

PART FIVE

Legal Considerations in
Federalist Thought

Federalism and Canadian Foreign Policy: The Conception of the Gérin-Lajoie Doctrine

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International relations have long been marked by the presence of independent political communities seeking to protect their sovereignty against interference by foreign powers. As early as 1648, the Peace of Westphalia prohibited European monarchs from interfering in the internal affairs of other states, particularly in religious conflicts, which were at the root of the Thirty Years' War (1618–48). Sovereignty lay in the ability of a government to make decisions without foreign interference.¹

Over the centuries, the legal attributes of sovereignty have become more specific. Under international law, sovereign states have four fundamental rights: (1) *jus belli*, the right to declare war, (2) *jus legationis*, the right to send and receive diplomatic missions, (3) the right of access to justice, that is, the right to have access to international courts of law, and (4) *jus tractatumum*, the right to conclude treaties with other sovereign powers. These legal and political rights are those of a sovereign country that controls a defined territory and in which a government exercises supreme authority over a population. These rights are designed to be indivisible, as is the principle of sovereignty.

Paradoxically, at the very time when the principle of sovereignty was established as a system internationally (the seventeenth and eighteenth centuries), states relying explicitly on the “divisibility” of sovereignty were created: federations. In federal systems, the central government and the federated states are, at least in theory, sovereign in their areas of jurisdiction. Federalism is therefore based on sovereignty’s divisibility and, as such, is difficult to reconcile with the principle of sovereignty. In a federal system, sovereignty can be exercised in the same territory and over the same population by two or more sources of political power.

Therefore, the way powers are distributed between two orders of government is of the utmost importance. Based on what is provided for under the federal Constitution, some areas of activity are under the exclusive

authority of the federal government, some are under that of the federated states, and some fall under shared jurisdiction. This is, for the most part, what determines the nature and form of the federated states' participation in foreign policy, as well as the relationship between the provinces and the federal government in that area.

However, federalism poses a problem for international law. While international law treats federal systems as unitary actors without regard to the distribution of powers, a federal state must take that distribution into account when negotiating and implementing international treaties, even if only to ensure the federated states' compliance with the country's international obligations.

A perfect example of this tension between sovereignty and federalism is Canadian federalism. The federal government's claim to be the only order of government empowered to represent Canada in international relations has been considered unacceptable by the government of Quebec since the Gérin-Lajoie doctrine was formulated in 1965. If the federal government had full authority over foreign policy, it would be able to negotiate international treaties in areas of provincial jurisdiction – for example, in education, health, or labour – and then impose a treaty's application on the provinces. The Canadian government would be legislating in complete contradiction to the distribution of powers provided for in the Canadian Constitution. With international negotiations and treaties increasing worldwide, this was simply not acceptable to the Quebec government during the Quiet Revolution.

The Gérin-Lajoie doctrine specifies that Quebec is the power that must conclude international conventions in its areas of jurisdiction. Paul Gérin-Lajoie declared in 1965: "I repeat that there is no reason why the right to implement an international agreement should be dissociated from the right to conclude this agreement. This is a case of two essential steps in the one, single operation. Nor is it admissible, any longer, for the federal state to exert a kind of supervision and adventitious control over Quebec's international relations."²

Since 1965, all Quebec political parties, including the Quebec Liberal Party, the Parti Québécois, the Union nationale, Action démocratique du Québec, and Coalition avenir Québec, have backed the Gérin-Lajoie doctrine.³ Former premier Jean Charest even took the idea a step further when, at a conference at the École nationale d'administration publique in 2004, he stated: "Quebec's powers at home are Quebec's powers everywhere."⁴ Both former premier Philippe Couillard⁵ and former Minister of International Relations and La Francophonie Christine St-Pierre⁶ have said the same, and this formulation has bolstered the Gérin-Lajoie doctrine as the new doctrinal basis for government action.

In this chapter, we will take a closer look at the Gérin-Lajoie doctrine to trace how the Quebec conception of the relationship between federalism and foreign policy has evolved. First, we will outline the history of conflict

between the principles of sovereignty and of Canadian federalism until the Gérin-Lajoie doctrine was formulated in 1965. We will then turn to the federal government's reaction to the doctrine.

THE GÉRIN-LAJOIE DOCTRINE

The tensions between the Canadian government's sovereignty in foreign policy matters and the distribution of powers between the federal government and the provinces did not begin with the Quiet Revolution. Although one might assume that Quebec is the only province to take the matter to heart, the issues surrounding sovereignty and the distribution of powers arose long ago.⁷

Nevertheless, during the Quiet Revolution, the Quebec government took a strong "provincialist" stance, especially with the formulation of the Gérin-Lajoie doctrine. In his famous speech drafted by jurist André Patry and delivered to the Montreal Consular Corps on 12 April 1965, Quebec's Deputy Premier and Minister of Education Paul Gérin-Lajoie (a constitutionalist by training) argued that the Canadian government did not have a monopoly on treaty-making and that the Quebec government also had the right to negotiate treaties within its areas of jurisdiction.

Gérin-Lajoie's speech was seminal. For the first time, an important Quebec minister had asserted, before foreign dignitaries, Quebec's desire to play a role on the international scene within its areas of constitutional jurisdiction, without the supervision or consent of the Canadian government.

With its resolutely nationalistic tone, the speech would become known as the "Gérin-Lajoie Doctrine of the international extension of Quebec's domestic jurisdictions."⁸ Since 1965, the doctrine has been the foundation of Quebec's international actions. In his speech, Gérin-Lajoie asserted "Quebec's determination to take its rightful place in the contemporary world."

Given the speech's importance and the fact that it is fairly revealing of the Quebec government's motives, it is relevant to quote long excerpts and comment on them. Gérin-Lajoie began his speech, which is written in a legal style, by laying out the context. He stated:

Quebec is not sovereign in all domains: it is a member of a federation. But, from a political point of view, it constitutes a state. It possesses all the characteristics of a state: territory, population, autonomous government. Beyond this, it is the political expression of a people distinguished, in a number of ways, from the English-language communities inhabiting North America ...

I would like to refer to an example which touches you very closely. At Paris, a little more than a month ago, I signed an agreement on educational matters with representatives of the Government of the French Republic. Since that time, this agreement has been the subject of great

interest and numerous commentators have professed astonishment at the “precedent” which it represented in matters diplomatic and constitutional. Actually, this event specifically demonstrated Quebec’s determination to take its rightful place in the contemporary world and to provide, in external as well as internal affairs, all the means necessary for the realization of the aspirations of the society for which it stands.⁹

Gérin-Lajoie was referring to the rapprochement between France and Quebec in the early 1960s. Even though the Quebec Liberal Party’s 1960 platform did not include a section on Quebec’s international relations, Jean Lesage, the party leader, wanted to establish trade missions in Europe and elsewhere to attract foreign capital and industrial projects. He did not foresee what would happen during his two terms. Although the history of Quebec’s international relations did not begin with the Quiet Revolution, the Lesage government’s actions between 1960 and 1966 gave Quebec’s international policies a strong foundation. Three important events would shape Quebec’s new relationship with the world: the opening of the *Maison du Québec* in Paris in 1961, a 28 February 1965 “agreement” with France on education – Quebec’s first international agreement – and, above all, the formulation of the Gérin-Lajoie doctrine, the legal basis for Quebec’s international actions. These policies gave Quebec an unprecedented international identity at the time.¹⁰

Gérin-Lajoie’s 1965 speech continued: “I mentioned a short time ago the surprise caused by the signing of an agreement on education between France and Quebec. This agreement is completely in keeping with the established constitutional order. Actually, the Canadian Federal Government is in a unique position with regard to international law. If it possesses an incontestable right to deal with foreign powers, the implementation of agreements which it may conclude concerning matters under provincial jurisdiction lies beyond its legislative competence. This was the decision, nearly thirty years ago, in a judgment handed down by the judicial committee of the Privy Council, a judgment which has never been set aside.”¹¹

It is necessary to explain Paul Gérin-Lajoie’s assertion that the agreement was in line with the established constitutional order. In Canada, the *British North America Act*, known since 1982 as the *Constitution Act, 1867*, hardly addresses international relations. Unlike some other federations’ constitutions – and this is a problem for Canada – the Canadian Constitution does not provide for exclusive jurisdiction over foreign affairs.¹² The provisions of the *Constitution Act, 1867*, that touch upon the distribution of legislative powers (sections 91 and 92) do not specify explicitly whether the federal or provincial government has authority over foreign policy.¹³

In addition, in contrast with some federal regimes’ constitutions, the *Constitution Act, 1867*, does not prohibit the provinces from playing a role in foreign policy. In fact, the only reference to foreign affairs is in section

132, which is intended to give the new Dominion of Canada the power to enforce imperial treaties, including those affecting provincial jurisdictions. The section states: “The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.”

The Act’s silence can be explained by the fact that Canada did not become a sovereign country in 1867, but remained a member of the British Empire. Since only the Empire enjoyed the rights of a sovereign entity, it was unnecessary to define the prerogatives of the provinces or the government of Canada in that regard. Those who framed the Constitution Act, 1867, did not foresee that the new dominion might eventually enjoy the same autonomy in foreign policy as in domestic affairs. Roff Johannson has noted that “the *British North America Act* was not designed to provide a constitution for an autonomous nation-state. Rather, what was involved was the sharing of authority between various levels of local government.”¹⁴

As Gérin-Lajoie pointed out, it is true that constitutional practice gives the federal government a greater role in foreign affairs. The period from 1871 to 1923 saw a change in procedures, as federal officials began to participate in negotiations that resulted in imperial treaties affecting Canada. Prime Minister John A. Macdonald was part of the British delegation that concluded the 1871 Treaty of Washington on border demarcation. After the First World War, Canada signed the Treaty of Versailles under its own name, and obtained a seat in the League of Nations and at the International Labour Organization. In 1923, as Minister of Marine and Fisheries, Ernest Lapointe signed a treaty with the American government on behalf of the Canadian government for the protection of the halibut fisheries. Prime Minister Mackenzie King insisted that the treaty not be countersigned by the British ambassador in Washington. Although they protested at first, the British agreed. This new procedure was confirmed with the 1926 Imperial Conference, which allowed Canada, as well as the other dominions, to negotiate and sign treaties. Canada was also gradually granted the right to establish diplomatic and consular relations with sovereign countries.

With the 1931 Statute of Westminster, Canada was officially granted full international personality, including the right to make its own treaties. However, nothing suggested that the federal government had the capacity to implement the treaties it ratified in provincial jurisdictions.¹⁵ This is crucial as it forms the basis of Gérin-Lajoie’s legal arguments.

Since the Statute of Westminster jeopardized the distribution of powers, the question of the federal government’s ability to impose its treaties on the provinces was raised rather quickly. Once the Statute was signed, the federal government naturally became more enterprising with regard to making

treaties and attempted to impose their implementation on the provinces. As a result, several disputes were brought before the courts in the 1930s. The jurisprudence established would serve as a foundation from then on.

One of the first cases concerned the aeronautics convention. In the 1932 *Aeronautics Reference*, certain provinces objected to the federal government laying claim to powers in the field of civil aviation. The federal government argued that it was merely applying an international treaty made by the British Empire in Paris in 1919. The Judicial Committee of the Privy Council in London, which, until 1949, was the final court of appeal for Canada, concluded that the Paris Convention was an “Empire treaty”; therefore, section 132 of the British North America Act allowed the federal government to legislate in provincial jurisdictions to ensure its implementation.¹⁶

The 1932 *Radio Reference* also related to areas of provincial and federal jurisdiction. This time, the federal government claimed the right to regulate and control radio communication in Canada, following Ottawa’s ratification of an international agreement on wireless telegraphy. The Judicial Committee ruled that section 132 did not apply because it was the Canadian government, not the Empire, that had signed the convention. However, the Committee concluded that it amounted “to the same thing.” They stated: “It is Canada as a whole which is amenable to the other powers for the proper carrying out of the Convention; and to prevent individuals in Canada infringing the stipulations of the Convention it is necessary that the Dominion should pass legislation which should apply to all the dwellers in Canada.”¹⁷

Since radio broadcasting did not fall within the subjects of exclusive provincial legislation provided for in section 92, the Committee granted legislative authority to Ottawa pursuant to the “Peace, Order, and good Government” residual powers clause of section 91.

However, this decision could still be detrimental to provincial prerogatives: by entering into international treaties, the federal government would be able to legislate in the provinces’ areas of jurisdiction and impose its policies on them. And this is exactly what the federal government sought to do in 1935. In response to the economic crisis, R.B. Bennett’s government passed legislation to implement International Labour Organization conventions concerning minimum wages, hours of work, and weekly rest in the industrial sector. Once again, Ottawa justified its intrusion into an area of provincial jurisdiction by invoking section 132. Although the Supreme Court of Canada ruled in Ottawa’s favour, the Judicial Committee of the Privy Council in London rejected the arguments in 1937. This judgment is of paramount importance with respect to the Canadian government’s legal capacity and the provinces’ rights regarding international treaties. It is at the heart of the legal logic in the Gérin-Lajoie doctrine.

The judgment stipulates that, while section 132 of the British North America Act gave Parliament and the federal government power to implement imperial treaties, that power was not a general power conferred on

the Canadian state with respect to the implementation of treaties.¹⁸ The 1937 *Labour Conventions Reference* placed great emphasis on an *a contrario* argument to the effect that, if the federal government had exclusive powers respecting treaty-making, then it would be able to implement treaties in areas of provincial jurisdiction and legislate in total contradiction with the distribution of powers provided for in sections 91 and 92 of the Constitution.¹⁹ However, the judges maintained that these sections were the very foundation of the federation and could not be circumvented in that way. They wrote: “No one can doubt that this distribution is one of the most essential conditions, probably the most essential condition, in the interprovincial compact to which the BNA Act gives effect.”²⁰

The Judicial Committee also ruled that implementation power should follow the distribution of powers provided for in sections 91 and 92. In the decision on labour conventions, Lord Atkins, member of the Privy Council, wrote:

It will be essential to keep in mind the distinction between (1.) the formation, and (2.) the performance, of the obligations constituted by a treaty, using that word as comprising any agreement between two or more sovereign States. Within the British Empire there is a well-established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action. Unlike some other countries, the stipulations of a treaty duly ratified do not within the Empire, by virtue of the treaty alone, have the force of law. If the national executive, the government of the day, decide to incur the obligations of a treaty which involve alteration of law they have to run the risk of obtaining the assent of Parliament to the necessary statute or statutes. To make themselves as secure as possible they will often in such cases before final ratification seek to obtain from Parliament an expression of approval. But it has never been suggested, and it is not the law, that such an expression of approval operates as law, or that in law it precludes the assenting Parliament, or any subsequent Parliament, from refusing to give its sanction to any legislative proposals that may subsequently be brought before it.²¹

In sum, in Canada, since this decision, the power to conclude a treaty (i.e., to negotiate, sign, and ratify a treaty) has rested with the executive, whereas the implementation power has resided with the legislature. Since Parliament is sovereign, it is not required to take legislative measures for the implementation of a treaty concluded by the executive. The same applies to provincial legislatures. For a treaty to have the force of law in Canada, the Canadian Parliament must legislate, particularly where federal laws are concerned, and provincial parliaments must also do so where provincial laws are at

issue. A treaty does not apply by itself, above existing laws: there needs to be some legislative intervention for it to take effect. In Canada, judges rule on the basis of laws, not treaties. For a treaty to be complied with in domestic law, it must, in most cases, be incorporated into legislation at the appropriate order of government.²² If domestic law is compatible with the treaty, there is no need to legislate. This is often the case, as the provinces and the federal government are often in the vanguard of international law or have already enacted laws that are stricter than international standards. If the law is incompatible with the treaty, implementing or incorporating legislation is required. This problematic situation, which Gérin-Lajoie described as “absurd,” is the core of his argument.

The idea developed by Gérin-Lajoie in his 1965 speech, when he was both deputy premier and education minister, is both simple and far reaching. He proposed to change the usual formula so that Quebec would be able to negotiate and implement international agreements in its areas of jurisdiction. Gérin-Lajoie’s position is explained by the fact that neither the Constitution Act, 1867, nor the Statute of Westminster, 1931, confer exclusive authority over foreign affairs on the federal government.

Moreover, since the Judicial Committee of the Privy Council’s *Labour Conventions Reference*, in 1937, the federal government has had the power to enter into treaties in areas of provincial jurisdiction, but it has not had the authority to compel the provinces to implement such treaties. This is why many international treaties ratified by Canada do not apply to all provinces or are never implemented. Because the federal government cannot implement the treaties it signs if they concern the jurisdictions of Canadian provinces, Paul Gérin-Lajoie wanted the provinces to negotiate their own treaties. He said the following in his 1965 speech:

At a time when the Government of Quebec is fully aware of its responsibility for the realization of the particular destiny of Quebec society, it has no desire to abandon to the Federal Government the power of implementing agreements in matters falling under provincial competence. Furthermore, it is fully aware of the fact that there is an element of absurdity in the existing constitutional situation.

Why should the state which puts an agreement into execution be unable to negotiate and sign it? Is an agreement not concluded with the essential purpose of putting it into application, and should those who will have to implement it not have the right to work out the conditions in advance?

In the matter of international competence, the Canadian Constitution is silent. With the exception of Article 132, which has become a dead letter since the Statute of Westminster 1931, there is nothing that says that international relations are solely under the jurisdiction of the federal state. Therefore, it is not by virtue of written

law, but rather by repeated practice over the past forty years, that the Federal Government has assumed an exclusive role with regard to relations with foreign countries.²³

Further on in his speech, he reworded the same argument: “I repeat that there is no reason why the right to implement an international agreement should be dissociated from the right to conclude this agreement. This is a case of two essential steps in the one, single operation. *Nor is it admissible, any longer, for the federal state to exert a kind of supervision and adventitious control over Quebec’s international relations.*”²⁴

Having stated what he wanted, Gérin-Lajoie now had to explain how it was necessary or useful. He continued:

There was a time when Ottawa’s exclusive exercise of international powers was scarcely prejudicial to the interests of the federated states, inasmuch as the field of international relations was fairly well defined.

But, in our day, this is no longer so. Interstate relations now touch every aspect of social life. This is why, in a federation such as Canada, it is now necessary for those member groups, who wish to do so, to participate actively and directly in the preparation of international agreements with which they are immediately concerned ...

Parallel to the full exercise of a limited “*ius tractatum*” claimed by Quebec, there is equally the right to participate in the activity of certain international organizations of a non-political character. A large number of interstate organizations have been founded for the sole purpose of bringing about a solution, by international cooperation, of problems which up to now have been purely local in nature.

Further, the multiplication of exchange of all kinds between countries has necessitated the direct or indirect intervention of the modern state so that these exchanges may be made basic elements of progress of understanding and of peace between peoples. In many fields which have now assumed international importance, Quebec wishes to play a direct role in keeping with its true countenance.²⁵

Gérin-Lajoie was referring to changes that are now called the internationalization and globalization of the international order. In the 1960s, a new phenomenon emerged that began to worry Quebec politicians and public officials. Traditionally, questions of international policy were dominated by issues that had little to do with the Canadian provinces’ areas of jurisdiction. In the days when international relations essentially concerned peace and war, trade tariffs, and currency stability, major international policy initiatives scarcely involved the provinces directly.

In 1945, particularly with the creation of the United Nations, experts started to be concerned that international questions would gradually come

to involve matters of provincial jurisdiction. International negotiations were starting to deal with matters “purely local in nature,” as Gérin-Lajoie put it. As bilateral and multilateral international agreements multiplied and normative activity increased in the various international organizations that produced treaties ratified by Canada, areas of provincial jurisdiction were increasingly concerned.

Given that more and more international treaties, conventions, and agreements negotiated by Canada concerned areas of activity under provincial jurisdiction (education, public health, social services, culture, communications, transportation, natural resources, vocational training, the environment, business subsidies, financial institutions, treatment of investors, removal of non-tariff barriers, regulation of professions, etc.), it was problematic that the provinces were not involved more directly in negotiations and in the preparation of mandates. In the context of the Quiet Revolution, the federal government’s persistence in signing treaties on questions falling under provincial jurisdiction was unacceptable. The underrepresentation of Francophones in the federal public service and the lack of knowledge on Quebec policy issues triggered an immediate reaction from Quebec leaders.

Faced with this new problem, 1960s Quebec had three options. First, the Quebec government could agree, as was the case with the American federation, for example, to be automatically bound, through constitutional amendment or otherwise, to international agreements signed by the government of Canada with other countries, even where such agreements concern exclusively provincial jurisdictions. Second, mechanisms for federal-provincial coordination of Canada’s foreign policy could be set up. The idea was to involve the provinces in the decision-making process on Canadian foreign policy, an approach that is common in many federal states today.²⁶ Third, the Quebec government could negotiate and sign international agreements in its own areas of jurisdiction while ensuring its foreign policy was consistent with the federal government’s broad directions and commitments.²⁷

Quebec officials ruled out the first option since it implied abandoning Quebec’s constitutional powers, which was contrary to the spirit of the Quiet Revolution. As Gérin-Lajoie pointed out in his speech, the government is “fully aware of its responsibility for the realization of the particular destiny of Quebec society, it has no desire to abandon to the Federal Government the power of implementing agreements in matters falling under provincial competence.”²⁸

The second option, which the federal government preferred, would have given the federal government a new constitutional power: the right to interfere in provincial policy matters on the basis of a new international competence. The federal government would therefore have been able to use an international agreement to force Quebec to amend its laws so that they would comply with that treaty.

The third option, the one the Quebec government chose, namely the Gérin-Lajoie Doctrine, was unacceptable to the federal government, which had believed, up to that point, that it had a monopoly on foreign affairs in Canada. According to Claude Morin, that was how Quebec would come to develop an international policy in its areas of jurisdiction. Quebec's inaction, in that respect, would have implicitly suggested that it agreed to federal government intervention.²⁹

THE FEDERAL GOVERNMENT'S REACTION

When Prime Minister Lester B. Pearson was asked to comment on Gérin-Lajoie's speech, he said: "Paul doesn't mean it."³⁰ But few of his advisors came to the same conclusion. Although the Canadian government was initially open to policies of rapprochement with France, it began to toughen up following the formulation of the doctrine and after certain diplomatic and protocol incidents that had left the Canadian ambassador in Paris in the dark. According to Claude Morin, who was involved in the conflict on the Quebec side, "the federal approach changed drastically from the moment Quebec took certain actions that were seen not as the ultimate end of a reassuringly quiet revolution, but rather as a starting point for the realization and strengthening of ambitions through which Quebec ultimately challenged, from a federal perspective, Ottawa's dominant and exclusive role in foreign policy."³¹

Eight days after Gérin-Lajoie's speech, Secretary of State Paul Martin Sr categorically rejected the government of Quebec's analysis and demands. On 20 April 1965, he declared: "The constitutional situation of Canada regarding the power to make treaties is clear. Canada has only one international identity in the community of nations. There is no doubt that the Canadian government alone has the power or the right to make treaties with other countries."³²

He went on to say that the federal government had sole responsibility for the direction of external affairs as an integral part of national policy affecting all Canadians. Two days later, on 22 April 1965, Minister Gérin-Lajoie gave a second speech on the question to a group of professors from French and Swiss universities. He explained that, when Ottawa concluded treaties on matters falling under provincial jurisdiction, the provinces were responsible for implementing them. He considered that, consequently, the Quebec government should also be able to negotiate such treaties. He argued that Quebec needed to develop its own international policy because it was not adequately represented by the federal government and because the Canadian foreign service neglected the French-speaking nations of the world. Quebec's desire to establish closer relations with French-speaking countries had become a necessity because federal diplomacy gave priority to Commonwealth countries. Gérin-Lajoie added that Quebec was not a province like the others and that,

by developing an international policy, it would simply take responsibility for a political field that it had previously neglected.³³

This Quebec interpretation of the Canadian Constitution was not shared by the federal authorities. On 23 April 1965, the federal government proposed the following compromise: “Once it is decided that what a province wants to accomplish in signing an agreement with a foreign country in terms of education or any other field of provincial responsibility is compatible with Canadian foreign policy, then the provincial authorities may go ahead to discuss the details directly with the relevant authorities in the country in question³⁴ ... However, when it was a case of formally entering into an international agreement, the federal powers responsible for signing treaties and conducting foreign affairs in general would necessarily have to come into play.”³⁵

The government of Quebec considered this last requirement to be unacceptable because, by giving the federal authorities a form of veto over provincial policies, it affirmed the Canadian government’s supremacy over areas of provincial jurisdiction. Ottawa wanted to oversee the entire treaty-making process and reserved the right to reject a policy prescribed under provincial jurisdiction.

The idea behind this proposal was to create a framework for the current and future actions of the Quebec government. Canada would sign agreements with France and other countries, such as Belgium and Switzerland, that have French as one of their official languages. Such agreements would cover Quebec’s agreements, which would become a sort of extension of the federal agreements. An internal memo to the attention of Secretary of State Paul Martin Sr – which was meant to remain secret but was revealed by Claude Morin – was intended to explain the purpose of the federal initiative. It reads as follows: “This [the framework agreement] is intended to counter three aims of the Quebec technocrats: (a) only Quebec can speak for French Canada, (b) Quebec has a monopoly on relations with French-speaking countries, and (c) regarding education, culture, etc., since Quebec is autonomous internally, it is independent externally and can establish and develop relations with other countries in these fields without having to deal with Ottawa (consultation, authorization, opinion, etc.).”³⁶

Gérin-Lajoie’s reaction to the proposal was scathing: “Quebec does not require Ottawa’s permission to enter into international agreements in areas under its jurisdiction. It did not request permission to sign an agreement with France and will not do so whenever it decides to conclude other agreements of that nature with other countries.”³⁷

After the Gérin-Lajoie doctrine was formulated, the federal government took an increasingly hard line. Paul Martin Sr wrote two white papers on this issue. In 1968, in Chapter 2 of *Federalism and International Relations*, titled “The Federal Responsibility,” he pointed out that, “in international

law, the conduct of foreign relations is the responsibility of fully independent members of the international community. Because the constituent members of a federal union do not meet this criterion, the direction and control of foreign relations in federal states is generally acknowledged to be the responsibility of the central authority. Accordingly, the members of federal states have no independent or autonomous capacity to conclude treaties, to become members of international organizations in their own right, or to accredit and receive diplomatic and consular agents.”³⁸

In the second white paper, *Federalism and International Conferences on Education*, the federal government reaffirmed its position as the only order of government that could represent Canada as a whole on the international stage, even in areas of exclusive provincial jurisdiction such as education. It also argued that a “devolution” of federal authority in this area would entail the disintegration of Canada. The white paper left no ambiguity as to the “indivisibility” of Canadian foreign policy: “Foreign policy is the external expression of a country’s sovereignty ... That a country should have several separate votes at an intergovernmental conference can mean that it would have more than one foreign policy. Foreign policy cannot be fragmented ... In the international world, there may be large and small units. There are and can be no half units.”³⁹

In short, for the federal government, foreign policy was indivisible and only the Canadian government had the authority to make proper international treaties.

The development of a foreign policy by the Quebec government elicited reactions from more than just politicians. Public servants at the Department of External Affairs in Ottawa were hostile to the advent of this cumbersome new player for two reasons. First, the Quebec government’s actions competed with those of the federal government, jeopardizing their efforts and legitimacy. Second, a considerable number of French Canadians had recently attained top positions in the department and were outraged to be told by Quebec officials that the interests of Francophones were not adequately represented.⁴⁰

Yet, studies presented to the Royal Commission on Bilingualism and Biculturalism confirmed Quebec’s analysis with regard to the federal government’s lack of consideration of Francophones. The Department of Foreign Affairs even tried to torpedo the work of two Quebec academics (including the author of the Gérin-Lajoie doctrine, André Patry) who were officially mandated to investigate the department’s respect for Canada’s cultural duality.

In his report, Professor Gilles Lalande concluded, “it is surprising, to say the least, that the law of numbers has not permitted a single French-language career officer to be head of a mission in the great majority of countries where Canadian interests are judged the most important.”⁴¹ André Patry, who

wrote the second study for the Commission, showed that English was still the language of communication between the Department of External Affairs and international organizations, including the Universal Postal Union, the only official language of which was French!

CONCLUSION

The most extraordinary thing in the history of the Gérin-Lajoie doctrine is that it became official government policy not as the result of a long reflection process but almost by accident. When Gérin-Lajoie first addressed the Montreal Consular Corps, Premier Jean Lesage was on holiday in Florida and could not be brought up to date on his deputy premier's interpretation of the Canadian Constitution. Upon his arrival at the airport, Lesage was asked by journalists to comment on his minister's speech. He said that Paul Gérin-Lajoie had indeed stated the government's policy.⁴²

As Claude Morin says about the event, "as was the case then, and as will be the case again and again, a major government policy was announced as a result of an unexpected combination of circumstances and the more or less appropriate, yet necessary, answers to questions raised by those same circumstances ... I have also learned that, in our system, a statement by the premier, no matter how informal, becomes the statement of final government policy, automatically rendering all previous ministers' positions and nuances obsolete."⁴³

If the premier had rebuffed his minister of education, the Gérin-Lajoie doctrine would have remained a dead letter. Thanks to Lesage's declaration of support – which took even the public officials who were present by surprise, including Claude Morin, as they had expected a denial – the Gérin-Lajoie doctrine became Quebec's official policy, simply because Premier Lesage was in a good mood when he arrived at the airport in Quebec City! However, it should be noted that Gérin-Lajoie was a renowned constitutionalist, which lent a certain authority to his speeches. Moreover, the legal basis of the doctrine was built on the jurisprudence of the Judicial Committee of the Privy Council in London, which gave it more credibility. To this day, neither this jurisprudence nor the Gérin-Lajoie doctrine have been overturned.

NOTES

- 1 On the concept, see: Bertrand Badie, *Un monde sans souveraineté* (Paris: Fayard, 1999).
- 2 Excerpt from the speech by Paul Gérin-Lajoie, Vice-President of the Quebec Executive Council and Minister of Education, to the Members of the Montreal Consular Corps, Montreal, 12 April 1965. Ministère des Relations internationales et de la Francophonie, "Allocution du ministre de l'Éducation, M. Paul Gérin-Lajoie," 12 April 1965, <https://www.sqrc.gouv.qc.ca/relations->

- canadiennes/positions-historiques/positions-quebec-1936-2001.
asp. English translation: <https://www.sqrc.gouv.qc.ca/rerelations-canadiennes/positions-historiques/positions-quebec-1936-2001-en.asp>.
- 3 François LeDuc and Marcel Cloutier, *Guide de la pratique des relations internationales du Québec* (Quebec City: Ministère des Relations internationales, 2000), 78.
 - 4 Cited in Annie Chaloux and Stéphane Paquin, “Le Québec sur la scène internationale: Les raisons de son dynamisme,” *Globe: Revue internationale d’études québécoises* 13, no. 1 (2010): 27. (Translated from the French. Unless otherwise indicated, all English translations of French texts are by the translators of this volume.)
 - 5 Philippe Couillard, “Discours d’assermentation du Conseil des ministres du gouvernement du premier ministre Philippe Couillard,” 23 April 2014, https://www.bibliotheque.assnat.qc.ca/DepotNumerique_v2/AffichageNotice.aspx?idn=75688.
 - 6 Christine St-Pierre, “Pérenniser l’objectif: Moderniser les moyens,” colloquium on the fiftieth anniversary of the Gérin-Lajoie doctrine, 27 March 2015, accessed 12 December 2019, http://www.mrif.gouv.qc.ca/fr/salle-de-presse/allocutions/2015/2015_03_27.
 - 7 Stéphane Paquin, ed., *Histoire des relations internationales du Québec* (Montreal: VLB éditeur, 2006); André Patry, *Le Québec dans le monde* (Montreal: Leméac, 1980).
 - 8 It was not until 1967 that Gérin-Lajoie used this historic expression during a debate in the National Assembly, on the establishment of the Department of Intergovernmental Affairs.
 - 9 Speech by Paul Gérin-Lajoie, Montreal, 12 April 1965, 130–1.
 - 10 On the history of Quebec’s international relations, see: Dale C. Thompson, *De Gaulle et le Québec* (Montreal: Éditions du Trécaré, 1990); David Meren, *With Friends Like These: Entangled Nationalism and the Canada-Quebec-France Triangle, 1944–1970* (Vancouver: UBC Press, 2012); Frédéric Bastien, *Relations particulières: La France face au Québec après de Gaulle* (Montreal: Boréal, 1999); Shiro Noda, *Entre l’indépendance et le fédéralisme, 1970–1980: La décennie marquante des relations internationales du Québec* (Quebec City: Les Presses de l’Université Laval, 2001); Luc Bernier, *De Paris à Washington: La politique internationale du Québec* (Quebec City: Les Presses de l’Université du Québec, 1996); Paul-André Comeau and Jean-Pierre Fournier, *Le Lobby du Québec à Paris: Les précurseurs du général de Gaulle* (Montreal: Québec Amérique, 2002). On education, see: Sami Mesli, *La coopération franco-québécoise dans le domaine de l’éducation: De 1965 à nos jours* (Quebec City: Septentrion, 2014).
 - 11 Speech by Paul Gérin-Lajoie, Montreal, 12 April 1965, 133.
 - 12 Anne-Marie Jacomy-Millette, “Les activités internationales des provinces canadiennes,” in *From Mackenzie King to Pierre Trudeau: Forty Years of Canadian Diplomacy, 1945–1985*, ed. Paul Painchaud (Quebec City: Les

- Presses de l'Université Laval, 1989), 82–3. See also: Michel Lebel, Francis Rigaldies, and José Woehrling, *Droit international public*, vol. 1 (Montreal: Les Éditions Thémis, 1978), 181–8.
- 13 On the distribution of powers, see Réjean Pelletier, “Constitution et fédéralisme,” in *Le parlementarisme canadien*, ed. Manon Tremblay, Réjean Pelletier, and Marcel R. Pelletier (Quebec City: Les Presses de l'Université Laval, 2000), 53–9.
 - 14 Peter Roff Johannson, “Provincial International Activities,” *International Journal* 33, no. 2 (1978): 359.
 - 15 Section 3 of the Statute of Westminster reads as follows: “It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.”
 - 16 On the aeronautics, radio, and labour convention references, see: Howard A. Leeson and Wilfried Vanderelst, *External Affairs and Canadian Federalism: The History of a Dilemma* (Toronto: Holt, Rinehart & Winston, 1973), 65–77.
 - 17 Peter H. Russell, Rainer Knopff, and Ted Morton, eds, *Federalism and the Charter: Leading Constitutional Decisions* (Ottawa: Carleton University Press, 1989), 95.
 - 18 *Canada (AG) v Ontario (AG)* (Labour Conventions), [1937] A.C. 326 (P.C.), in François Chevette, Herbert Marx, and Han-Ru Zhou, *Constitutional Law: Fundamental Principles: Notes and Cases*, trans. Mary Baker, Maya Grabianowska, and Han-Ru Zhou (Montreal: Les Éditions Thémis, 2020), 298.
 - 19 In *Liquidators of the Maritime Bank of Canada*, the Judicial Committee of the Privy Council in London also confirmed federalism as the founding principle of Canada: “The object of the [British North America] Act was neither to weld the provinces into one, nor to subordinate provincial governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy.” *Liquidators of the Maritime Bank of Canada v. Receiver-General of New-Brunswick* (1892), A.C. 437, 441–2.
 - 20 *Canada (AG) v Ontario (AG)* (Labour Conventions), [1937] A.C. 326 (P.C.), in Chevette, Marx, and Zhou, *Constitutional Law*, 298.
 - 21 *Ibid.*, 294–5.
 - 22 Sylvie Scherrer, “L’effet des traités dans l’ordre juridique interne canadien à la lumière de la jurisprudence récente,” in *Développements récents en droit administratif*, ed. Barreau du Québec, Service de la formation permanente (Montreal: Les Éditions Yvon Blais, 2000), 59.
 - 23 Speech by Paul Gérin-Lajoie, Montreal, 12 April 1965, 133.
 - 24 *Ibid.* Gérin-Lajoie himself added the part in italics (emphasis added) to the speech prepared by André Patry. Source: André Patry, interview by the author, January 2006.

- 25 Speech by Paul Gérin-Lajoie, Montreal, 12 April 1965, 133–4.
- 26 Stéphane Paquin, “Quelle place pour les provinces canadiennes dans les organisations et les négociations internationales du Canada à la lumière des pratiques au sein d’autres fédérations?” *Administration publique du Canada/Canadian Public Administration* 48, no. 4 (2005): 477–505.
- 27 Claude Morin, *L’art de l’impossible: La diplomatie québécoise depuis 1960* (Montreal: Boréal, 1987), 38.
- 28 Speech by Paul Gérin-Lajoie, Montreal, 12 April 1965, 133.
- 29 Morin, *L’art de l’impossible*, 39.
- 30 Lester B. Pearson, cited in Jack Granatstein and Bothwell Robert, *Pirouette: Pierre Trudeau and Canadian Foreign Policy* (Toronto: University of Toronto Press, 1990), 116.
- 31 Morin, *L’art de l’impossible*, 33 (translation).
- 32 Cited in Morin, *L’art de l’impossible*, 38. For an English version, see: Richard Howard, Jacques Lacoursière, and Claude Bouchard, *A New History of Canada: Quiet Revolution, 1960–1967* (Wrocław: Éditions Format, 1972), 1239–40.
- 33 Robin Gendron, *Toward a Francophone Community: Canada’s Relations with France and French Africa, 1945–1968* (Montreal: McGill-Queen’s University Press, 2006).
- 34 Cited in Morin, *L’art de l’impossible*, 38. For an English version, see Howard, Lacoursière, and Bouchard, *A New History of Canada*, 1239.
- 35 Morin, *L’art de l’impossible*, 38.
- 36 Cited in *ibid.*, 59 (translation).
- 37 Paul Gérin-Lajoie, cited in *ibid.*, 29 (translation).
- 38 Government of Canada, *Federalism and International Relations* (Ottawa: Secretary of State for External Affairs, 1968), ch. 2, p. 11, <https://primarydocuments.ca/wp-content/uploads/1968/01/FedIntRelationsMartin1968.pdf>.
- 39 Government of Canada, *Federalism and International Conferences on Education* (Ottawa: Secretary of State for External Affairs, 1968), 12, <https://primarydocuments.ca/federalism-and-international-conferences-on-education-supplement-to-federalism-and-international-relations/#14>.
- 40 Dale C. Thompson, *De Gaulle et le Québec* (Montreal: Éditions du Trécarré, 1990), 190.
- 41 Patry, *Le Québec dans le monde*, 79 (translation).
- 42 However, according to Dale C. Thompson, Paul Gérin-Lajoie went to Florida to give Lesage his speech after delivering it to the Montreal Consular Corps, and Lesage said: “It’s good, Paul, it’s good” (translation). But the fact remains that Lesage was made aware of the speech after it was delivered. See: Thompson, *De Gaulle et le Québec*, 186–7.
- 43 Morin, *L’art de l’impossible*, 31 (translation).