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SELF-DETERMINATION: CANADA AND QUEBEC

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In considering the case of Quebec and Canada, it is useful to begin with a broad understanding of national self-determination because it points us to a historical experience that has been instrumental in framing Canadians' own understanding in a formal, quasi-judicial sense.

If we take as a starting point the notion that self-determination refers generally to the capacity of an identifiable group to shape substantially its life and living conditions and focus on French Canada and Quebec, we can identify three historical phases of interest: conquest and toleration, confederation, and the sovereignty debate.

CONQUEST AND TOLERATION

When the British defeated the French on the Plains of Abraham in 1759, they assumed control of a settled population of sixty thousand souls—a society that was French speaking, Roman Catholic, and organized in its civil administration along continental French lines. The British authorities, confronted with the policy alternatives of assimilation, expulsion, or toleration of the French inhabitants of what had become British North America, chose toleration, largely because they had little choice if they were

to secure the loyalty, or at least the quiescence, of French Canadians in the face of the impending rebellion of the Thirteen Colonies to the south.

That pattern of accommodation, established in the earliest years of British North America and sustained in the generations thereafter, imprinted itself on the people of Canada and grew in time into a foundational principle of Canadian political culture. Lord Durham recommended the assimilation of French Canadians in his famous 1840 report,¹ but by then the opposite approach of toleration and accommodation had established itself, and his ideas fell on deaf ears. The realization of Durham's proposal to create a United Province of Canada bringing together the French and English communities within one political structure did not lead to the assimilation of the former, as he had hoped, but instead brought about the reverse—namely, an informal, binational political system in which policies clearly unacceptable to one of the two communities were not acted upon.

Thus, from its earliest beginnings, British North America gave some space to the principle of French-Canadian self-determination, recognizing the right of that community to its religion, its civil law, and its language.

CONFEDERATION, 1867

By the time Canada as we know it was founded in 1867, the accommodation of the most vital concerns of the two national communities had become an embedded structural necessity, and it has remained so to this day. Confederation in 1867 not only established an initial four-unit federal system; it divided the United Province of Canada into the provinces of Ontario and Quebec, providing in Quebec a homeland within Canada for the bulk of North America's French Canadians. The federal constitution, then known as the British North America Act, granted a considerable range of powers to Quebec and its people, as it did to other provincial jurisdictions in the federation. Among Quebec's constitutionally protected jurisdictional responsibilities were direct taxation, borrowing money on its own recognizance, the regulation of private corporations with provincial purposes, property and civil rights in the province, the administration of justice, municipal government, and health and education. French Canadians, then, who were a clear majority of the population of Quebec, were able to control through their provincial legislature a wide range of the things that mattered most to their community. By any measure, Canadian federalism gave to French Canadians (or Quebecers) a substantial degree of national

self-determination, which has only increased with the decentralization of the Canadian federal system since the Second World War.

THE SOVEREIGNTY DEBATE

In the 1960s, the Parti Québécois was formed, with the central objective of securing the sovereignty of Quebec or—as it was understood by most Canadians—the separation of Quebec from the rest of Canada. This raised the question of whether the Quebec people had the right to choose their political status, up to and including outright independence. The option of secession is excluded by constitutional law in several federations; Brazil's constitution, for instance, speaks of the Brazilian federation, "*formada pela uniao indissolúvel dos Estados e Municipios e do Distrito Federal*,"² and Australia's refers to the federation as "one indissoluble Federal Commonwealth under the Crown of the United Kingdom of Great Britain and Ireland."

No such language exists within Canada's constitution. The secession of a member of the federation was not explicitly excluded when it was written, nor was it formally contemplated. Indeed, the possibility was not a topic of significant public debate until the onset of the Quiet Revolution in Quebec in the early 1960s. When sovereignty emerged as a serious option for a noticeable number of Quebecers, it was not dealt with primarily as a legal issue, either within Quebec or in the larger Canadian debate. Quite early on, it became clear that there was no taste for regarding sovereignists as traitors or secession as an illegal act. Implicitly, it was understood that the Canadian federal state rested ultimately on consent and was, for that reason, contingent on the will of its members to sustain the association.

In the course of its first governing mandate, the Parti Québécois organized a referendum in 1980 on its proposal of sovereignty-association, a scheme that would involve the emergence of a sovereign Quebec state with a continuing association with the rest of Canada. Sixty percent of the people of Quebec voted against the proposal. After a tortuous and wrenching process of constitutional discussion, which introduced a Charter of Rights and Freedoms into the Canadian Constitution but which, in the course of the following decade, failed to address the Quebec Government's concerns, the Parti Québécois, out of office since 1985, regained power in 1994 and held a second referendum on sovereignty in 1995. This time, the result was

much closer. While the proposal was voted down again, the margin was only around thirty thousand votes; just 50.6 percent of Quebecers voted no.

In the aftermath of this close result, the federal government asked the Supreme Court of Canada to answer three questions, judicializing the sovereignty debate in a way it had not been before:

1. Under the constitution of Canada, can Quebec secede from Canada unilaterally?
2. Under international law, can Quebec secede from Canada unilaterally?
3. In the event of a conflict between domestic and international law, which takes precedence?

The court rendered its unanimous decision in 1998, declaring, unsurprisingly, that the unilateral secession of Quebec would be contrary to both the constitution of Canada and international law. It also said, however, that if a clear majority of Quebecers responding to a clear question repudiated the existing constitutional order and expressed a desire to pursue secession, the other parties to confederation would be obliged to negotiate constitutional changes to respond to that desire. The existing procedures for amending the constitution could accommodate the radical alteration of Canada's constitutional arrangements, even including the secession of Quebec from the federation. The conduct of all parties would need to be guided by the same constitutional principles that gave rise to this duty to negotiate: federalism, democracy, constitutionalism and the rule of law, and the protection of minorities.

A year later, the federal Parliament passed legislation indicating how the Government of Canada would implement the findings of the Supreme Court in the event of another referendum. In response, the National Assembly of Quebec passed the Quebec Self-Determination Act in 2000, asserting, "The Quebec people has the inalienable right to freely decide the political regime and legal status of Quebec."

And there, effectively, the matter rests. Both Quebecers and Canadians elsewhere have made clear they do not wish to engage in an existential discussion about the status of Quebec within or outside Canada. This preference was reaffirmed in dramatic fashion most recently in the April 2014 Quebec election, which saw the Parti Québécois, which had been

discussing sovereignty during the campaign, going down to defeat at the hands of the Liberal Party after only nineteen months in power.

HIGHLIGHTS OF THE CANADIAN STORY

A number of features of the Canada–Quebec experience may be worth underlining.

1. The geopolitical circumstances surrounding the origins of Canada favored the initial accommodation of French Canada within British North America. Over time, that accommodation worked itself into a habit.
2. French Canadians, abandoned by France in the New World, had a strong interest in working with the British, as long as their basic rights and traditions were respected.
3. The British North American colonies, Quebec included, battled for self-determination within the framework of the British Empire, not, as in the United States, against British authority. The change was evolutionary, not revolutionary.
4. The principles of accommodation and political consent were deeply ingrained in Canadian and Quebec political culture by the time the drive for national self-determination began in Quebec in the 1960s.
5. Quebeckers were not a subjugated minority at the time the sovereignty movement emerged. While economic discrimination clearly existed, they ran their own legislature and government, passed their own laws, worshipped without hindrance in their own churches, ran their own school systems, hospitals, and municipalities, and had the potential under the constitution to do far more, should they wish, as the events of the Quiet Revolution were to demonstrate. In addition, they had full representation in the federal Parliament and on the Supreme Court.
6. The debate about self-determination was conducted within the rules of a constitutional democracy. Virtually all participants played by the rules of the game, and they respected the constraints of the rule of law, even when it was working against them.
7. While it took time to become clear, the commitment of the vast majority of citizens to the principle of consent as the

basis of a multinational political community ultimately revealed itself as an ordinal value in the country's makeup. The flipside of this was the realization that force would not be used to maintain the territorial integrity of the country.

8. While the constitutional debates raged, both societies, French and English, were changing, and the conception of Canada shifted from an Anglo-Saxon, Protestant, British-oriented country with a French minority to the notion of a multinational immigrant society with two official languages and an extraordinarily diverse population, with little more than residual ties to Britain.
9. While the court played a critical role at a defining moment, most of the heavy lifting in the sovereignty debate was left to political leaders and citizens.

Self-determination cannot reasonably be understood in absolutist or categorical terms. Whether it is a question of individual or national self-determination, it must be placed in a social and political context in which myriad constraining forces limit and mold its expression. The question that has shaped the long and troubled history of Quebec self-determination is whether Quebec's acknowledged claim to self-determination is better expressed within the constitutional framework of Canada or without.

NOTES

1. John George Lambton, the Earl of Durham, a British reform politician, was appointed governor general of British North America to investigate the causes of the 1837 rebellions in Lower and Upper Canada. He arrived in Canada in May 1838 but left in 1839 after a dispute with the imperial government, to whom he submitted his *Report on the Affairs of British North America*. In addition to his recommendation that the French Canadians be assimilated into English Canada, he proposed Upper and Lower Canada be brought together in a United Province of Canada, and that it and the other British North American colonies be granted responsible government, the core feature of parliamentary democracy. While his assimilation recommendation was not accepted, his other two proposals were accomplished within the following decade.

2. "... formed by the indissoluble union of the states and municipalities and of the Federal District ..."

ABOUT THE AUTHOR

David Cameron, political scientist and dean of the Faculty of Arts & Science at the University of Toronto, has put his expertise on federalism, Quebec nationalism, French-English relations, constitutional renewal, and national unity to use helping countries around the world rebuild and reform their governance structures following periods of ethno-cultural conflict. He has advised the government of Sri Lanka and the Tamil Tigers on federalism and constitutional reform during his many visits to that region. He has traveled to Baghdad on behalf of the National Democratic Institute for International Affairs in Washington to help lay the groundwork for a new Iraqi State. He has also helped the Estonian government reform its constitution and advised different levels of government in India on the management of their federation.

In 2007, he was asked to lead the governance component of the Jerusalem Old City Initiative, which is seeking to develop a workable model of political, economic, and security organization for that city that might help address the conflicting aspirations of Israelis, Palestinians, and the international community. Amidst all this, Cameron has somehow found time to serve the University of Toronto by taking on a series of senior administrative positions beginning with his appointment as vice president, Institutional Relations, in 1985. He was acting chair, Department of Political Science, from 2002 to 2003, acting vice dean of undergraduate education and teaching in the Faculty of Arts & Science in 2003–2004, and chair of the Department of Political Science from 2006 to 2012.