

Sovereignty Issues in Quebec



Quebec Sovereignty According to Canadian Constitutional Law

Canadian constitutional law does not explicitly allow for the possibility that a province might secede. Yet some people claim that sovereignty can be attained via constitutional amendment and the subsequent consent to such an amendment by the Canadian provinces (seven out of ten or perhaps all of them) as well as the federal government. In the event of a vote in favour of sovereignty, some would still insist that the Canadian constitution is binding, even if this constitutional order was implemented against the democratic will of the Quebec people. They claim that Quebec's political sovereignty is illegal, that it cannot be declared unilaterally and that, should Quebec unilaterally declare independence, its territorial integrity would not necessarily be preserved.

What can be said in response to these arguments? One could indeed use the Canadian Constitution to counter some of Quebec's moral and political arguments. Yet, by choosing to repatriate the Constitution without the consent of Quebec and its National Assembly, Canada has in a sense helped to resolve this dilemma. Even if it were in principle possible to use the political weight of the Constitution to oppose the political weight of Quebec's moral arguments, the balance leans in the latter's favour. The reason is that the Constitution is, in fact, illegitimate because it was imposed without the consent of the people of Quebec or Quebec's National Assembly. Therefore, the events of 1982 justify a unilateral declaration of independence, if it should become necessary. To claim that Quebec cannot attain sovereignty without Canada's consent means to forget that Canada imposed its new constitutional order without Quebec's consent. However, since it did do so, Canada must now be prepared to accept the consequences and accept the expression of the will of the Quebec people.

Quebec and Canada would nonetheless be wise to reach an agreement in the period immediately following a vote in favour of sovereignty. Canadians could, after such a vote, quickly come to an agreement concerning amendments to their own constitution which would take Quebec's sovereignty into account. A unilateral decision by Quebec must be considered a last resort, but a refusal to acknowledge Quebec sovereignty would be one way for Canada to force Quebec to make a unilateral declaration of independence. If the Canadian provinces and the federal government use their Constitution to block this process, they will be the ones opting for force over law and imposing "constitutional legality" over democratic legitimacy.

Peoples create constitutions, constitutions do not create peoples. And when a constitution is imposed on a people against its will, they have every right to acquire a new one. If there are sufficient moral justifications, such a people could even resort to political sovereignty as part of this process. All in all, Quebec sovereignty only appears illegal in relation to a constitution which has been illegitimately imposed on Quebec. This is the reason why the Canadian Constitution cannot be used to counter Quebec's proposed actions.

Quebec Sovereignty and International Law

The Canadian Constitution cannot legitimately exert influence over Quebec's sovereignist aspirations, but can such aspirations be governed and directed by international law? The right to self-determination written into the United Nations Charter, stated in the U.N. 1970 Declaration of Friendly Relations (A.G. Resolution 2625), essentially concerns colonized peoples, and some understand this to mean that the right to sovereignty is limited to them. Yet in practice, international law recognizes a society's right to accede to sovereignty, if the process is democratic and if it is able to properly govern its territory and population. Therefore, the process of attaining sovereignty is first and foremost a political issue, not a legal one. International law neither authorizes nor prohibits sovereignty; it simply recognizes it. On this basis, we claim that Quebec sovereignty is in keeping with international law, in the same way as the sovereignty of many states since the end of the Second World War, and especially during this decade (during which 21 new states have been recognized).

Certain members of the current Canadian government maintain that Quebec cannot use international law as a basis for unilaterally declaring its sovereignty, concluding that such a declaration would be illegal under international law. This is how they hope to make people believe that this process is morally reprehensible. Yet most international legal experts who have offered opinions on this subject disagree. International law does more than simply avoid ruling on this question. It recognizes sovereignty. These jurists implicitly recognize that the pursuit of sovereignty surpasses the bounds of the strictly legal, and is often both politically legitimate and morally justified.

As we have indicated, Quebec will do everything in its power to avoid a unilateral declaration of sovereignty. Nonetheless, if faced with Canada's refusal to recognize its democratic decision, Quebec could feel itself obligated to make such a declaration. Would Quebec be able to justify its actions?