

The Relations between Canada and Quebec: An Appraisal

di Roberto Louvin

Abstract: Brevi note sulle relazioni tra Canada e Quebec – The paper analyses the long-standing issue of Quebec's self-determination, in light of the recent judgment of the Superior Court of Québec *Henderson c. Attorney General of Quebec*. After years of procedural delays, the appeal of the former Equality Party leader at the *Assemblée nationale du Québec* Keith O. Henderson has finally reached a ruling that could put an end – for now – to the decades-long dispute between Ottawa and Quebec. At the moment, it seems unlikely that the "clarity" of the referendum question will again be examined by the Canadian Supreme Court, twenty years after its famous *Advisory Opinion* on the possibility of secession of Québec and on the formulation of the related question. For the time being, the Superior Court of Québec finds itself in a deadlock in which the federal and provincial governments remain entrenched on their respective positions. The positive trend, in procedural terms, of the recent referendums on the independence of Scotland and New Caledonia – in which the strategic importance of a negotiated approach was fully recognized in ensuring that the referendum procedure is conducted in a peaceful and respectful manner between the parties – does not yet seem to inspire the governments of Ottawa and Quebec to take a decisive step towards a direct agreement on the question to be eventually submitted to the citizens.

695

Keywords: Canada, Quebec, self-determination, referendum, sovereignty.

1. Introduction

Is the sovereignty project for Quebec launched in the 1960s still ongoing?

This challenge, in a multicultural and pragmatic country such as Canada, has put the federal system to the test and is still questioning the capacity of the Canadian constitutional system to respond democratically to the claim of self-determination that reached its peak between 1980 and 1995 and that is now much less virulent.

Three different constitutional theories confront and oppose each other in Canada about the foundations on which the federal order is based: the Canadian federalist original reading of the genesis and legitimacy of Canada as a pact between political elites and the Dominion « with a Constitution similar in principle to that of the United Kingdom »¹, the Quebec interpretation of the federal covenant as a bilateral agreement on which depend the conditions for the

¹ This opinion is summarised in its fundamental features by P.W. Hogg, *Constitutional Law of Canada*, Toronto, 2007. The foundation through a political elites covenant is emphasized by Tania Groppi, *Canada*, Bologna, 2006.

maintenance or dissolution of the covenant itself² and the more recent attempts to base the federal constitutional order exclusively on new and general shared values³.

The difference between these three perspectives has been well highlighted by the difficult search for a democratic and referendum path, through the two attempts to achieve independence, in 1981 and 1995⁴. The narrow margin of failure, in 1995, of the second of these tests – 50.6% against, 49.4% in favor – hinted at the possibility of a later relaunch of Quebec's sovereignty project. This plan seems nowadays to be in decline and in the next campaign for provincial and federal elections the question of sovereignty will apparently no longer be the focus of political debate.

If the political debate seems to be relatively cooled, the embers are still glowing on the judicial front, where the question of Quebec's political status is still not definitively settled. This concern has recently been brought to the forefront by the judgment of the Superior Court of Quebec regarding the Province's chances to preserve its future freedom of choice⁵. This matter becomes more and more interesting in the light of recent attempts of some European regions – Scotland and Catalonia – to exert their right of self-determination.

2. The background of the judicial dispute

Following the Quebec referendum for sovereignty in 1995, the Supreme Court of Canada issued his famous Advisory Opinion on the possibility of Quebec secession and the conditions under which it might take place. It essentially stated that a referendum vote answering a «clear question» and leading to a «clear majority» in favor of sovereignty would give the mandatory democratic legitimacy to the sovereigntist project: the Federal government, as well as that of the other Canadian provinces, would then have the obligation to enter into «good faith negotiations» with Quebec⁶. By this pronouncement «for the very first time in modern history, a national court considered the tough question of the legal characterization of secession by a federated unit (a province) within a democratic state»⁷, exercising an «irenic and political function, through legal analysis»⁸.

² Well exemplified in the historical narrative of J.-Y. Morin, J. Woerling, *Les Constitutions du Canada et du Québec du régime français à nos jours*, vol. I, Montreal, 1994.

³ Cfr N. Wayne, *The Ideology of Shared Values: a Myopic Vision of Unity in the Multi-Nation State*, in J.H. Carens (ed.), *Is Quebec Nationalism Just? Perspectives from Anglophone Canada*, Montreal, 1995, 137-159.

⁴ R. Louvin, 1996, *Il Québec all'indomani della consultazione referendaria*, in *Diritto e Società*, 2001, 2, 271-282.

⁵ *Henderson v. Attorney General of Quebec*, 2018, QCCS, 1586.

⁶ *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217. This statement is explored through the lens of constitutional theory by S. Choudhry, R. Howse, *Constitutional Theory and The Quebec Secession Reference* in *Canadian Journal of Law & Jurisprudence*, 13(2), 143-169 (2000).

⁷ S. Beaulac, F. Bérard, *The Law of Independence. Quebec, Montenegro, Kosovo, Scotland, Catalonia*, Montréal, Toronto, 2017.

⁸ V. Constantinesco, *Cour Suprême du Canada, Arrêt du 20 août 1998, Renvoi relatif à la sécession du Québec*, in *Civitas Europa*, 2 (1999).

The political response of federal authorities, provoked by the leverage effect of the Supreme Court's decision, took shape itself in 2000 by Bill C-20 which was intended to make explicit, from the perspective of the authorities in Ottawa, the «conditions of clarity» formulated by the Supreme Court of Canada in its Reference re Secession of Quebec. By the Clarity Act, the federal government intended to ensure that the question asked on the occasion of a possible third referendum on sovereignty was clear and, at the same time, to avoid the obligation to negotiate the secession of a province if the result of the referendum turned out to be doubtful: the goal was therefore «to identify in advance of any future referendum the circumstances which would trigger its constitutional duty to negotiate the secession of Quebec from Canada»⁹.

The right reserved by this Act for the federal Parliament to scrutinize the transparency of the referendum question to be submitted to the Quebec electorate¹⁰, as well as the attribution to the Parliament of Ottawa of the power to fix the requested majority, would obviously not please the provincial authorities¹¹.

The reaction to this «intrusion» in the internal affairs of the French-speaking Province led the Parliament of Quebec to react immediately, with a symmetrical and opposite law, the Bill 99, concerning the rights and prerogatives of Québec¹². The provincial government chaired at the time by Lucien Bouchard meant obviously to prevent outside federal intervention in the debate on Quebec's future¹³.

Therefore, this Act was essentially intended to legally affirm the right of the Quebec people to conceive by itself the way in which the referendum question about sovereignty would be formulated without any influence¹⁴, within the framework of rights implying the free choice of his own political system¹⁵. The

⁹ P. Dumberry, *The Secession Question in Quebec*, in *Diritto pubblico comparato ed europeo*, 2, 370 (2015).

¹⁰ The House of Commons substantially recognized its own power to validate the text of the question which the provincial government intended to submit to its electors in the referendum on a secession project in order to «determine, by resolution, whether the question is clear»: Bill C-20, § 1.

¹¹ The House of Commons reserved in particular the right to consider: (a) the importance of the majority of valid votes cast in favor of the secession proposal; (b) the percentage of eligible citizens voting in the referendum; (c) any further factors or circumstances it considered relevant (Bill C-20, § 4).

¹² «An act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec state» (*Loi sur l'exercice des prérogatives du peuple québécois et de l'État du Québec*), RLRQ c. E-20.2.

¹³ Rejecting the «federal clarifying option», the Premier of Quebec clearly stated before his Parliament that «we do not collectively need a big brother... the government thus wants to prevent the federal Parliament from trying to substitute an unworthy stratagem for a fundamental rule of democracy (the process of consulting the people)» by establishing a new concept when a future referendum is held: the «floating majority»: *Assemblée nationale du Québec, Journal des débats*, 2000, December 7, 8577.

¹⁴ Bill 99, art. 1: «The right of the Québec people to self-determination is founded in fact and in law. The Québec people is the holder of rights that are universally recognized under the principle of equal rights and self-determination of peoples».

¹⁵ Bill 99, art. 2: «The Québec people has the inalienable right to freely decide the political regime and legal status of Québec».

right to secession would, therefore, be exercised by a simple majority (50% plus one) in a referendum vote¹⁶.

In order to prevent the danger of territorial mutilation by internal minorities, Bill 99 also affirmed the principle of Quebec's territorial integrity, while at the same time recognizing the rights of the English-speaking minority and the Native people within its territory¹⁷. The inalienable right of the Quebec people to freely choose their own political system and the legal status of Quebec would seem to imply, in provincial law, a kind of « unilaterality » in the choice of procedures and that the Quebec people could determine by themselves, through their political institutions, the modalities for attaining independence¹⁸.

698

On the basis of Bill 99, the *Assemblée Nationale du Québec* would to that effect derive its legitimacy solely from the will of the people living in its territory, expressed by the election of its deputies, by equal vote and secret ballot: a legitimacy that the provincial Parliament extends to referendums held under the Referendum Act that establishes the status of elector.

In the following years, with the intent of strengthening Quebec's constitutional foundations, the Premier of the Province, Pauline Marois, brought forward a new bill on October 2007, allowing the Quebec nation to express its identity through the drafting, for the first time, of a written Quebec constitution and the institution of Quebec citizenship¹⁹. Nevertheless, these projects were not followed up and the political debate on this subject gradually stalled.

¹⁶ Bill 99, art. 4: «When Québec people is consulted by way of a referendum under the Referendum Act, the winning option is the option that obtains a majority of the valid votes cast, namely 50 % of the valid votes cast plus one». In his opinion, requested by the Parliamentary Assembly of the Council of Europe on the compatibility with applicable international standards of the existing legislation in Montenegro concerning the organisation of referendums, the Venice Commission considered on its side that «If a simple majority of those voting is not sufficient, there are two different kinds of possible majority requirements: (A) a rule requiring a qualified majority of those voting (that could be e.g. 55%, 60% or 65%); (B) a rule requiring that there must, in addition to a simple majority of those voting, also be a specified number of Yes votes (eg 35%, 40%, 45% or 50%) of the total national electorate»: Opinion n. 343/2005, § 29, 34: www.venice.coe.int. The Venice Commission also referred in its 'Opinion' to the Canada-Québec issue, stating that «While therefore the absence of any requirement of a specific level of support for a referendum on independence is not inconsistent with internationally recognized standards, the Commission emphasises that there are reasons for requiring a level higher than a simple majority of those voting, since this may be necessary to provide legitimacy for the outcome of a referendum».

¹⁷ Among the «other views to be considered» by the House of Commons, Bill C-20 specially mentioned «any formal statements or resolutions by the representatives of the Aboriginal peoples of Canada, especially those in the province whose government is proposing the referendum on secession, and any other views it considers to be relevant » (Bill 99, art. 5).

¹⁸ Bill 99, art. 5: «The Québec State derives its legitimacy from the will of the people inhabiting its territory. The will of the people is expressed through the election of Members to the National Assembly by universal suffrage, by secret ballot under the one person, one vote system pursuant to the Election Act (chapter E-3.3), and through referendums held pursuant to the Referendum Act. Qualification as an elector is governed by the provisions of the Election Act». The statement of this kind of "independence" is notably emphasized in art. 13 of Bill 99, which states that «No other parliament or government may reduce the powers, authority, sovereignty or legitimacy of the National Assembly, or impose constraint on the democratic will of the Québec people to determine its own future».

¹⁹ Bill 195, Québec Identity Act, sets forth measures to enable the Quebec nation to express its identity and provides for the drafting of a Quebec Constitution and the setting up of a select

If we compare Bill C-20 and Bill 99, we can easily observe that each of the parties are symmetrically motivated by the same fears and have the same goal: to prevent the antagonist from imposing the rules of procedure without having no longer any say in the matter. We need to place these two bills along the three-step path of the secession process: first, a break with the constitutional tacit prohibition of withdrawing from membership of a federation, then a compromise organized around specific and exceptional mechanisms and lastly but most importantly, the revolution involving in its essence a fundamental questioning of the old constitutional order²⁰.

3. A New Chapter in the Constitutional Series: Henderson v. Attorney General of Quebec

While the clashes were apparently calming down, in the aftermath of the second referendum, a judicial initiative by former Equality Party leader Keith Owen Henderson reignited the fires by challenging the constitutionality of Bill 99²¹.

After numerous dilations, the case finally came before the Superior Court of Quebec, a superior court also having jurisdiction in constitutional matters²². In its supervisory role, this Court ensures that the entity which adopted the law actually holds the legislative power granted by the Constitution, but also that the very content of the law is valid and respects the limits of Parliament's competence.

The Henderson allegations pointed out the conflict resulting from Bill 99 between the legislative proclamation of unilateral right of secession by the Quebec people and the procedural conditions for amending the Constitution of Canada. According to the applicant, Bill 99 produces effects far exceeding the internal constituent power attributed to the Province and therefore he contests the validity of articles 1 to 5 and article 13 of Bill 99.

The then Attorney General of Canada, Stephen Harper, joined the challenge to Bill 99, asking the Quebec Court to invalidate the provincial legislation by arguing, very schematically, that either Bill 99 meant nothing, or it had to be invalidated as unconstitutional.

The position of Quebecers was more articulated: the Attorney General of Quebec defended Bill 99 by invoking that it constituted just a solemn declaration of principles already affirmed and established in the past and that it really had no

parliamentary committee. On the same day, Daniel Turp, Member of the National Assembly, introduced Bill 196, "Quebec Constitution", in the provincial Parliament with the goal of enshrining in a new Quebec constitution the fundamental values of Quebec, which also define the criteria for supremacy of the Quebec Constitution, Quebec Constitution: cfr D. Turp, *Essais sur le droit du Québec de se doter de sa propre loi fondamentale*, 2013, Montreal.

²⁰ J.-P. Massias, *La réalité constitutionnelle du droit à la sécession*, in O. Lecucq (ed.), *Sécession et processus sécessionniste en droit international, européen et constitutionnel*, Paris, 19 (2017).

²¹ Keith Henderson launched his challenge to Bill 99 on behalf of The Special Committee for Canadian Unity, which was founded to defend before the courts "the rights of Canadians who reside in Quebec, whenever those rights are challenged or abrogated by the political adversaries of Canada or by those prepared to denigrate human dignity for their own sectarian purposes": cfr www.thespecialcommittee.com, last consulted July 2018.

²² The jurisdiction and organization of the Superior Court of Quebec is defined in Chapter T-16, Courts of Justice Act of Quebec.

legal scope. The *Société Saint-Jean-Baptiste*²³, intervening in the trial, considered on the contrary that the contested provisions of Bill 99 had a significant legal scope and were not merely declaratory, but likely to put a firm foothold in the endless constitutional debate on this subject.

The final decision was rendered on April 18, 2018, drafted by Justice Claude D'Almeida of the Superior Court of Québec²⁴. This sentence constitutionally validated Bill 99 in the provincial legal order, and rejected the conclusions formulated by Mr. Henderson: the National Assembly is finally held fully competent to rule on the matter and has in no way adopted provisions contrary to the Canadian Charter of Rights and Freedoms.

Bill 99, according to the Quebec Court, makes no reference to supposed «unilateral secession» or to some other kind of procedure excluding prior negotiations: its sole purpose is «to reiterate principles already existing in various Quebec statutes, for some, and, for others, at the very heart of the Quebec and Canadian political system, which are based on the principle of a democratic society, and it was also intended to bring these rights and principles together in a single, strong instrument whose ultimate purpose was to convey the message that we will paraphrase with the slogan *Maîtres chez nous* (Masters in our house)»²⁵.

It is to be noted that while the applicant announced promptly his intention to appeal the Quebec Court's decision, the Federal government declared to be satisfied with the Superior Court's decision and that it didn't intend to support Mr. Henderson's efforts.

4. The decision of the Superior Court

The Superior Court gives a balanced judgment in this affair²⁶.

In its lengthy contextualization of the origin of Bill 99, firstly endeavoring to determine provincial jurisdiction, the Judge recalls the matters falling within provincial jurisdiction in the case under consideration²⁷ and points out that they are to be considered and protected from possible interference²⁸. Quebec Court claims this way a kind of «principle of non-interference» prohibiting each level of government from directly or indirectly encroaching on the other²⁹. It thus consider the procedure for referendum vote an internal matter of the province, each member of the federation, within its own sphere of competence, remains

²³ The *Société Saint-Jean-Baptiste* is a very old militant association still active to promote and defend the rights of the nation born of New France.

²⁴ *Superior Court of Québec, Henderson v. Attorney General of Québec*.

²⁵ *Id.*, § 565.

²⁶ Stating, for the sake of precision, that «sections 1, 2, 3, 4, 5, and 13 of the Act respecting the exercise of the prerogatives of the people of Quebec and the State of Quebec, which the applicant contests, respect the Constitution and the Charter of Rights and Freedoms»: *Henderson v. Attorney General of Québec*, § 603.

²⁷ Constitution Act, 1867. Exclusive Powers of Provincial Legislatures concern the amendment of Quebec's internal constitution (s. 92, n. 1), civil rights in the province (s. 92, n. 13) and matters of a purely local or private nature specific to Quebec (s. 92, n. 16).

²⁸ 1867 Constitution Act, artt. 92, 92A, 93 and 95.

²⁹ *Henderson v. Attorney General of Québec*, § 288.

sovereign and is not subject to interference by others³⁰, on the condition, however, to not amend provisions essential to the implementation of the federal principle.

A possible change to the existing constitutional order requires the application of the Constitution Act, 1982, Part V, according to which the provincial initiative does not include the right to amend the Constitution unilaterally, nor to put others before the *fait accompli*. Justice Dallaire intends however to place Bill 99 within the framework and guidelines of an «internal sovereignty» crucial for the management of Quebec affairs³¹. The opinion of the Court of Québec is that within this perimeter nothing allows seceding unilaterally³².

Bill 99 is therefore not a tool dedicated to separate unilaterally from Canada and its purpose is just to reaffirm something that already exists³³. The judgment seems not to contradict the 1998 Advisory Opinion. The Quebec Judge follows the line of reasoning of the Ottawa judges, trying not to offer possibilities for an eventual future judgment of Canadian Supreme Court. Simple majority of votes is also held by the court to be valid as a general principle in the Canadian political system³⁴.

Concerning the use of expressions such as «Quebec people», «Quebec State» or «national State», the Court considers that their sense has to be contextualized, in their specific meaning related to the conditions of exercise of the « right to choose ». The referendum thus takes the same color of any other internal consultation process and therefore remains an internal matter³⁵. In this perspective, Bill 99 does not declare that Quebec would reach the status of a sovereign State³⁶. There is no pre-constitution of conditions of sovereignty by this Act and it is not a question of « supplying Quebec – the Court notes it by a very colorful sentence - with weapons to become an independent state, at any cost, in a cavalier manner, and without respecting the recipe that the Supreme Court had provided in its Advisory Opinion to raise the cake »³⁷. Not only the words used by the legislator, but also the words he does not use become relevant: the legislator has intentionally avoided using terms such as « secession », « unilateral » or « without prior negotiation » and if he has chosen not to use these keywords, we must properly consider that he did not intend to imply these consequences³⁸.

³⁰ Id, § 294.

³¹ Id, § 329.

³² Id, § 317.

³³ «The Quebec government has always pretended that a Quebec people existed, and it reaffirmed it in this Act which does not create this Quebec people and does not allow it to secede without first negotiating» ; id, § 348-349.

³⁴ The Supreme Court's jurisprudence offers the Quebec Court an important advantage. With respect to the majority required by Bill 99, there is a precedent set for other provinces: the rule according to which a simple majority of votes prevails is formally stated in British Columbia (Referendum act 16, s. 4.), Alberta (Constitutional referendum act 169, art 4 (1) and Newfoundland (Referendum act 170, s. 3.), necessarily producing a binding result everywhere without any illegality being noted on this subject by the Federal Supreme Court.

³⁵ Id, § 479.

³⁶ Id, § 368.

³⁷ Id, § 419.

³⁸ Id, § 568-569.

The mere fact of voting in favor of a secession project would not imply immediate legal effects, as established in the 1998 Advisory Opinion of the Supreme Court³⁹ by dividing this process into two phases. It will then be necessary to negotiate with the other members of the federation, and the path towards secession will inevitably involve the amendment of the federal Constitution⁴⁰. « To choose » means « to take something, preferably over another »: the « right to choose » is therefore not synonymous with « proclaim » or « declare » independence, so that a unilateral declaration of secession without prior negotiations still remains excluded⁴¹.

If the language globally used by the legislator of the province, just reiterating the legal principles he recognizes as foundations of Quebec democracy, seems shocking to someone, it is only « because he thought it important to add braces to the belt, just to get his message across well »⁴².

Justice Dallaire finally considers that nothing is written in Bill 99 that has not already been said and fully reiterated and that these rights and prerogatives are and continue to be exercised by the people and the State of Quebec, none of this going against the statements contained in the 1998 Supreme Court Advisory Opinion on Secession⁴³: Quebec remains firmly forced to negotiate its exit even if a popular vote is taken in favor of secession.

The statement contained in the Reference by the Federal Judge is deemed to be well respected: « it will be for the political actors to determine what constitutes “a clear majority on a clear question” in the circumstances under which a future referendum vote may be taken »⁴⁴. Federal and Provincial Government are one more time sent back face to face. The only firm point of the discussion is that in Canada, the « negotiating principle » is based on the need to combine the requirements of the expression of Democracy with those arising from other founding principles of the Constitution. It is nevertheless, at the same time, obvious that the two parties, on this particular subject, actually do not intend to negotiate.

5. Why do Canada and Quebec remain in a *cul-de-sac*?

A quick comparison with the main separatist events of the last few years explains well why, notwithstanding the flexibility of the Canadian constitutional system, the whole affair is permanently blocked. It is worth noting that this is not an isolated case. In the last three decades, a very large number of constitutions have

³⁹ *Id.*, § 447.

⁴⁰ *Id.*, § 453.

⁴¹ *Id.*, § 469.

⁴² *Id.*, § 543.

⁴³ *Id.*, § 571.

⁴⁴ *Reference re Secession of Quebec*, § 153. The Canadian supreme judges, as Quebec Court solemnly quotes, consider that « The reconciliation of the various legitimate constitutional interests is necessarily committed to the political rather than the judicial realm precisely because that reconciliation can only be achieved through the give and take of political negotiations. To the extent issues addressed in the course of negotiation are political, the courts, appreciating their proper role in the constitutional scheme, would have no supervisory role ».

been adopted or challenged through the secession of parts of the territory of States. The importance and intensity of the phenomena of secession consequently require more and more attention from constitutionalists.

The opposing political forces often capitalize on the persistence of the clash and do not bow to a compromise, which would not be impossible, on the procedures to be put in place in case of a new referendum: the Catalan example is in this sense emblematic, even if, unlike Canada, Spain brings with it a heavy past of nationalism and violent centralism very different from the great North American state⁴⁵. The absolute Spanish legal and constitutional prohibition of secession clearly seems to be an instrumental extension of a statist ideology called upon to delegitimize a claim based on strong social and political reality.

The Canadian federal system remains a suitable framework and a fruitful matrix principle for future constitutional compromises⁴⁶, even if his emerging character of « post-national State » more than « binational State » makes that less obvious. The central point is to place the Quebecois affair in a process according to which Patriation Reference can be « highly predictive of broad patterns in constitutional litigation », according to « the modern approach to constitutional interpretation which views the Constitution as a constellation of shifting interests and allegiances »⁴⁷ and in the implicit idea that the unwritten constitutional principles of the Rule of Law and Constitutionalism have in the Supreme Court strong defender of the Canadian constitutional order⁴⁸.

The most successful path towards a reliable people's verdict accepted by both contenders on the dissolution of the constitutional bond is the Scottish one. The Edinburgh agreements⁴⁹ undoubtedly prove that loyal negotiation between the two parties can lead to effective and respected memoranda of understanding, avoiding conflicts and pretexts.

The example of New Caledonia, with its referendum scheduled for November 4, 2018 also highlights the importance of passing time as a key factor in reaching a decision in a peaceful context. The great lesson of the Noumea Agreements, strongly pursued by French Prime Minister Michel Rocard, confirm

⁴⁵ J. M. Castellà Andreu, *Catalan secession, between politics and law* in *Studi parlamentari e di politica costituzionale*, 7, 177-178 (2012).

⁴⁶ As pointed out by E. Brouillet, *Le fédéralisme et la Cour suprême du Canada: quelques réflexions sur le principe d'exclusivité des pouvoirs* in *Revue québécoise de droit constitutionnel*, 3 (2010), and J.-C. Mathieu, P. Taillon, *Le fédéralisme comme principe matriciel dans l'interprétation de la procédure de modification constitutionnelle*, in *McGill Law Journal*, 60, 4, 763 ss. (2015).

⁴⁷ C. Mathen, 2011, *The question calls for an answer, and I propose to answer it: the Patriation Reference as Constitutional Method*, in *The Supreme Court Law Review*, 54, 144 (2011).

⁴⁸ A.M. Dodek, *Courting Constitutional Danger: Constitutional Conventions and the Legacy of the Patriation Reference*, in *Supreme Court Law Review*, 54, 121 (2011). This role is analytically examined by G. Rolla (ed.), *L'apporto della Corte suprema alla determinazione dei caratteri dell'ordinamento costituzionale canadese*, Milan, 2008.

⁴⁹ 'Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland', Edinburgh, 15 October 2012. The Edinburgh Agreement, as well as the negotiations that led to its signature, represent a very special case of its kind: a compromise was reached, while the Scottish Prime Minister wanted a third option between the 'yes' and the 'no', allowing popular support for greater devolution to Scotland, the British government insisted on a strict binary choice between independence and Scotland's retention in the United Kingdom.

the importance of lengthening the time to take a considered and not impulsive decision about such a strategic choice as future independence or its possible refusing. A fair secession process requires specific temporality, which results in the imposition of a reasonable span of time between when the request is made and when the referendum takes place.

In short, the *feuilleton* of the Canada-Québec diatribe is far from over, even if at this moment there are no longer conditions of urgency for a definition of the framework of procedures in view of an eventual third round of Quebexit. Meanwhile, the question must be raised of developing, in constitutional law, a serious and reliable democratic theory of secession for a peaceful and bloodless solution to other future conflicts⁵⁰. While considering the exceptional character of these rules, their legitimacy depends on the fact that they must not make impossible for a population aspiring to separate from the old State to realize the option of independence. Fair procedural conditions should rather be seriously established, making the separation possible *a priori*, without resorting to sterile legalism and repressive rules.

⁵⁰ As suggested and theorized by I. Ruggiu, *Referendum and secession. The appeal to the people for independence in Scotland and Catalonia*, in *Costituzionalismo.it*, 2, 36 (2016).