

**The European Union and Sovereignist Politics in Québec:**

**Who Forgot their Glasses?**

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## **Introduction**

The defeat of the Parti Québécois (PQ) in the last Québec elections signalled a shake up in sovereigntist politics. Since the referendum campaign of 1995, the PQ used its control of political power as leverage to rally its members around positions favoured by leaders Lucien Bouchard and Bernard Landry. First and foremost among these positions was the idea that Québec sovereignty would come with a partnership with Canada, and that this partnership would most certainly have an economic dimension and possibly a political one as well. The crucial reference for PQ leadership was always the European Union (EU). For PQ leaders who have strong connections with several French politicians, looking to Europe as an inspiration for packaging their project was a natural extension of their closeness to the French intellectual world. In the EU, they saw a balance between sovereignty and partnership that could serve as a model for the political future of Québec. This was most clearly spelled out by PQ leader Bernard Landry's call, in the spring of 2003, for the creation of a Québec-Canada confederation. The idea that the EU should be a template for Québec-Canada relations became somewhat of an orthodoxy in sovereigntist milieux (Martel and Pâquet, 2001), although many prominent sovereigntists, so-called hard-liners such as former Premier Jacques Parizeau, never endorsed it. This orthodoxy has been questioned since the PQ lost power to the Liberals in 2003.

In August of that year, PQ leader Bernard Landry said he had realized that the European Union was not an adequate model for managing Québec-Canada relations (Dutrisac, 2003). The Bloc Québécois (BQ) has been involved in a similar questioning. In a document entitled "The European Union: A Model for Québec," 14 out of the 34 BQ MPs rejected the suggestion that Québec sovereignty should involve an EU-type

partnership (Thompson, 2003). These MPs re-articulated the hard line by suggesting that sovereigntists should forget about partnership and focus on independence.

This paper examines to what extent the realities of the European Union fit with the claims and aspirations of the PQ. It questions, from an empirical rather than a normative perspective, the idea that the position of EU member states would be satisfactory to the PQ by comparing the workings of the Union to the discourse of the PQ on the need for sovereignty. The paper analyzes, in light of the PQ's rationale for supporting sovereignty, the degree of autonomy enjoyed by members of the EU in various areas of public policy and in foreign affairs as well as the level of constraint stemming from the economic and currency union. It is divided into two sections. The first section compares PQ ideas about sovereign statehood, both in its internal and external dimensions, to the situation of EU member states. The second section examines how the partnership elements of the EU taken up by the PQ (single market, monetary union, single currency and institutions) work in Europe, and what the position of a sovereign Québec would be within similar arrangements in Canada or North America.

### **Sovereignist Views of the EU**

The PQ's model for a sovereign Québec is far from being free of ambiguity. But it does have one concrete source of inspiration: the European Union. This was made very clear in the year just before the 1995 referendum. Bernard Landry, then Minister for International Relations, suggested that the sovereigntist project, with its ideas of common currency, common institutions, and free movement of goods and people, was almost identical to the preamble of the 1957 Treaty of Rome (Robitaille, 1995). In the context of

the referendum campaign, the EU provided the inspiration for BQ leader Lucien Bouchard to push the idea of partnership with Canada (O'Neill, 1995). More specifically, it was the Maastricht Treaty which was hailed as a model for a future Québec-Canada partnership (Presse canadienne, 1995). Jacques Parizeau, whose preference was always to campaign simply on sovereignty, officially supported Bouchard's partnership proposal, even stating that "si une entente du type de Maastricht nous était offerte, nous sauterions dessus." (Cauchon, 1995)

References to the European Union survived the 1995 referendum. In 2000, Lucien Bouchard spoke of the need for a modern vision of sovereignty. "L'Union européenne," suggested Bouchard, "est bien choisie comme modèle de modernité. (...) nous devons faire au Canada une proposition de partenariat économique assortie, pour en assurer la gestion, d'un partenariat politique." (Cloutier, 2002) The EU is therefore a positive model that stands in stark contrast with Canada. The PQ views Europe as imaginative and moving ahead while it considers Canadian federalism stagnant and immobile. "Europe has changed and Canada is stuck," remarked Bernard Landry when visiting Brussels in July 2001 (Canadian Press, 2001).

PQ leaders have often used the concept of confederation when discussing the EU in the context of Québec-Canada relations. "What we have in mind," said Bernard Landry in 2001, "is a confederal-type union, European-style. That means sovereign countries talking together in a positive manner about the cultivation of what they call the four liberties: free circulation of goods, services, capital and persons." (Canadian Press, 2001) Landry, who successfully pushed through the idea of confederation at a PQ convention just before the 2003 election, was quoted (prior to his post-2003 election

change of heart) as saying that the PQ would be satisfied with an EU-like arrangement between Québec and Canada. “If Jean Chrétien accepted tomorrow that Quebec have in a Canada-Quebec union the same situation as France in the European Union or Great Britain in the European Union, the Quebec question would be settled tomorrow afternoon. It’s as simple as that.” (Authier, 2001) Former leaders Lucien Bouchard and Jacques Parizeau are also on record for stating that a replica of the EU in Canada would satisfy the PQ (Bellavance, 1999; Cauchon, 1995)

For the PQ, the attraction of the European model resides in its dual dimension of sovereignty and partnership. It is indeed no coincidence that questions for the 1980 and 1995 referendums featured the notions of sovereignty-association and sovereignty partnership respectively. The concept of sovereignty embodies the idea of political independence and justifies the romantic notion that it is in the destiny of nations to have their own state. The concept of partnership conveys a dimension of continuity and insurance against unexpected outcomes which is useful for convincing a population to support secession. References to the EU have been viewed by the PQ as fleshing out an idea (the combination of sovereignty and partnership) which the party feared might be too vague for the population to fully assimilate.(Dougherty, 2000)

The PQ holds an intergovernmentalist view rather than a federalist or even a multi-level governance view of the European Union, that is, it sees it as a supranational association of sovereign states rather than a political community *per se*. In 2000, then PQ vice-president Fabien Bécharde said that the EU was not a federalist system “because its 15 member countries are sovereign states.” (Dougherty, 2000) The PQ conception of state sovereignty within the EU follows a fairly traditional understanding. In this context,

the EU has been viewed as providing to its members a level of sovereignty that would give Québec the freedom to enact independent domestic and foreign policies.

On the domestic front, sovereignty is viewed as the only guarantee that Québec will be able to create and implement public policy autonomously. At the broadest level, the PQ has made the ability of the Québec government to decide alone on issues of public policy a question of principle. In this context, sovereignty is viewed as affecting all policy sectors. The PQ has also argued that sovereignty would allow Québec to preserve or design specific distinctive policies. For example, it has always been the PQ's contention that the federal government is unable, or perhaps unwilling, to adequately protect and promote the French language and culture. The PQ has also suggested that sovereignty is needed to protect the "Québec model" of socio-economic development that features state interventionism and progressive social policies. In the area of justice, the PQ has complained that changes to Canada's Young Offenders Act undermine Québec's approach for dealing with criminality among the youth.

The PQ also views sovereignty as a way to guarantee Québec's freedom in foreign policy. In this context, sovereignty is seen in a very conventional way: it is, for example, having a formal voice in international institutions (the much used seat-at-the UN imagery).<sup>1</sup> The PQ argues that Québec needs to be a sovereign state to promote its distinct culture and socio-economic model. For the PQ, "[S]i les Québécoise et les Québécois veulent préserver ce qu'ils sont, assurer un développement conforme à leur identité et à leurs aspirations et promouvoir la diversité culturelle, ils doivent être présents aux tables internationales réservées aux nations et aux peuples souverains." (Ministère des relations internationales, 23-24) For the PQ, the conduct of an independent

foreign policy also involves, in addition to issues of culture and identity, a chance to shape the process of globalization through participation in international negotiations.<sup>2</sup> Globalization, it is argued, makes sovereignty even more urgent because only a sovereign statehood can serve to harness and regulate liberalization and the hegemonic diffusion of the English language. Or, in the PQ's words, "Province, le Québec subira la mondialisation; État souverain, il se donnera la capacité d'agir." (Parti québécois, 2002; 14)

The PQ also makes political use of partnership concept which involves three aspects borrowed from the European Union. First, there should be an economic union with Canada. This is the most basic element of the partnership; it is aimed at separating potential political upheavals from regular patterns of trade and business. Interestingly, the PQ has not said much about the specifics of a future economic union. This suggests that, when it comes to trade and economic matters, the PQ simply wishes for the continuation of the current order. Second, the PQ proposes some type of monetary union. For the PQ, the most likely scenario would be the continuation of the current union using the Canadian dollar, although adopting the American dollar is an option that has never been ruled out. Where sovereignist thinking is most influenced by the European Union is in the push for a North American monetary union. In its 2000 program, the BQ states: "Le Bloc Québécois est convaincu qu'il faut tirer profit de l'exemple européen et mettre en place une union monétaire négociée." (Bloc québécois, 2000; 145) In this context, it suggests the creation of a Currency Institute for the Americas (Institut monétaire des Amériques) which would be composed of experts from the countries in the NAFTA zone. This Institute would have the mandate to discuss the pros and the cons of a currency union,

and to study various possible options. For the BQ (and PQ), a currency union in the Americas is seen as an interesting safety net for a transition to sovereignty in Québec, not the least because such an arrangement would not be controlled by the Canadian state.

Third, the PQ views partnership as involving certain shared political institutions. The logic behind the existence of such institutions is not federal but functional: they would not be created to provide mechanisms of representation and decision-making to a political community, but rather their existence would be necessary to administer certain aspects of the economic union. The functions and workings of these institutions are largely unspecified, but the inspiration behind this political dimension of partnership clearly comes from the EU. For example, during the 1995 referendum campaign the PQ proposed the creation of a ‘community council’ (conseil communautaire) composed of ministers from both states. (Presse canadienne, 1995)

### **Sovereignty and the European Union**

The very concept of sovereignty has been at the center of the PQ’s programme and discourse ever since its creation in 1968. For the PQ, sovereignty involves making Québec completely autonomous with respect to the making of public policy, both in its domestic and international dimensions. In recent years, PQ leaders have seen the EU as an arrangement where member states could retain the power to enact public policy independently. The two sections below discuss how this perception compares with the workings of the European Union. The conclusion is that there are some discrepancies between image and reality.

### *Domestic Public Policy*

The PQ's conceptualization of sovereignty, from a domestic perspective, has been that it involved giving Québec free rein over all areas of state intervention and regulation. In this sub-section, we examine the involvement of European institutions in selected fields of domestic policy to assess the congruence between the PQ's image of member states' positions and the realities of the EU in this regard. Of course, this is only a cursory view considering that the EU is involved in so many different policy fields, and that the specifics of this involvement are often very complex. Nevertheless, even a simple discussion of the role played by the EU in selected policy areas is revealing of some discrepancies.

The congruence between PQ aspirations for full autonomy on domestic public-policy making and the European Union is strongest in the cultural field although it is not perfect. By and large, the EU has stayed clear of any attempt to get involved into cultural matters since it could substantiate fears that the integration process involves the erosion of national cultures. In fact, EU officials tend to speak reassuringly about a union based on cultural diversity and a multiplicity of national and other identities. Both this formal hands-off approach to culture and principled position on diversity is certainly coherent with what the PQ would like to see in a supranational institution. This being said, there are some positions taken by the EU towards cultural issues which could be unwelcome by the PQ. For example, the EU has pushed, albeit selectively,<sup>3</sup> for its members to ratify the Council of Europe Framework Convention on National Minorities, a document which provides cultural and linguistic rights protection to minority groups. From an identity perspective, the EU has instituted in 1992 a European citizenship which seeks to develop

a European consciousness among the population of member states. Admittedly, the idea is to create a 'civic'-type European identity inspired by notions of constitutional patriotism which would parallel rather than supplant national identities. Still, this is somewhat reminiscent of the Canadian situation which the PQ rejects.

Another area where EU activity has been fairly modest is social policy. Most importantly, there is no European welfare state involved in financial redistribution. Much like culture, social protection is a sensitive matter for states and it is unclear that citizens of wealthier member states would agree to the implicit transfer of money towards poorer ones that re-distributive policies would involve. From this perspective, the EU model does provide member states with policy autonomy over such things as health care, pensions, and social assistance. This being said, the EU does boast a Social Charter which poses some constraints upon member states since it guarantees several social rights: employment, social protection, health and safety at the workplace, etc... The EU frequently trumpets objectives of social cohesion, although it offers very few policies to back this up; educational and vocational training programs are probably the most significant in this regard.

The absence of a European welfare state does not mean that the European space is completely devoid of any redistribution. In addition to cohesion policy discussed later in the paper, redistribution occurs through the other major budgetary component of the EU, the Common Agricultural Policy (CAP).<sup>4</sup> Europe's agricultural policy involves an element of financial solidarity expressed through the existence of a fund (The European Agricultural Guidance and Guarantee Fund) that serves to subsidize agricultural products. In this context, some member states are net payers (most notably Germany and Britain)

while others are net gainers (for example, Spain and France). It is unclear that these types of mechanisms of re-distribution would be acceptable to the PQ in a Canada-Québec political arrangement.

The CAP is also, along with economic and monetary policy, the most Europeanized policy field in the EU (Ackrill, 2000). Agriculture in Europe is subject to a common policy of price support. It is a central element in the single market and the customs union; indeed, the CAP was built upon the principles of market unity and preferential treatment. Policy areas not so clearly tied up with the core European objectives of a economic and trade unions have also come under the orbit of the EU. Under the so-called pillar of Justice and Home Affairs (JHA) erected by the Maastricht Treaty of 1992 and built up in the 1997 Treaty of Amsterdam, the EU has crafted a policy agenda in the areas of immigration, asylum, policing and judicial cooperation. At the broadest level, the objective of the JHA pillar is to create an area of 'Freedom, Security and Justice' in Europe. As a matter of policy, it is in the areas of immigration and asylum where there has been the strongest move towards Europeanization. For example, EU member states have committed to the harmonization of asylum rules, criteria and procedures as well as to a common strategy for managing illegal immigration. With respect to justice, the JHA has produced a European law enforcement organization (Europol), police college and task force of police chiefs. The EU framework with respect to immigration and policing is not much less centralized than Canadian federalism, at least as it pertains to Quebec.

The involvement of the EU in areas of public policy traditionally considered domestic has not been limited to agriculture and the twin pillars of EMU and JHA. The environment, for example, has been a mounting concern of the European Community/Union since the 1970s. The SEA provided an explicit legal basis for environmental protection and the inclusion of this component in all other Community policies (Art. 130r EC Treaty). The EU interest for the environment has been manifested through a series of action plans which have set Europe-wide guidelines about conservation, waste management, as well as air, noise and water pollution and stressed the concept of sustainable development. (Wood and Yesilada, 2004; 187-188) Moreover, the EU has an industrial/research and development policy which funds various research initiatives. It also sets guidelines about issues as diverse as working conditions (for example, with respect to safety standards) and fishing quotas. This Europeanization of public policy seems strikingly similar to the ‘federal intrusions’ into Québec’s jurisdictions which are used by the PQ to promote sovereignty and, ironically, the European model.

### *Foreign Policy*

The PQ has also stressed the external necessities of sovereignty in recent years. There is a strong sense coming from the PQ that sovereignty within a European-style model means that only the Québec government could devise foreign policy on behalf of its population and that foreign policy positions, beyond the framework of NAFTA, would be largely unconstrained. This view marginalizes the agency of the European Union as an

international actor and overlooks the constraints that the EU presents for member states when it comes to international affairs.

Since the EU is a project of continental integration, it may be easy to forget that it is also an international, or global, actor. The EU has signed various types of agreements with non-member states: trade agreements, which are the narrowest in scope; cooperation agreements, which offer a larger framework for bilateral relationships; and association agreements, which represent more far-reaching packages that can extend the customs union (Turkey) or the internal market (Iceland, Liechtenstein and Norway). The decision to open negotiation on such agreements, and the authority to conclude them, rests with the Council of Ministers which uses the qualified majority voting procedure while the negotiations themselves are conducted by the Commission. Of course, this type of external activity on the part of the EU does not prevent member states from concluding their own agreements; it simply represents a second layer of international networks coming from Europe. (Smith, 2003; 230)

Much the same can be said about foreign aid. EU member states are free to set their own budgets and decide on the recipients when it comes to financial assistance to developing countries. However, there is, alongside the foreign aid presence of member states, a distinct European Union aid and development policy. The core of the EU's aid and development policy is channelled through an association agreement, the Cotonou (formerly Lomé) convention which includes 77 countries from Africa, the Caribbean and the Pacific. The Cotonou convention, in addition to significant financial and development aid activity in Central/Eastern Europe serves to make the EU, independently of the

activity of its member states in this regard, one of the world's most important aid donors. (Bretherton and Vogler, 1999; 109).

An aspect of the EU's international agency that is more constraining for member states is in the area of foreign trade. In virtue of its customs, economic and monetary union as well as its Common Commercial Policy (CCP) and Common Agricultural Policy (CAP), the EU (through the Commission) acts as a single actor when it comes to negotiating tariffs with third parties. Of course, one could view the role of the Commission as coordinator between member states, but it remains that these states speak with one voice in multilateral forums on trade negotiations. The European Community Treaty (Rome, 1957) already made the Commission responsible for relations with the General Agreement on Tariffs and Trade (GATT), and the EC/EU, along with the United States, has since been the major actor in GATT (since 1995 WTO) negotiations.<sup>5</sup>

Beyond the fact that the EU performs many roles on the international scene (bilateral partner, aid donor, trade negotiator), it is also important to highlight that one of its long-term objectives has been to coordinate foreign policy positions. The initial framework for such coordination was the European Political Cooperation (EPC) sketched out in the 1970 Luxembourg Report. The EPC was first a purely intergovernmental forum where foreign ministers would meet in an effort to conciliate national foreign policies. However, as the Commission was gradually brought into the forum in the 1980s, the objective of coordination was surpassed by that of 'joint action.' (Piening, 1997; 34) Far from being deterred by the limited success of their harmonization efforts in foreign policy, some EU member states, emboldened by the end of the Cold War and keen to jumpstart the *political* aspect of integration, moved from the EPC to the idea of a

Common Foreign and Security Policy (CFSP). In 1992, the CFSP became the second pillar of the TEU. In this context, foreign policy in the EU was no longer to be about simple inter-state cooperation through meetings of foreign ministers; rather, it focused on the Europeanization of foreign policy. In this perspective, issues of foreign policies were to be dealt with by European Union institutions: the Council of Ministers, with the support of the Commission and the input of the European Parliament. This meant that foreign policy has become a 'Brussels activity.'(Nuttal, 2000; 273) The effort at the Europeanization of foreign policy is also visible in the creation, with the Treaty of Amsterdam, of a High Representative for the CFSP. This second pillar of the EU has been much maligned for yielding few concrete results. For example, the EU was unable to deal coherently and productively with the violent disintegration of Yugoslavia. Perhaps less important but more spectacular were the disagreements between member states over the American intervention in Iraq. The CFSP describes an objective rather than a current practice. However, there is no denying that despite the tremendous obstacles for integrating the foreign policies of initially 12, now 25, states, the international dimension is not escaping the logic of integration.

This brief discussion of the external affairs dimension of EU politics suggests that the EU model is not fully consistent with the aims and ambitions of the PQ about Québec as an international actor. Of course, if the European Union were transplanted in Canada, Québec would gain considerable autonomy on the international stage: it would be in a position to become a member of international organizations, to be a signatory of a greater number of international agreements (and arguably more significant ones), and to more freely develop bilateral relations with states. However, it is also important to recognize

that the EU is a global actor in its own right and that, therefore, the foreign policies of member states do not go totally unconstrained. While the fact that the supranational institutions can also sign agreements and be an aid donor is not overly problematic from the PQ's perspective, the issue of single agency in trade is more serious. From the international angle, a central argument the PQ has made for sovereignty is the need for Québec to have its own voice in discussions shaping the international political economy because its approach to trade is different from Canada's. In this context, invoking the EU as a model seems misplaced. Similarly, the PQ stress on the liberating effect of sovereignty for Québec's international autonomy under-appreciates the drive for the convergence of foreign policies, most recently through the CFSP. This may simply stem from the difficulty of borrowing a 'coming-together' model and applying it to what would be a 'coming-apart' situation. For example, the TEU (Article J.1, Title V) states that one of the objectives of the CFSP is 'to safeguard the common values, fundamental interests and independence of the Union.' This type of language may fit in a process of political integration, but it would certainly appear odd in the context of a post-referendum Québec-Canada association; indeed, the PQ argues values, interests and identity *divergence* is what makes the abandonment of federalism in favour of an EU-style model necessary.

### **Partnership and the European Union**

As we have seen, the focus of Québec sovereignists lies with the Maastricht Treaty. Yet, the monetary provisions of the TEU are only understandable in the context of the Single European Act (SEA) of 1986, on which it builds and from which it derives

much of its rationale. In this context, we will discuss the main components of the single market program before outlining the two main economic components of the TEU, the single currency and regional redistribution. We then examine the institutional dimension of partnership, including the under-discussed European Court of Justice (ECJ) whose political role seems quite at odds with the sovereigntist idea of the EU.

### *The Single Market and the Monetary Union*

Contrary to what would be the case in a Québec-Union, Europe's single market was designed as a move toward further integration. "Eurosclerosis" was the term coined in the late 1970s to describe two related phenomena: first, the political stagnation in EC integration,<sup>6</sup> and second, the poor competitiveness of most European economies vis-à-vis those of the US and Japan. The SEA was adopted on 26 February 1986 to alleviate both problems; its core is the single market (SEM) program, which is based on the assumption that non-tariff barriers to trade between member states were the major cause of the economic component of Eurosclerosis.<sup>7</sup> The single market is defined in the SEA as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured." Clarifying these so-called *four freedoms*, the SEM encompasses eight different aspects.

First, the elimination of *technical barriers* was to be achieved through two components: mutual recognition of national standards; and approximation through the stipulation of Community-wide "essential requirements" such as minimum safety and health standards. The intended effect of these principles was to prevent national standards from being used as impediments to cross-border trade. Second, the reduction of *fiscal*

*barriers* was deemed necessary, as differences in indirect taxes, in particular the valued added tax and excise duties, were also regarded as major obstacles to cross-border trade. Given the wide disparities in tax systems within the EC, the aim was to approximate rather than to fully harmonize indirect taxes.

Third, the removal of *physical barriers* concerns especially the abolition of customs forms and formalities. While over 150 previous documents in use for the transport of goods across EC internal borders were replaced by a single one by January 1988, even this was abrogated by January 1993. The liberalization of transport services has been a key element in the program, particularly regarding to the elimination of quota restrictions on road shipments.

Fourth, nationals of any member state have the right to seek and obtain *employment* anywhere in the Community. They also mostly enjoy the same treatment as nationals of the respective host states in matters of payment, working conditions, and trade union rights. Fifth, professionals in many *occupations* now have the right to have their qualifications recognized in other member states.

Sixth, *financial services* have been opened, that is, cross-border restrictions on the operation of businesses in the services sector, such as banking and insurance, were largely eliminated. Seventh, arrangements for the free *movement of capital* now apply throughout the EC. Eighth, various directives have been introduced to open *public procurement* markets. According to the European Commission public purchasing has reached up to 15 per cent of GDP, while in the mid-1980s only two per cent of all government contracts went to suppliers from other EC countries.<sup>8</sup>

The market-enhancing scheme of the single market was complemented in the SEA in three ways: first, in cooperation between European industry and the Commission, an “imitation of Japanese technology corporatism” (Parker, 2000) was established. Second, the “building up a supranational cohesion regime through the revised and extended regional policy” is considered a side payment to garner enough support for the single market program among member states (Ziltener, 2000a). Third, although building the weakest part of the SEA, EC competencies in social regulations have been expanded and strengthened.<sup>9</sup>

What are the implications of the SEA provisions for the sovereignist agenda? Two aspects relate primarily to the Canadian federation as a whole (but with relevance for Quebec), whereas two Common Market components touch the PQ position directly. First, commercial policy and labor mobility go distinctly further in Europe with the Single Market than is the case in Canada. Two examples may illustrate this. Despite the so-called Agreement on Internal Trade (AIT) negotiated in the early 1990s to improve intra-provincial exchange, one of the *commercial* restrictions applies to the shipment of beer across provincial borders. While there are exceptions for so-called micro breweries, the large producers are to maintain separate operations in each province. Naturally, Québec is a beneficiary of a restrictive policy that would be impossible under the SEA.<sup>10</sup> Regarding *labor mobility*, the Community’s policy of “mutual recognition” necessitates the acceptance of apprenticeships and university degrees across member states. Barring language barriers, citizens can principally seek employment in other member states without formal retraining. Conversely, mobility restrictions in Canada exist, for instance, in the legal profession. A student who received her law degree in Nova Scotia but wishes

to practice in Manitoba has to write the bar examination there. If she relocates to British Columbia, she will have to take a new bar examination although all three provinces apply the same legal system. The costs and time associated with intra-provincial moves acts as a de facto restriction to labor mobility. Quebec significantly profits from this policy, as it also acts as a protection for a different legal tradition.

The two aspects of the SEA that concern the sovereigntist project more directly relate to *social regulations* and *immigration policy*. The former accompany the commercial policy of the common market to avoid tilted competition due to, for instance, different labor codes and environmental regulations. Since these are standards put forth by the European Commission for the Community as a whole, the room for separate national regulations shrinks over time.<sup>11</sup> For example, through the purpose of harmonizing many regulations, changes have occurred in the fields of health and consumer protection.<sup>12</sup> Thus, as the PQ has an income tax rate and redistributive policy (e.g. low university tuition, 5\$ day care) that diverges markedly from other provinces (and indeed all US states), it would find its leverage on these matters restricted under a Common Market-type framework. A joint European immigration policy, which is a logical implication of the SEA but is codified separately under the so-called Schengen Agreement, cannot be in the interest of a sovereigntist Quebecker adamant to uphold an immigration policy separate from the rest of Canada.

With respect to the Maastricht Treaty, two aspects are commonly regarded as the most important elements: the provisions and protocols relating to Economic and Monetary Union (EMU), and the considerable extensions regarding social and economic

cohesion, better known as EU regional policy. The move toward a single currency was seen as a logical consequence of the single market program adopted with the SEA. The free movement of goods, services, capital and labor proved to be clearly curtailed by the vagaries of exchange rate fluctuations. In addition, a common currency would effectively prevent states with such an extraordinary high degree of cross-border trade from using their currencies as instruments of economic policy, that is, for competitive devaluations in order to promote their respective export industries.<sup>13</sup>

Twelve member states are currently part of the Euro zone. While the heads of their national banks are all represented with one voice on the European Central Bank's (ECB's) main decision making body, the Governing Council, "neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions" from elsewhere (Art. 107 EC Treaty). Nonetheless, there is interchange with other EU institutions; the European Parliament, for instance, receives the ECB's annual report and is consulted about the selection of the ECB president (Helleiner, 2003: 7). Upon establishing the single currency, the question of macro indicators that the member states have to abide by to ensure the stability of the Euro was settled with the establishment of three so-called convergence criteria, known as the "Maastricht Criteria." They require an inflation rate of no more than 1.5 per cent above the inflation rate of the three most stable economies; a national debt of no higher than 60 per cent of GDP; and a budget deficit no more than 3 per cent of GDP. These criteria are supposed to be enforced through the so-called Growth and Stability Pact. It is meant to levy financial penalties against members of the Euro zone that consistently violate the Maastricht criteria.<sup>14</sup> Ironically, the current German and French governments have repeatedly failed to meet

the criterion of limiting the budget deficit to 3 per cent of GDP. Since EU finance minister decided not to penalize the two countries, the European Commission has announced that this is in violation of the growth and stability pact. Chartering new legal territory, the Commission is currently suing the member states via the Council of (Finance) Ministers before the European Court of Justice for a violation of the Maastricht Treaty.

The quasi-federal nature of the ECB appears to fit well with the sovereigntist agenda, especially since the PQ repeatedly criticized the “centralist” operation of the Bank of Canada, occasionally threatening to join the US Federal Reserve System instead.<sup>15</sup> However, the crux lies in the Growth and Stability Pact, which is designed to curb spending and the concomitant tax policies beyond the Maastricht criteria in the member states of the Euro zone. Fiscal constraints stemming the Growth and Stability Pact have put pressure on many member states to re-structure their welfare provisions.<sup>16</sup> In this context, the EU bears heavily on the options available to states in the social area, perhaps as heavily as the structures of Canadian federalism do on provinces. Under such a Pact, Québec could in all likelihood not actualize the degree of income distribution the PQ stands for. This is irrespective of whether Québec would have its independent tax-base after a hypothetical secession, or whether it continued to rely on federal transfers (if granted).

Apart from the monetary function of the TEU, additional financial means to increase the redistribution of income between European regions have been introduced with the Maastricht Treaty. Until the creation of the European Regional Development Fund (ERDF) in 1975, following the entry of the UK and Ireland, regional policy within

the Union was largely a prerogative of the member states. The accession of Spain and Portugal doubled the number of people that are living in regions that have with a per capita income of less than 75 per cent of the Union average. Hence, a Union-wide regional policy is primarily an issue of reducing equity differences in living standards, as poorer regions tend to have a smaller endowment with immobile factors of production.<sup>17</sup>

The Union's *structural funds* are the main financial instruments for pursuing the aims of greater economic and social cohesion within the Union. ERDF assistance is provided both in the form of grants for specific projects, and as program assistance, which can cover a broader range of measures targeted at specific problems over several years. It has grown from 4.5 per cent of Union spending in 1975 to 13.1 per cent in 1995 and operates on the basis of the so-called additionality principle, meaning that allocations should be additional to funding provided by national governments. The funds have been reformed several times, seeking to ensure closer coordination of structural policies by setting common objectives. In December 1992, parallel to the official completion of the single market, the European Council in Edinburgh earmarked ECU 141.5 billion for the regions between 1993 and 1999. Including funding for the 1995 entrants, the total has been increased to about ECU 150 billion between 1994 and 1999.<sup>18</sup>

In addition, the *Cohesion Fund* was established at the Maastricht summit, due to strong pressure from the four poorest member states (Portugal, Spain, Greece and Ireland, with a combined population of 63 million). The TEU includes a protocol on economic and social cohesion and requires the Fund to provide financial support for transport and environmental infrastructure projects.<sup>19</sup> Hence, whereas the ERDF attempts to reduce regional disparities at large, the project-based Cohesion Fund seeks to reduce disparities

between member states. In 1992, the above four countries received 50 per cent of the funds. Together with the Cohesion Fund, this portion increased to 54 per cent by 1999.

All these re-distributive schemes seem at odds with the PQ idea of a Québec-Canada union. Perhaps most significantly, these are grounded in the idea of European political community in which there needs to be some form of solidarity above and beyond national borders. For the PQ, one of the key ideas behind sovereignty is to make the parameters of re-distribution congruent with those of the Québec nation; after all, it routinely decries the fact that a part of Quebeckers' tax money is sent to, and spent by, the federal government. Obviously, the level of re-distribution in the EU is much smaller than in Canada when equalization payments and all other means are considered and it is unclear what the re-distributive patterns would be if a EU-type cohesion policy were implemented in a Canada-Québec arrangement. Nevertheless, it seems that the very notion of such a policy goes against the PQ idea of a sovereign Québec.

### **Institutions**

The European Union features three main political institutions: the European Commission, instrumental in agenda-setting; the Council of the European Union (or Council of Ministers) decision-making, which is the central decision-making body; and the European Parliament (EP), whose support is increasingly necessary for European policy to be made by the Council. The role of the EP in policy-making varies from one policy area to the other, as does the internal decision-making procedure of the Council which can follow either an unanimity or qualified majority requirement.<sup>20</sup> The composition of the institutions involved in the European policy-making process is

differentiated: European Commissioners are appointed by states, Members of the European Parliament are directly elected, and the Council of Ministers simply features members of national executives. This whole scheme is *sui generis*, and it is hard to see how any insight can be drawn from it to fashion a Canada-Quebec political arrangement. The major difference between the European and post-referendum Canada context is numbers. A Canada-Québec union would have only two members, which means that a Council-type body could only make decisions through unanimity, that is, with the support of both Canadian and Québec ministers. The qualified majority, towards which the EU is increasingly moving,<sup>21</sup> could obviously not apply. In this context, a Council-type body would be likely to be permanently polarized as would a supranational parliament and a Commission-type institution. As such, the policy-making process resulting from the interactions between European institutions would make no sense in a Canada-Québec arrangement since all the venues would be similarly structured. With only two members, there would be no possibility for shifting alliances and, considering the climate in which the framework would have been created, not much chance for the creation of truly supranational (as opposed to intergovernmental) institutions.

The European Court of Justice (ECJ) is part of the European institutional framework. It was created already in 1952 under the Treaty of Paris, along with the European Coal and Steel Community. Its principal mandate is to uphold the Treaties and guarantee that EU legislation, the so-called “Community law,” is interpreted and applied uniformly in all member states. In doing so, the ECJ has jurisdiction in disputes involving EU institutions, member states, businesses and individuals. It is composed of 15 judges, one from each member state, to ensure that all the EU’s national legal systems are

represented.<sup>22</sup> The Court hears cases referred to it by the Commission, individual member states and national courts needing a ruling on the application of EU law. In other words, the important feature of European legal integration is that Community law *always* takes precedence over national law in the member states.

The ECJ's mandate has increased over the course of deepened European integration, particularly with the SEA and the Maastricht Treaty. Most significantly, private individuals, provided they have legal representation, can now bring proceedings to the Court; they are allowed to do so *directly*, that is, they do not have to first exercise all domestic legal options.<sup>23</sup> They can either have an EU law annulled if it affects them directly and individually, or claim that a particular national law, by which they are, again, directly and individually affected, is in violation of Community law.<sup>24</sup> To assist the ECJ in its burdening work load, the so-called Court of First Instance was established in 1989, charged with adjudicating certain categories of cases such as, for example, those on competition law.

The Court gives rulings on cases brought before it. The four most common types of case are: 1) requests for a preliminary ruling; 2) proceedings for failure to fulfill an obligation; 3) proceedings for annulment; and 4) proceedings for failure to act. First, in a preliminary ruling, the courts in each EU country are responsible for ensuring that EU law is properly applied in that country. Yet, there is a risk that courts in different countries might interpret EU law in different ways. If a national court is in any doubt about the interpretation or validity of an EU law it may, and sometimes must, ask the Court of Justice for advice. This advice labeled as a "preliminary ruling."

Second, the Commission can initiate legal proceedings if it has reason to believe that a member state is failing to fulfill its obligations under EU law. These proceedings can also be initiated by another member state. In either case, the Court investigates the allegations and gives its judgment. The accused member state, if it is indeed found to be at fault, must comply at once. Third, if any member state, the Council, the Commission or (under certain conditions) Parliament believes that a particular EU law is illegal, they may ask the Court to invalidate it. As mentioned above, these “proceedings for annulment” can also be used by private individuals who claim that a particular law affects adversely them directly. If the Court finds that the law in question was not correctly adopted or is not correctly based on the Treaties, it may declare the law null and void.

Fourth, the Treaty requires the European Parliament, the Council and the Commission to make certain decisions under certain circumstances. If they fail to do so, the member states, the other Community institutions and (under certain conditions) individuals or companies can lodge a complaint with the Court so as to have this violation officially recorded.

The key element coming out of the political scope of the ECJ is the principle of the supremacy of European law. This represents a limit on state sovereignty which the PQ would be unlikely to accept. After all, the PQ’s discourse centers on the rejection of a constitutional order supported by the courts and its conceptualization of sovereignty always involves the idea of Québec gaining the power to legislate free of formal legal-constitutional constraints. Trading the constraints stemming from the legal-constitutional context of the Canadian federation from another one, albeit somewhat looser, does not seem coherent with the politics of the PQ.

## **Conclusion**

In comparing the political claims of the PQ and its perception of the European integration to the realities of the EU, we see a nuanced picture. When it comes to the domestic sovereignty dimension, that is, the autonomy Québec would enjoy in various policy fields if an EU-type arrangement served as an inspiration to build a Québec-Canada political union, the PQ would see traditional claims about the sole jurisdiction over culture, language and social policy largely satisfied. This being said, in a variety of other fields the European Union plays a regulatory or policy-making role which would most likely be unwanted by the PQ. With respect to foreign policy, an EU-type arrangement would, to an extent, provide Québec with the much sought after ‘voice’ in international affairs. However, there does not seem to have the recognition on the part of the PQ that in trade forums such as the WTO the EU speaks on behalf of all member states, nor that there is a push for fleshing common positions on a variety of issues.

The concept of partnership which the PQ has used to sell the sovereignty option in the 1995 has, in the European context, implications which militant sovereignists probably would not appreciate. The European single market involves more integration with respect to commercial policy and labour mobility than the present Canadian federation, which, in turn, means less purely national regulations. It also features re-distributive policies for the purpose of creating cohesion. From a monetary perspective, the ECB offers an interesting model for the PQ insofar as it is more decentralized than the Bank of Canada. The problem with the PQ borrowing from the European monetary union example is that it has meant severe restrictions for member states as a result of the Growth and Stability Pact. It

is hard to see how the PQ could accept a partnership that would present more constraint to its fiscal policy than does the current federal model. Finally, it is simply impossible to draw any insight from the EU's institutional framework for designing a Canada-Québec arrangement since all the mechanisms of representation and decision-making are ill-suited for a union of two.

It may be that the central problem in using the EU for thinking about a Canada-Québec association is that it is a 'coming together' form of integration whereas anything following a positive referendum vote in Québec would be a 'coming apart' arrangement. Perhaps a more adequate comparison is to think of the evolution of the EU in light of the Canadian federation. (Thérêt, 2002)

## Endnotes

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<sup>1</sup> In its 2002 bulletin, the PQ lists the 26 countries (including Switzerland!) that have joined the UN since 1992. Parti québécois, 2002; 15.

<sup>2</sup> The term "globalization" has a number of different facets. For an analytical discussion of its components, see Hülsemeyer (2003). The implications of the process of economic globalization, specifically for select *federal* member states of regional integration treaties, are discussed in Hülsemeyer (forthcoming 2004a). The PQ mentions, among others, the Kyoto protocol, softwood lumber and the establishment of international agricultural norms as issues on which Québec could freely voice its position, if it were sovereign (Parti québécois, 2002; 14).

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<sup>3</sup> The EU has pressed incoming member states to observe the convention while many current member states (France, the Netherlands) have not ratified it.

<sup>4</sup> The CAP accounts for approximately about 50% of the total EU budget.

<sup>5</sup> Disagreements between the two blocks came to the forefront particularly in the so-called Uruguay Round negotiations (1986-1993), which for the first time attempted to tackle European and North American agricultural subsidies; the topic single-handedly was responsible for the extraordinary length of the negotiations and the Round as a whole nearly failed on this account. Christopher Piening, *Global Europe. The European Union in World Affairs* (Boulder: Lynne Rienner Publishers, 1997), p. 20.

<sup>6</sup> Note that fiscal federalism as an economic theory is impartial to the desirability of European integration as an end in itself. This is in contrast especially to the “classical” political variants of integration theory in the discipline of International Relations. For the major contributions to European integration theory, see Haas (1958) for neofunctionalism; Friedrich (1969) for federalism; Moravcsik (1991) for intergovernmentalism; Pinder (1996) for new federalism; and Pierson (1996) for historical institutionalism.

<sup>7</sup> The expected benefits of the SEM were exhaustively elaborated in the officially commissioned so-called Cecchini Report on the “costs of non-Europe,” which was based on a survey of 11,000 firms and published in 1988. The report was criticized, among other things, for having given insufficient weight to the strong possibility that the benefits would be distributed very unevenly among member states, regions, and industries (Jones, 1996: 173).

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<sup>8</sup> These measures were to be enacted through the concept of “mutual recognition,” breaking with traditional arduous and time-consuming EC concept of a “harmonization,” that is, a convergence of national standards around a new European one. Sun and Pelkmans (1995), however, suggest that the resulting regulatory competition among member states, since the adoption of QMV, can be considered complementary to EU harmonization.

<sup>9</sup> For a detailed discussion of the connection between the SEA, monetary union and regional redistribution, see Hülsemeyer (2000).

<sup>10</sup> Incidentally, the fall of trade restrictions between EC member states according to the policy of “mutual recognition” caused initial concern in Germany precisely with respect to beer. German regulations demand that it be brewed under the so-called purity law dating from 1516. It determines the ingredients allowed in its production. Since other Community member states do not have such standards, German consumers feared to be flooded with sub-standard beer on their supermarket shelves. However, as German consumers refused to buy their products, the major European breweries have all proceeded to brew their beers for the German market according to the purity law.

<sup>11</sup> Some of social regulations that were enacted as a consequence of the SEA have surpassed domestic standards even of advanced member states. Even the southern EC countries that had the most to lose from strong measures of Community regulation, as their adjustment costs are highest, agreed to the adoption of EC directives because they were unequipped to meet the expertise of the Commission (Pierson, 1996: 153). In

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addition, QMV made it difficult for these member states to prevent the European Council from passing elevated regulatory standards.

<sup>12</sup> The extension of European tasks and functions through the SEA did not so much consist of the schematic transfer of competencies from member states to Brussels. Rather it was the acquisition by the EC of co-responsibility and of possibilities of co-determination with the member states in ever more policy areas (Hrbek, 1999: 218).

<sup>13</sup> In general terms, the so-called Mundell-Fleming theorem posits that under conditions of capital mobility, states are faced with a trade-off between exchange rate stability and monetary autonomy; if the exchange rate is held constant, monetary policy cannot deviate from that of other countries (Frieden, 1991). Within the EU, the national room for maneuver had already been limited through the Exchange Rate Mechanism. However, its crisis in 1992-1993 changed the band to 15 per cent (that is, it *de facto* gave plenty of room for maneuver), and enabled the UK to devalue its currency and gain economic advantage as a result.

<sup>14</sup> It was put in place on insistence of the then conservative German government, which wanted to hinder the admission of Italy and Greece to the single currency, since both countries do not have a history of strictly adhering to monetary stability. Ultimately, both countries joined the Euro zone.

<sup>15</sup> Yet, any such “threat” is either not credible or displays unfamiliarity with the operation of the US Federal Reserve System. While it is geographically divided into twelve districts, these individual districts represent the commercial banks of that region, not the public interest as is the case with the Bank of Canada, the ECB and its national central

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banks. A similar error about the operation of the US Federal reserve System is committed by those advocating that a single currency between Canada and the United States (Helleiner, 2003; Hülsemeyer, forthcoming 2004b).

<sup>16</sup> In typical EU fashion, the Growth and Stability Pact has been enforced unevenly. France and Germany, which have ran deficits higher than 3% of their GDP for several consecutive years, have not been subject to sanctions after having refused to make recommended adjustments.

<sup>17</sup> Although national regional policies are still operated within the Union, the governments in the less wealthy member states usually do not have the resources to tackle major regional problems by themselves.

<sup>18</sup> The EU categorizes its regions; since July 1993, six priority objectives, that is, regions with specific attributes, exist. Objective 1 covers so-called lagging regions, usually expected to have a per capita income of less than 75 per cent of EU GDP. Objective 2 are regions in industrial decline; among other criteria, unemployment rates higher than the Union average, a higher percentage of industrial employment than the Union average, and a decline in industrial jobs. Objective 3 seeks to combat long-term unemployment and to help young people and others threatened by exclusion from the labor market into work. Objective 4 is targeted at unemployment by facilitating adaptation of workers to industrial change and changes in production systems. Objective 5a is geared toward modernization and adjustment of agricultural structures, whereas Objective 5b also encompasses adaptation of fishery structures. Priority is given to developing jobs outside

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farming and fishing, such as tourism and small businesses. Finally, Objective 6 provides assistance to remote and sparsely populated regions in Sweden and Finland.

<sup>19</sup> The Edinburgh European Council decided that ECU 15 billion (at 1992 prices) would be allocated to the Fund between 1993 and 1999, with 70 per cent going to Objective 1 regions. The Cohesion Fund came into existence at the end of 1993 with an annual budget of ECU 1.5 billion, rising to ECU 2.6 billion by 1999. It covers between 80 and 89 per cent of the costs of the projects it supports.

<sup>20</sup> The institutional framework in the early 1980s exhibited two features. First, although the EC's supranational bodies, the Commission and the European Court of Justice, had been able to expand their influence on the Community's policies and legal structure, ultimate decisions were left to intergovernmental bargaining in the European Council (see Keohane and Hoffmann, 1991; Burley and Mattli, 1993). There, in accordance with the so-called Luxembourg Compromise of 1966, the heads of state and government had to decide with unanimity, if a member state declared an issue as being of vital national importance (Moravcsik, 1991). Second, decision-making in the Council had been complicated further by the doubling of EC membership between 1973 and 1986 and the increased divergence in the level of economic development resulting from it. Four of the six new members (Ireland, Greece, Portugal and Spain) are the poorest within the Community, based on their GDP compared to the Union average. Exacerbated by ideological differences between the three largest member states (Germany, France and the UK), these factors caused stalemate in the Council and, therefore, in European integration.

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<sup>21</sup> For example, qualified majority exists for issues of occupational health and safety, as well as for the working environment. EC directives in these fields do not need to be explicitly justified with the completion of the internal market (Majone, 1993: 164; Springer, 1992; Ziltener, 2000b).

<sup>22</sup> Even after enlargement there will still be one judge per member state, but for the sake of efficiency the Court will be able to sit as a “Grand Chamber” of just 11 judges instead of always having to meet in a plenary session attended by all the judges.

<sup>23</sup> However, there is a stiff penalty if the court decides against the complainant. If they lose the case, they may be liable to pay the costs of both sides. On the other hand, if they win, the EU pays costs and the law will be declared null and void throughout the European Union.

<sup>24</sup> One of the highest profile case in recent years involved a 21-year old German female who wanted to join an armored unit of the German military. However, the German constitution allowed females only as musicians and medics. The plaintiff charged that this was violating the equality of gender guaranteed in Community law. The Court sided with the female, demanding a change of the German constitution. In the meantime, the first women have voluntarily entered the German military in combat roles.

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