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THE JUNE 12 AGREEMENT: A COMMON PROJECT FOR QUEBEC'S FUTURE

by Daniel Turp

The evening of April 7, 1995, might well have been a turning point in the history of contemporary Quebec and Canada. On that evening, Lucien Bouchard, the leader of the Bloc québécois, delivered the opening speech to the first national Convention of the Bloc québécois. He proposed that the sovereigntist project "quickly take a turn (*virage*) which will bring it closer to Quebeckers and open a credible future avenue for new relationships between Quebec and Canada, responding to their legitimate concerns."

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SOVEREIGNTY ... BUT WHERE'S THE ASSOCIATION?

Analyzing the Three-Party Blueprint for Quebec Secession

by Robert Howse

> "... toute société sans loix ou sans Chefs, toute union formée ou maintenue par le hasard, doit nécessairement dégénérer en querelle et dissention à la première circumstance qui vient à changer; l'antique union des Peuples de l'Europe a compliqué leurs intérêts et leurs droits de mille manières; ... leurs divisions sont d'autant plus funestes, que leurs liaisons sont plus intimes; et leures fréquentes querelles ont presque la cruauté des guerres civiles."
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> J.-J. Rousseau, *Extrait du projet du paix perpétuelle de Monsieur L'Abbé de Saint Pierre*

On June 12, 1995, the Parti québécois, the Bloc québécois and the Action démocratique party (Mario Dumont) formally agreed on a blueprint for Quebec secession. The three-party agreement is often de-

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scribed in press reports as a "virage" (turnaround) from a hard-line separatist position as a third option or as "sovereignty-association." However, nothing in the three-party agreement envisages an association between Canada and Quebec that would differ in kind or intensity from the relations that exist between most separate, sovereign states in the world today.

Thus, the three-party agreement represents a major victory for Jacques Parizeau over those Quebec nationalists who wanted a genuine "third option" (for instance, a European Union-like arrangement) to be the basis of the "oui" campaign. And the price that Parizeau has paid for this victory is minimal. The agreement is scattered with comforting turns of phrase like "partnership," "integration," "common institutions," and "parliamentary assembly." But the actual *proposals* are for arrangements no more and no less integrating than what Canada has today, either bilaterally or multilaterally with scores of separate states.

The three-party agreement's proposal for a treaty between Canada and a sovereign Quebec begins by covering subject matter that would, admittedly, have to be dealt with in *any* treaty that allowed for an orderly secession, such as division of federal assets and the debt. The three-party agreement then goes on to state that the treaty is to ensure that the "partnership" "is capable of taking action" to deal with matters such as the free flow of goods, individuals, service and capital, as well and labour mobility and citizenship. However, this is redundant; according to the general principles of international law, *any* two or more sovereign states have, through mutual consent, the capacity to enter into binding obligations that cover these areas of cooperation.

The agreement goes on to list a number of other areas where "nothing will prevent the two member states reaching agreement," among them defence policy, financial institutions, monetary and fiscal matters, trans-boundary pollution, trade in hazardous wastes, arms and drug trafficking, postal services, and transportation. All these areas are (taken together) the subject of dozens, perhaps hundreds, of existing treaties or accords between separate, sovereign states; most are also in the domain of one or more international institutions whose members are separate, sovereign states. In the defence area, one could cite NATO and NORAD; in the case of financial institutions, the Basle Committee of the Bank of International Settlements; in transportation, the International Civil Aviation Organization and the bilateral "open skies" accords between Canada and the United States; with respect to the environment, the Montreal Protocol and the Basle Hazardous Wastes Convention; in monetary matters, the IMF; in fiscal matters, the proliferation of bilateral tax treaties. In sum, to say that nothing impedes agreement between Canada and a sovereign Quebec in such areas of common interest is merely to make a platitudinous restatement of the potential scope of contemporary international relations.

"One would have to be extremely naive, or entirely ignorant of the recent course of world events, to think that these conflicting territorial claims will permit a straightforward peaceful reconciliation. Any proposal for the future of Quebec-Canada relations after secession that ignores this reality is, in the last analysis, a dangerous fairy tale."

The three-party agreement also envisages the possibility (although not the *requirement*) that Canada and a sovereign Quebec would take common positions from time to time in various international forums or negotiations. Such alliances, leagues, or groupings of like-minded separate states are as old as the history of international relations. *Ad hoc* arrangements of this nature should be distinguished from the concept of a common external commercial policy and a common foreign policy where the members of an economic and political union commit themselves to speak with one voice to the rest of the world.

The three-party agreement proposes three institutions to manage Canada-Quebec relations. The first, "the partnership council," would be made up of ministerial representatives of both countries. It would make decisions on the implementation of the Canada-Quebec treaty, subject to a veto by each country on any such decision, and would be served by an expert secretariat. Treaties between separate, sovereign states often involve this kind of institutional infrastructure. An obvious example is the Free Trade Commission provided for in NAFTA, which is made up of "cabinet-level representatives" of Canada, the United States, and Mexico, and is charged with supervising the implementation of NAFTA, overseeing its further elaboration and related tasks. These kinds of treaty-implementation bodies should be clearly distinguished from institutions such as the Council of Ministers and the Commission in the European Union. These European bodies have crucial and well-defined roles in the making of laws and regulations applicable throughout the entire Un-

ion. No such function is envisaged for the Canada-Quebec partnership council or its secretariat. In this, as in all other things, the agreement follows the traditional model of relations between completely separate states rather than the more integrating "economic and political union" model exemplified by Europe today.

The second institution proposed by the three-party agreement is called a "parliamentary assembly." This is a joint body to be composed of representatives appointed from the national parliaments of each country, *not* directly elected by the citizens to sit in this body. Far from being a genuine supranational democratic body (like the European Parliament is now in the process of becoming), the parliamentary assembly lacks the capacity to legislate. It is limited to passing "resolutions" (in international law a resolution is not generally seen as a binding legal act) and making "recommendations" to the council. Arrangements of this general nature already exist between separate, sovereign states—for example, the Canada-United States Inter-Parliamentary Group, a body formed in 1958 consisting of 24 Canadian parliamentarians and 24 US legislators (12 Senators and 12 Congresspeople), which meets annually to deliberate on matters of mutual consent.

The final institution proposed in the three-party agreement, the "tribunal," is to be modelled on the dispute settlement arrangements in the NAFTA and the GATT/WTO, as well as the arrangements in the Canadian Agreement on Internal Trade (the dispute settlement provisions in this last instrument are themselves based on the NAFTA/GATT model, albeit with a few important variations). Inasmuch as the Tribunal is to deal with trade and related economic disputes, it may be largely redundant. Assuming that a separate Quebec were to join GATT and NAFTA, disputes between Quebec and Canada on most trade matters could be handled through the mechanisms that already exist in those international economic regimes.

All the arrangements proposed in the three-party agreement are, of course, subject to negotiation and agreement with Canada. The agreement rightly emphasizes that the size and importance of the trade and other economic links between Quebec and the rest of Canada would make it in both parties' interests to come to terms. However, in principle, and provided both parties act in accordance with economic self-interest, a stable basis for future economic ties could largely be assured through adhesion to international rules and institutions such as those of GATT/WTO and NAFTA, and/or through the continued application of the principles embodied in the Agreement on Internal Trade. However, this last instrument is a political accord, the provisions of which do not in themselves have the status of law. On many matters, the norms in the Agreement on Internal Trade are less comprehensive and less integrating than those of the GATT/WTO. In sum, there would be an "economic association" between Canada and a separate, sovereign Quebec, just as there is an economic association between Canada and the United States, or Canada and the European Union, and it would be governed by many of the same rules and norms.

"The agreement proposes the kind of relationship that now prevails between separate, sovereign states during periods of relative peace and stability. The question, of course, is whether even this will be easy to build from the ashes of what may become a bitter conflict of absolutes."

The interdependence of interests between Canada and a separate Quebec does, of course, mean that there will be a significant bilateral relationship on some issues, many of which could be described as more political than economic. Yet, as the quotation from Rousseau/St. Pierre at the beginning of this article suggests, interdependence far from guarantees friendly relations among interdependent states, much less the possibility of an economic and political union.

Of course, what is proposed in the three-party agreement and what might happen between Canada and a separate Quebec over the long run, are two different things. It could be pointed out that the European Union itself began on paper as little more than an inter-state treaty about coal and steel (even if some of its idealist founders, like Jean Monnet, had more ambitious goals right from the start). No one can credibly claim to predict the future, and it is within the realm of historical possibility that, over time, the separation model proposed in the agreement could evolve into an economic and political union model where the common institutions have genuine powers of lawmaking and governance.

The best we have to go on is the evidence of past secessions that suggests the unlikelihood of such a possibility. Nor should one abstract from the nationalist core of the separatist project in analyzing these prospects. In addition to claims of minority rights by Anglophones and perhaps Allophones, the imminent possibility of secession will probably provoke a strong counter-claim to self-determination by Aboriginal

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nations within Quebec. One would have to be extremely naive, or entirely ignorant of the recent course of world events, to think that these conflicting territorial claims will permit a straightforward peaceful reconciliation. Any proposal for the future of Quebec-Canada relations after secession that ignores this reality is, in the last analysis, a dangerous fairy tale. Failing a negotiated settlement before the referendum, in the case of a "yes" vote, Canada will be forced to choose between the Aboriginal and the separatist territorial claims and will have to choose quickly. This choice will have a fateful impact on the future of the Canada-Quebec relationship.

A careful analysis of the three-party agreement reveals at least one thing—that what the sovereigntists are after is separation *tout court*, not an economic and political union, a third option, or a decentralized confederation. The agreement proposes the kind of relationship that now prevails between separate, sovereign states during periods of relative peace and stability. The question, of course, is whether even this will be easy to build from the ashes of what may become a bitter conflict of absolutes.

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EDITORIAL

The Charter's Impact on the Criminal Justice System

by Jamie Cameron

The Politics of Justice

As Canada heads into summer, justice issues continue to command the public's attention. Barely a day or week passes without Justice Minister Rock announcing a new policy initiative or defending others already in process. A short time ago, Parliament enacted the Minister's gun control legislation, as well as a sentencing bill, which creates enhanced penalties for crimes motivated by bias, including discrimination against gays. While the ink on those measures was drying, a mandatory DNA testing law was introduced and passed in one day. Yet to come is legislation which will outflank the Supreme Court of Canada's controversial drunkenness decision, a statutory solution to the income tax/child custody/equality quagmire, and amendments to federal human rights legislation that will add sexual orientation to the existing list of prohibited grounds of discrimination.

The politics of justice this year have been dominated by a cacophony of noisy, fractious voices. Though debate on controversial issues has always been spirited, who would have predicted such powerful resistance to gun registration or the vehemence of opposition to "special rights" for gays? There can be little doubt that the Charter has ignited the debate on these issues. No longer are groups and individuals content to express polite interest: as stakeholders under the Charter they demand a voice and role in the process.

In the courts, the Charter has wreaked havoc on Canada's system of criminal justice; today the accused enjoys protection that would have been unimaginable ten years ago. As might be expected, the public vented its anger when the Charter caused thousands of criminal charges to be stayed and accepted extreme intoxication as a defence to sexual assault.

Meanwhile, the Charter has been quietly altering the underlying assumptions of our *system* of justice. Changes to the system, which up to now were less dramatic, have been exploded by the Bernardo trial.

The Homolka-Bernardo Proceedings

Canada will be a long time recovering from the crimes of Karla Homolka and Paul Bernardo. It is now comprehensible that an attractive married couple could plan and carry out the abduction and protracted sexual torture of two teenage girls, without arousing suspicion. The sordid details of a third death, Ms. Homolka's own sister, have also entered the public domain. These acts are only comprehensible because they are indisputably a matter of fact, having been recorded, in a twisted bid for posterity, on several hours of audio-video tape.

From the time Ms. Homolka turned herself in to authorities in 1993 to the present, the public's right to know has been hotly debated, and has come sharply into conflict with competing interests such as the accused's right to a fair trial and the privacy and dignity of the victims and their families. Two years ago, when Ms. Homolka's plea and sentence were settled, members