QUÉBEC - CANADA

WHAT IS THE PATH AHEAD?

NOUVEAUX SENTIERS VERS L'AVENIR

Edited by / Sous la direction de

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SHOULD A SUPERMAJORITY BE REQUIRED IN A REFERENDUM ON SEPARATION?

Although there has been an explicit separatist threat from Quebec since the 1965 publication of Daniel Johnson's *Egalité ou Indépendance,* there was until 1995 a virtual taboo among Canada's political class on discussing the mechanics of separation. A few writers have dealt with the topic in recent years (see especially Young 1995 and the literature reviewed in Dion 1995), but politicians have avoided the subject religiously. Some dismissed separation as too unlikely to warrant discussion; others thought separation was possible but feared that discussing it openly would make it a more likely outcome.

All of that has now changed decisively. After the close vote in the 1995 referendum, it is obvious to everyone that a serious attempt to separate Quebec from Canada, though not an inevitability, is a very real possibility. Thus politicians and political commentators are now rushing to discuss what has become known after Gordon Gibson's book (1994) as "Plan B," including the substantive terms and conditions of separation as well as the process by which it might occur.

Because of limitations of space, I will deal only with the process of separation, particularly the issue of whether a supermajority should be required in any future referendum on sovereignty. Shortly after the 1995 referendum, the Prime Minister said that Canada would not be divided on the strength of one vote, which seemed to mean that a 50% + 1 majority would not be considered decisive. Then in January 1996, the newly appointed Minister of Intergovernmental Affairs, Stéphane Dion, made explicit statements about considering a supermajority, though he did not specify a decision rule to replace simple majority. Nothing has been decided, but the federal politicians have certainly staked out a position that will be difficult to abandon.

The argument for requiring a supermajority is straightforward. Dividing the country is a major step with profound implications for all Canadians, both inside and outside Quebec; and such a decision should not be taken lightly on the basis of a small and perhaps transitory majority. The argument is convincing at an abstract level, and if we were writing on a blank slate, I would be happy to constitutionalize a supermajority requirement for provincial referendums on separation. But Canadian history is not a *tabula rasa;* and the conditions in which we actually find ourselves make supermajority a pernicious idea, harmful as well as unnecessary.

First, it would break with historical precedent. There have been three national referendums in Canadian history (1898 on prohibition, 1942 on conscription, 1992 on the Charlottetown Accord); two Quebec referendums on separation (1980, 1995); and a two-stage Newfoundland referendum on union with Canada (1948). There have also been roughly another 40 provincial referendums plus thousands of local plebiscites on all sorts of issues (Boyer 1992, 259-260). In almost all of these votes, the decision rule has been simple majority (See Boyer 1992, 198, for an exception in the current Saskatchewan legislation). Moreover, the federal government participated in both Quebec sovereignty referendums on the understanding that 50% + 1 would be decisive. To announce unilaterally that the decision rule will be different in the future looks suspiciously like bad faith.

This is liable to be harmful in at least three ways. First, it will be trumpeted by the separatist forces as another humiliation. "Look," they will say, "Ottawa participated in the last referendum but never intended to honour the result. You can never trust the federalists."

Second, it draws further attention to the role played by Anglophone and allophone voters in Quebec, who are almost unanimously opposed to separation. Because of this solidly federalist ethnic bloc, the separatists must get about 60% of the French vote just to approach 50% + 1. Setting the decision threshold at 60% or higher, as has been suggested, would require getting 75% or even more of the French vote in order to achieve a Yes victory. Such a move would surely exacerbate the resentment against the ethnics that already exists.

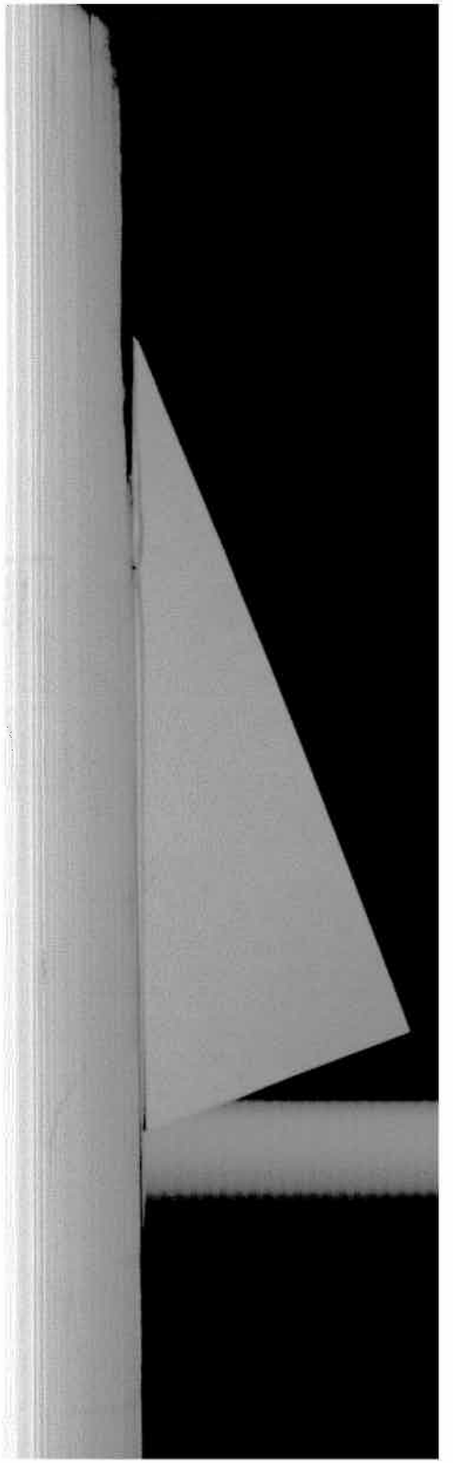
Third, and most seriously, a supermajority rule might provoke a unilateral declaration of independence (UDI). To borrow a metaphor from the high jump, if we set the bar so high that it is impossible to jump over it, the separatists might try to run under it instead. Imagine a referendum in which the Yes side got 55% but Canada maintained that the decision rule was 60%. How strong would Canada's position look in the eyes of the other nations of the world, whose decision to grant or withhold recognition would ultimately determine the success of Quebec's UDI gambit? Or, claiming that Canada was not dealing in good faith, the separatists might dispense with a referendum altogether and go back to

the pre-1976 Parti Québécois doctrine that a PQ victory in a provincial election would legitimate independence (Johnson 1994, 146). These are all unattractive scenarios. Canada might triumph in the end, but only at the cost of immense economic disruption and a legacy of bitterness in Quebec that would guarantee separatism an immortal lifespan.

If a supermajority is dangerous, it is also unnecessary, for it is simply not true that Canada could be divided on the basis of one vote in a provincial referendum. The separation of any province from Canada would require the passage of a constitutional amendment. To be sure, the constitution is silent about separation, but it is silent on all sorts of things about which amendments have been passed (e.g., unemployment insurance, old age pensions). The sovereign power of constitutional amendment extends to any subject whatsoever. A victory for the Yes side in a Quebec referendum could do no more than legitimate a request from the provincial government to begin negotiating the terms of separation.

One uncertainty is how an amendment for secession would be approved. According to Peter Hogg (1992, 5-32), approval would "probably" require the general procedure (the federal Parliament plus the legislatures of two-thirds of the provinces having 50% of the population of the provinces), but he adds in a footnote: "It is possible that the indirect impact of a secession on the matters enumerated in s. 41 [e.g., the Crown] makes the unanimity procedure applicable." The point is that the separation of Quebec would affect not only the Lieutenant Governor of Quebec but also the powers of the Governor General, and s. 41(a) of *The Constitution Act, 1982,* requires unanimous provincial consent for changes to the office of the Queen, Governor General, and Lieutenant Governor. For this reason, Patrick Monahan (1995, 7-9) argues strongly that the unanimity procedure (Parliament plus the legislatures of all provinces) would be required. A mere political scientist cannot arbitrate such a dispute between such legal luminaries, but it obviously needs to be sorted out. A reference to the Supreme Court of Canada may be required at some point.

Whatever the precise legalities may be, it is of transcendent importance that the federal government enforce the constitution. The requirement of obtaining the approval of Parliament and at least seven provincial legislatures is the best hope of protecting the interests of all of us, both inside and outside Quebec. Presumably, our elected politicians would withhold ratification until Quebec had agreed to reasonable terms on such matters as division and repayment of the national debt, citizenship, right of passage, trade, and all the other matters that need to be negotiated. Of course, Quebec has its own weapon in UDI, and this is no negligible threat, for it would do grave damage to the Canadian economy. However, it would cause even worse damage to the smaller and weaker Quebec economy, so that Quebec would probably not resort to it as long as there was a reasonable hope of achieving separation through constitutional



amendment. This means that the federal government and the other provinces would have to negotiate in good faith or risk Quebec bringing down everyone's house of cards.

Unfortunately, it is very late in the day to start insisting on the rule of law. By far the gravest folly of Canada's political class in facing the separatist threat has been its failure to talk about the rule of law. For thirty years, Quebec separatists have been left uncontradicted while they made public claims to the right to issue UDI. Meanwhile, leading Canadians have repeatedly said that force would never be used to keep Quebec in Canada. This may be true, but it is only part of the truth. One must contemplate the use of force to ensure that the departure of Quebec takes place under the rule of law, just as one would enforce the constitution in other respects. It would have been much better to say this in 1966 than wait until 1996, but "better late than never" still applies.

Insistence on the rule of law also disposes of another red herring in the debate—the wording of the referendum question. If Canada were to be divided solely on the result of a provincial referendum, the wording of the question would be vital. But if the constitution is followed, separation cannot take place until the Quebec National Assembly approves a constitutional resolution embodying the negotiated terms of separation. This might or might not entail a second referendum in Quebec, but in any case it would mean that Quebeckers would know what they were getting into.

Federal policy, thus, should include the following elements:

(1) The Prime Minister should announce his acceptance of simple majority as the decision rule in any future Quebec referendum on sovereignty. This acceptance must be categorical, without any escape clauses.

(2) At the same time, the Prime Minister should make it crystal clear that a Yes vote in a referendum does not legitimate UDI. It is a request to begin negotiations, nothing more.

(3) The Prime Minister should also declare that the federal government will negotiate in good faith if the Yes side triumphs, and will do its best to ensure that the provinces also negotiate in good faith. For Jean Chrétien, this amounts to promising his own resignation, because it is hardly acceptable for a prime minister from Quebec to lead negotiations on behalf of the rest of the country.

(4) The Prime Minister should begin to emphasize the constitution and the rule of law in his public statements, specifically the need for separation to take place through a constitutional amendment. This should not be done belligerently in public, but in private he should inform the premier of Quebec that Canada will use all means at its disposal, including the RCMP and the Canadian Forces, to ensure that the rule of law is followed. In short, UDI must be ruled out as an acceptable option for Quebec.

I believe that this policy would have three beneficial results:

(1) It would lower the risks of UDI because separatists in Quebec would know that there was a legal way to attain their objectives.

(2) It would reassure other Canadians that their interests would be considered because separation could not happen on Quebec's terms alone.

(3) It *might* (and this is certainly speculative) make separation less likely by ensuring that the National Assembly of Quebec, and through it the people of Quebec, would be aware of all the conditions of separation and would have to agree to them. At that stage, voters who thought that separation was compatible with continuing Canadian citizenship would be disabused of their illusions. However, it is impossible to know how this would play out because it is conceivable that a groundswell of nationalist enthusiasm would override all practical considerations.

There are never any guarantees in politics. But given what has gone before, I think that renunciation of the demand for a supermajority and emphasis upon the constitution and the rule of law offer the best prospect for managing a national-unity crisis.

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VALUES IN DISARRAY

Introduction

To the question "What values and principles are currently animating the Canadian public?," the panelists unanimously responded that "Canada is currently a country in value disarray" (in the words of Donna Dasko). However, the value disarray is by no means unidimensional. Our values experts find not only inter-ethnic attitudes in disorder, but also a certain disruption in our social, economic, and political value systems. Further, they offer different explanations for this state of affairs and also a diverse set of solutions. We will follow them in this trajectory. We will find, in addition, that our authors have selected cryptic expressions to symbolize the essence of their findings. These, too, merit a place in this summary report.

Current Value Systems

"Sharing and Caring vs. Leaner and Meaner." Donna Dasko describes attitudes toward the fleeting social contract. Essentially, support for a strong state and caring policies are no longer major motivating forces. While caring social values are still intact, it is also true that 68 percent of Ontarians supported Harris's intention of cutting social programs by 22 percent. The fact is, there is no agreement on how fiscal responsibility should be achieved. Several recessions and deflated economic circumstances have served to deflate expectations. Thus, there are conflicting priorities between the welfare net and affordability. No clear alternative vision exists.

Differences also exist about East-West ties, accommodating Quebec within Canada, and between Anglophone and Francophone value