



FROM CIVIL RIGHTS TO HUMAN RIGHTS AND SELF-DETERMINATION?

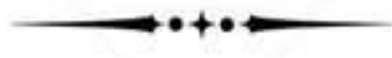
PROCEEDINGS OF THE IHRAAM CHICAGO CONFERENCE 2012





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EXTERNAL SELF-DETERMINATION AND INTERNAL SELF- DETERMINATION IN QUEBEC, CANADA



DANIEL TURP

I was invited to talk about self-determination in the Quebec context. Although there are parallels to be made between the black communities in the United States and may be more parallels when in the previous conferences¹ we were discussing not only Quebec, but the Islets, and Scotland, and what's happening in many parts of the world where there are peoples making claims for self-determination, whether internal or external, I think that self-determination is all about freedom. It's all about peoples as collectivities claiming more freedom, more say in everyday life. I would like to talk to you about what has happened in Quebec in the past decades, but also about what is happening now because self-determination is a continuing process. A great French philosopher once said that a nation is a plebiscite of every day—a process where every day you decide who you are, what you are, and what you'd like to be or become. Quebec in that respect has been struggling for self-determination and continues to do on a day to day basis.

Quebec is one of the 10 provinces of Canada. There are also 3 territories in Canada. It is a federal system like the US but is seen as a more centralized system, because provinces have a great amount of power in many areas. It's a country of 33 million inhabitants, Quebec has now in this Fall has reached 8 million people, 23% of Canada's population as a whole. Though that portion is going down significantly. At one point

it was 35%, but the population of the western provinces of Canada, including BC, is increasing more than that of Quebec, so the number of Quebecers in proportion is less than it was in the past decade.

Within Quebec, of that 8 million people, there is about 80%, a little bit more than 80%, that are French-speaking or of French origin. There is a national minority of English-speaking Quebecers that composes about 8% of the Quebec population now. There are immigrants of all sorts. In the early '50s-'60s, there were Italian and Greek immigrants, now more are coming from French-speaking Arab countries, and they are about 10% of the population now, and increasing. And there are 11 aboriginal nations in Quebec. There are 10 Indian nations, and 1 "inuit" nation, who comprise somewhat more than 1% of the population, approximately 100,000 inhabitants. So that is the graphic outlook of Quebec nowadays.

Originally, Quebec was New France, but there was a conquest in 1759, so New France became Canada. But Canada then was comprised of both Quebec, and Ontario, and part of the United States. Afterwards, Canada became upper and lower Canada, and then it became a Confederation in 1867 where Quebec was one of four provinces then. Canada was not a country, Canada only became a country for our Supreme Court of Canada between 1949 and 1982. It relinquished progressively its links with the United Kingdom and the British Empire. But even then it took another three decades before Canada became completely independent because until 1982 Canada could not even amend its own constitution, it could only be amended in Britain by the British Parliament.

Then in 1982 there was the patriation of the Canadian constitution—a total patriation from the UK, which made Canada a totally independent country. That was not long ago, only some 30 years ago. The 1982 patriation of the Canadian Constitution triggered a lot of difficulties for Quebec, because it was done unilaterally—without Quebec's consent. And we, the French Quebecers (Québécois) did not celebrate it. The 1982 constitution entered into force on April 17th, 1982 and the Queen came to Ottawa. Mr. Trudeau, the Canadian Prime Minister, and others were very proud of the patriation of the constitution, but all of that was done without Quebec's consent. Even though Quebec did not agree with what was in this new constitution, and had been isolated by the other 9 provinces, the federal government still went ahead and asked the United Kingdom to adopt this constitution and it did. Since 1982, Quebec has never signed on to that constitution and is not part of that constitution. It has been imposed on Quebec because the Supreme Court has said that Canada can go ahead and adopt the constitution without Quebec's consent and that it still applies to Quebec.

There has been, throughout the history of Quebec, the idea that

it should continue to exist. At one point Canada was Quebec, Canada was French-speaking Canadians and the others were not Canadian, they were English. And then they became English Canadians and we became French Canadians. And then in early '60s the French Canadians came to identify themselves more and more as Quebecers, and also at that point, in 1967, the idea took hold that Quebec formed a nation in itself, the Quebec nation.

Quebec has always been in survival mode and always wanted to survive and exist. And it tried. And it made a lot of children. My grandmother had a lot of children. Now we do not have many children, we have a very low birth rate, but Quebec survived. During all those years and decades and centuries, there was always the idea that we were a nation and wanted to continue. We had an identity; we wanted to preserve that identity. The idea that the Québécois were to be assimilated was not acceptable. We wanted to preserve our language, our culture, and in those days there was also the issue of preserving the Catholic faith, because the French in Quebec were Catholic. So we were intent on preserving that kind of identity: native language, culture, religion. And in the '60s what we called the Quiet Revolution took place. At one point, many Quebecers said: "It is really hard to survive in Canada, it is really hard to be ourselves and have our own identity. Let's think about maybe becoming a country. Maybe becoming a country on our own."

Québec's Right of Self-Determination

Since then there has been a big debate where self-determination—the notion of self-determination—has played a key role. In the '60s, the right of self-determination was being advocated and used by colonial peoples in Africa and in the Pacific. The Québécois said: "We also are an oppressed people in a sense. Our language is not respected and we do not have our own institutions, or if we do, we cannot use them like we want to develop ourselves, let's become a country."

And that's when the leaders of political parties started to invoke the right of self-determination under international law. They would quote the Charter of the United Nations, and the 1966 Covenants on human rights where common article one in both Covenants says: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." In Quebec, the political life organized itself around this idea: that Quebec had the right to self-determination and could decide for itself what should be its political status. There were people advocating full independence from Canada, and still do. Some people were advocating changing the federal system, making

Quebec more autonomous within Canada and trying then to change the constitution and to gain more powers over the economy and to become recognized as a distinct society or nation within the Canadian framework.

In the '60s, political parties in Quebec were advocating for one or the other of the options, and at one point—it was a shock for many people, may be even in the US—the political party led by a very charismatic leader, Rene Levesque, won the election in Quebec in 1976. It was very surprising; people never thought it would happen. But Quebecers decided that they would give this new party, a social democratic party which had also an interesting program on social issues and the environment, a chance, and it was elected. It was elected on the commitment that it would hold a referendum that would be on the idea of becoming independent, of having some kind of special relationship with Canada that would then be another different country, but with whom we would maintain a special relationship because it was our neighbor and we had great economic ties of great importance that shouldn't be severed. And the idea of that political party, the Parti Québécois, was to have a sovereign Quebec and a relationship with the rest of Canada which would be analogous to what is happening in Europe and what is happening with the European community, now the European Union where countries were in a very close economic relationship, but remained different sovereign countries when it came to all the other issues: culture language, religion, social issues.

The Parti Québécois organized the first referendum in 1980 and it was an interesting democratic exercise. We adopted a Referendum Act that created two umbrella committees and strict rules on how much money could be spent by each of the two committees to promote the yes and no sides. It ended up with a defeat of the yes side. It was 40% for sovereignty association and 60% in favor of against sovereignty association.

In the campaign, what still upsets a lot of people in Quebec, is that in 1980 during that time Mr. Trudeau (who was from Quebec) was the prime minister of Canada, he promised the Québécois solemnly that if they voted “no” there would be changes to Canadian constitution that would allow Quebecers to be freer, and to have more autonomy. But what Mr. Trudeau then did two years later was to adopt a constitution without at all dealing with the fundamental issues that were important to Quebec. He put in a Charter of Human Rights and Freedoms in the constitution from London, but he made a deal with Premiers of the 9 other provinces and went on to patriate the constitution without Quebec's consent.

Now the constitution of 1982 even repealed parts of Quebec language laws without its consent and that still has consequences today because the Supreme Court sometimes makes decisions that are very

inconsistent with Quebec's view on what should be its own language policy. So in 1982 the patriation of the Canadian constitution left people in Quebec very upset, and then there were attempts later on to repair the injustice of the constitutional negotiations led by Mr. Malroney, the Conservative Party leader who became the next prime minister in Ottawa. He tried to negotiate a new constitutional agreement to bring back Quebec into the Canadian family constitutionally. There was the Meech Lake Accord, which was not adopted. And a few years later there was the Charlottetown Accord. There was a referendum both in Quebec and the rest of Canada. This referendum to change the constitution was defeated again because in Quebec people said that this Agreement was not giving enough autonomy to Quebec while the rest of Canada in 1992 said it gave too much autonomy to Quebec, and for very different reasons. There was a vote and 56% were against the Charlottetown Accord in Quebec while 54% in the rest of Canada voted against it. The Parti Québécois was reelected in 1994 on the promise to hold another referendum on independence. One year after reelection it held the referendum, and in the meantime, a new party was created in Ottawa, the Bloc Québécois. Together these political parties and other movements promoted the idea of sovereignty with the same kind of idea—that even though we become sovereign, there should still be a special partnership with Canada that is economic, maybe also political, some kind of common citizenship between Canada and Quebec. And that referendum, the second one on the issue of independence, was held on Oct 30th, 1995. The result was a very narrow margin of 49.42% “Yes” to 50.58% “No”. That was a bit upsetting for some of us, but that's democracy.

We were very upset when we realized that a lot of people had cheated and that our laws had not been respected, because there was so much money spent illegally on the vote, which did not respect our referendum laws. All kinds of things happened that were unacceptable, such as Canada's accelerating the granting of citizenship to some recent immigrants so they could vote no. But still, the referendum was lost.

There was talk about self-determination. People would say we have the right to decide our own future, there was nothing in the constitution that said that. That is the struggle—to gain that right for ourselves, even if it is not in the constitution itself, even if under international law it is not very obvious because maybe it only applies to colonial peoples, but the struggle—the idea that we were people, and that we had the right to decide our future— finally was accepted by other Canadians and the Canadian government. So it means a lot to struggle and persevere on your own for what you think is your right and your responsibility: to maintain your identity and to fight for your identity.

Québec's Right to International and Internal Self-Determination and the Supreme Court of Canada

But that was difficult because when we almost won in 1995, people said, ok let's use the law now. Let's give the Supreme Court of Canada the chance to say that Quebecers have the right to separate from Canada. There were three questions put to the Supreme Court in 1998, asking the court if Quebec had the right to self-determination under international law that would allow it to unilaterally secede? Is there a right to secede under Canadian constitutional law? And another other dealing with the conflict between international law and constitutional law. That was really interesting. The government of Quebec boycotted that case because it said that this was political and was not legal, but the court decided to decide on the issue. Surprisingly it gave an advisory opinion that refused to bluntly answer the questions. It suggested that international law did not allow Quebec to secede unilaterally from Canada because Quebec was not a colonial people under the definition of the UN and it was not an oppressed people.

But on the question relating to internal self-determination, the Supreme Court said under the principles of democracy and federalism, if there is a clear question for Quebecers and a clear majority, Quebec has a right to secede under Canadian constitutional law. And there is even an obligation on the other partners of the federation to negotiate Quebec secession. There are two issues: the question should be clear and there has to be a clear majority. It did not say what kind of questions would be deemed to be clear and what was a majority. Then the federal parliament adopted the Clarity Act that suggested that the questions should never deal with the issue of sovereignty with partnership (sovereignty-association), because that would not be clear. The question would need to be: do you want to be independent and that is all. And on the clarity of what constitutes a majority, the Clarity Act is unclear.

So we have relied a lot on external self-determination, but now we can rely on internal self-determination under the Canadian constitution. Now the Supreme Court has suggested that we do have internal self-determination. So what has happened, since the beginning of the present century, is that there has been little movement on this issue of independence or self-determination, because in 2003 the Parti Québécois was defeated by the Liberal Party of Canada led by a federalist who does not want Quebec to secede, but he also does not want more autonomy for Quebec. He always says that the fruit is not ripe and we should not try and negotiate more because Canadians are not willing to give more autonomy to Quebec. So he has been very careful not to open Pandora's Box. Because if we try again to negotiate, it won't work and eventually

another referendum will be organized because eventually Quebecers will be upset that no agreement has been reached on constitutional autonomy and independence will become an issue once again.

But when you have a motion that is only a motion, that is not in the constitution, and that does not mean much except symbolically, people are not really satisfied.

Since the 1995 referendum, the successive Canadian governments have decided not to deal with the issue of Québec self-determination. This might end soon because elections have to be called in the next year. If the Parti Québécois is elected, the future is about self-determination and hopefully Quebecers will continue to democratically be able to decide what they want to become and will, I hope, decide to emerge as a free, democratic and independent nation.

[NOTE: Since the delivery of this paper, the Parti Québécois has been returned to power in Quebec.]

ENDNOTES

- 1 IHRAAM Conferences on the right to self-determination held in Geneva in 2000 and 2004. See Y.N. Kly and D. Kly, eds., *In Pursuit of the Right to Self-Determination: Collected Papers & Proceedings of the First International Conference on the Right to Self-determination & the United Nations, Geneva 2000*, Clarity Press, Inc., 2001 and Y.N. Kly & D. Kly, eds., *In Pursuit of an International Civil Tribunal on the Right to Self-determination: Collected Papers 7 Proceedings of the Second International Conference on the Right to Self-determination, the United Nations, and International Civil Society, Geneva 2004*, Clarity Press, Inc., 2005.