

WRITINGS IN HONOUR OF CLAUDE RYAN/ ÉCRITS EN L'HONNEUR DE CLAUDE RYAN

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INTRODUCTION

Nathalie Kermoal
Claude Couture

Lors de la collation des grades de l'Université de l'Alberta, le 18 novembre 1998, Claude Ryan, à qui l'on remettait un doctorat honorifique, déclarait : « Il serait superficiel de croire que l'ère des nations est terminée. Les questions que l'on doit se poser à ce sujet portent non pas sur la survie des nations comme telles mais plutôt sur la nature et l'étendue des pouvoirs qu'exerceront les gouvernements nationaux... »

À une époque où plusieurs auteurs ont eu tendance à proclamer la mort des nations et du nationalisme, Claude Ryan montra une fois de plus sa grande perspicacité vis-à-vis des questions politiques de son époque. Pendant plus de quarante ans, il fut à la fois un observateur et un acteur éclairé de la vie publique canadienne. Son départ, le 9 février 2004, laisse à toute fin pratique le monde intellectuel et politique canadien sans leader moral d'une telle envergure. Aussi, le présent numéro de Forum constitutionnel se veut simplement un hommage à celui qui fut sans doute l'un des plus influents personnages publics de son époque. Ce numéro spécial regroupe deux textes de Claude Ryan lui-même : le premier prononcé lors de la remise de son doctorat honorifique à Edmonton en novembre 1998, le second portant sur le fédéralisme renouvelé que Claude Ryan envisageait pour le Canada. Les autres textes sont des textes d'auteurs qui ont travaillé sur des aspects qui avaient passionné Claude Ryan et qui offrent des perspectives contradictoires de la réalité politique canadienne.

Claude Ryan est né à Montréal, le 26 janvier 1925. D'origine sociale modeste, il fit d'abord ses études à l'école Saint-Jean-de-Matha à Ville-Émard, puis au collège de Sainte-Croix à Montréal, enfin à l'École de service social de l'Université de Montréal de 1944 à 1946. Ses biographes relatent aussi un stage d'études en histoire de l'Église et en histoire universelle à

l'université pontificale grégorienne de Rome en 1951 et 1952.

Il eut une longue carrière publique qui commença par le poste de secrétaire national de la section de langue française de l'Action catholique canadienne de 1945 à 1962. Il fut par la suite président de l'Institut canadien d'éducation des adultes de 1955 à 1961 et président du comité d'étude sur l'éducation des adultes au ministère de l'Éducation du Québec en 1962 et 1963. Après cette fonction, il devint éditorialiste au quotidien Le Devoir de 1962 à 1964 puis à partir de 1964, directeur du même journal et gérant général de l'Imprimerie populaire (société éditrice du Devoir), fonctions qu'il occupa de mai 1964 à janvier 1978. Il fut aussi membre du conseil d'administration de la Presse canadienne de 1964 à 1971.

Son entrée en politique se fit en 1978, dans le contexte de la prise du pouvoir du Parti québécois en 1976 et de la période préférendaire de 1977 à 1980. Élu chef du Parti libéral du Québec le 15 avril 1978, il devint député libéral dans Argenteuil à l'élection partielle du 30 avril 1979. Il fut donc leader provincial des forces du 'non' lors du référendum de 1980 au Québec. Mais son rôle fut éclipsé, il faut le dire, avec le retour au pouvoir de Pierre Trudeau au niveau fédéral en février 1980. Même si le 'non' l'emporta en 1980 par une marge importante de 20 % des voix exprimées, Claude Ryan fut incapable cependant d'empêcher le retour au pouvoir des péquistes en 1981. Bien que réélu en 1981, il dut céder sa place de leader du Parti libéral et chef de l'opposition officielle le 10 août 1982, date de sa démission. Il n'en continua pas moins d'agir comme vice-président de la Commission de l'éducation et de la main-d'œuvre du 15 mars 1984 au 23 octobre 1985. Il fut réélu député en 1985 et 1989 lors d'élections provinciales remportées par les libéraux. Sa

loyauté au parti lui valut d'être nommé à d'importantes fonctions lors de ces gouvernements dirigés par Robert Bourassa, notamment celui de ministre de l'Éducation et ministre de l'Enseignement supérieur et de la Science du 12 décembre 1985 au 5 octobre 1990. Il fut aussi ministre responsable de l'application de la Charte de la langue française du 3 mars 1989 au 11 janvier 1994, donc en plein cœur des controverses soulevées par l'utilisation entre 1988 et 1993 par le Québec de la clause 'nonobstant' de la Charte canadienne des droits et des échecs de Meech et de Charlottetown que les libéraux du Québec appuyèrent. Pire encore, à la suite de la crise d'Oka, il fut nommé ministre de la Sécurité publique du 5 octobre 1990 au 11 janvier 1994. Il fut enfin ministre des Affaires municipales dans le cabinet Bourassa, puis dans le cabinet Johnson (Daniel, fils) du 5 octobre 1990 au 26 septembre 1994. Il se retira de la politique active à l'automne de 1994.

Claude Ryan fut aussi actif dans les organisations publiques et communautaires, notamment à titre de membre du conseil d'administration de la caisse populaire Saint-Louis-de-France à Montréal du 23 octobre 1956 au 13 mai 1968 et vice-président du 18 septembre 1963 au 3 mai 1968. Il fut aussi membre de la section canadienne du Canadian-American Committee. Son engagement et dévouement lui valurent plusieurs prix, dont : le prix de l'éditorial du National Newspaper Award (1964), prix du National Press Club (1965), prix du Conseil canadien des Chrétiens et des Juifs ou Human Relations Award (1966), prix du Comité ouvrier juif du Canada pour sa défense des droits de l'homme (1969), prix Quill du Windsor Press Club (1971), le Prix de carrière du Conseil du patronat du Québec (1996) et la médaille du mérite de l'Office des communications sociales (1997). Nommé au Canadian News Hall of Fame, en 1968, il fut aussi compagnon de l'ordre du Canada le 16 novembre 1995. Outre son doctorat honorifique de l'université de l'Alberta, il reçut un doctorat honoris causa en théologie du Collège dominicain de philosophie et de théologie, le 12 novembre 2000. En fin de carrière il fut professeur à l'Université McGill en études catholiques et on lui octroya, à titre posthume, l'insigne de Commandeur de l'Ordre de la Pléiade le 17 mars 2004.

Auteur prolifique, il publia, entre autres : Les Classes moyennes au Canada français (1950), l'Éducation des adultes, réalité moderne (1957), Le Contact dans l'apostolat (1959), Esprits durs, coeurs doux; La vie intellectuelle des militants chrétiens (1959), Les Comités: esprit et méthodes (1962), Un Type nouveau de laïc (1966), Le Devoir et la crise d'octobre 70 (1971), Le Québec qui se fait (1971), Une société stable (1978) et Regards sur le fédéralisme (1995).

Claude Ryan était un homme d'idées, de réflexions dont les analyses percutantes étaient sollicitées par de nombreux politiciens. Toute sa vie, il cherchera à concilier les rapports entre les différents nationalismes qui s'expriment au sein de la société québécoise et canadienne.

Certains observateurs de la scène québécoise se montrent, cependant, critique de l'approche préconisée par Claude Ryan. Dans un premier texte, Jack Jedwab examine la crise des identités politiques au Canada et la problématique de la 'reconnaissance' à la façon de Charles Taylor et de Will Kymlicka. Selon Jedwab, depuis les années 1960 et les travaux de la Commission sur le bilinguisme et le biculturalisme, les gouvernements fédéraux, libéraux ou conservateurs, ont tenté trois types de solution au problème posé en particulier par le Québec : 1) l'approche de l'inclusion dans le pouvoir décisionnel des institutions fédérales; 2) l'approche de la reconnaissance accordant au Québec des attributs 'spéciaux'; 3) l'approche de la décentralisation et de la régionalisation. Or, pour Jedwab, la première approche, appliquée par Pierre Trudeau, fut la plus réussie, les deux autres, au contraire appuyées par Claude Ryan, posèrent des problèmes de déséquilibre qui aggravèrent les tensions au Canada.

Pour sa part, Stéphane Kelly fait l'examen de la thèse qui prétend que le régime Trudeau a trahi l'héritage des pères fondateurs de l'Amérique du Nord britannique. Kelly soutient au contraire que Trudeau fut parfaitement en ligne avec la pensée des Pères de la Confédération et a reproduit un modèle de reconnaissance inégale du Québec. Kenneth McRoberts soutient au contraire que l'esprit de la Confédération de la Commission sur le bilinguisme et le biculturalisme fondé sur la reconnaissance ne se retrouve pas dans les

institutions trudeauistes et que le Canada devrait examiner plus attentivement l'évolution du dossier de la reconnaissance au pays de Galles et en Catalogne pour peut-être retourner à un esprit de compromis.

Claude Couture ajoute une autre dimension au débat en faisant ressortir le caractère unique de la reconnaissance de la diversité du Canada, comme c'est le cas pour le bilinguisme et le multiculturalisme. Dans son texte, l'auteur se démarque nettement des thèses de Louis Hartz et de Gérard Bouchard et rappelle que les institutions américaines sont demeurées antidémocratiques et élitistes alors que les institutions du Canada ont laissé la place à la diversité grâce à un libéralisme populaire de résistance. En définissant et en inscrivant les droits linguistiques, les droits des Autochtones et le droit à l'égalité dans la Constitution canadienne, le Canada s'est doté d'institutions originales dans le contexte occidental et se démarque ainsi nettement du libéralisme conservateur des États-Unis.

Linda Cardinal, quant à elle, nous invite à une réflexion sur les conséquences de la judiciarisation de la politique canadienne. Ce phénomène ne permettant pas d'engager le pays dans un débat démocratique sur les droits des minorités linguistiques et des peuples des Premières Nations, on observe le rétrécissement de l'espace politique canadien. Même s'il y a lieu de réformer le fédéralisme, la volonté d'apporter des changements constitutionnels ouverts à l'Autre n'existe tout simplement pas au Canada.

Enfin, pour terminer ce dossier, Julián Castro-Rea et Donald Smith jaugent les paramètres des politiques de reconnaissance des Premières Nations, notamment en relation avec la question du Québec. Or, justement, Claude Ryan exprima à plusieurs reprises son désarroi face à ce qu'il percevait comme une profonde incompréhension entre les deux groupes. Lors d'une conférence tenue à Montréal en 2002 pour rappeler l'échec de l'Accord de Charlottetown, Matthew Coon-Come, alors chef de l'Assemblée des Premières Nations, avait fait l'éloge de Claude Ryan, qui était présent, et de sa grande générosité de vision, annonçant ainsi la future 'Paix des Braves' signée le 7 février

2002 entre le Québec et les Cris de la Baie James, entente qui reconnaît le principe de 'nation à nation'.

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RECONCILING DUALITY AND DIVERSITY/ DUALITÉ ET DIVERSITÉ SONT-ELLES CONCILIABLES?

Claude Ryan

RECONCILING DUALITY AND DIVERSITY*

I wish to thank the University of Alberta for the honorary degree which it has generously conferred upon me today. I accept with joy this high distinction because I assume that beyond my modest person you have wished, Madam Chancellor, to express your attachment to the linguistic duality of our country and to the unique role which history has devolved upon Québec in this respect. I also accept it with humility for I am well aware that the only degrees which count in life are those which accrue to deserving students following prolonged years of arduous study.

To you, members of this autumn's graduating class, I extend my sincere congratulations upon your success. To those who assisted you in the course of your long journey, in particular your parents, I address a word of admiration. By helping you as they did, they rendered an invaluable service not only to a son, a daughter, a brother, a sister, or a friend, but also to society in general.

I greatly admire those of you who, instead of seeking immediate gains, will devote additional years to the disinterested pursuit of knowledge. I presume however that a majority will now embark upon a practical career. Since I made the same choice some fifty years ago, at a time when a graduating student's options were much more

limited, do not be surprised if my remarks, though they are meant for all of you, may seem to bear the imprint of my own experience.

Once you enter the business and professional world, your first obligation will of course be to excel in your own field of endeavor. Your degree will certify that you successfully mastered the essentials of your discipline. But it can only be a starting point. Since knowledge is continually renewed with ever-increasing rapidity, you will have to keep abreast of every development in your discipline and related fields. In order to excel, you must act conscientiously and competently in all matters, large and small, relating to your professional responsibilities. You must, in particular, serve the public with dignity, honesty, respect, courtesy and diligence. You must remain disposed at all times to change your methods of work whenever better ones become available. Regardless of what you think about them, you must also be prepared to abide by established rules as long as they have not been changed by regular procedures.

Thanks to your knowledge and skills, you will enjoy a higher measure of material comfort and better control over the organization of your life than the majority of your fellow citizens. But it would be a tragic waste if your talents were to be employed exclusively in the selfish promotion of your individual aggrandizement or pleasure. The more you learn about the workings of society, the more you will realize that insecurity, poverty and injustice are widespread among your fellow-citizens. You will also discover that society depends on your personal commitment to causes that transcend your immediate interests. From those

* An address delivered at the University of Alberta on the occasion of the fall Convocation held at the Jubilee Auditorium, in Edmonton, on November 18, 1998. Published with the permission of Mr. Paul Ryan and the Ryan Family. Version française à suivre.

who have received more, more must logically be expected in the service of the common good.

The society in which one is called upon to live cannot be an abstract and impersonal universe. It must be established on a given territory. It must have its own history. It must comprise members who, while different in several ways, are linked together by common values to which they all adhere. It must, in other words, be a nation. Among the values which help define a nation, language, culture, moral standards, religion, social customs, laws, and political institutions are most important. In spite of all that we hear nowadays and about the homogenizing impact of globalization and the alleged decline of nations, the latter will continue for a long time to provide the basic framework for the organization of life in society. It would be superficial to think that the era of nations is over. The real questions in this area relate not to the survival of nations as such but to the nature and extent of the powers which of national governments will exercise and to the frontiers within which each nation will seek its destiny.

If this is true, Canada should normally continue to provide the social and political environment within which your lives will evolve and we would have many reasons to rejoice over that prospect. Our country forms, on this northern half of the American continent, a political society which is distinct, prosperous and free. Being neither too big nor too small, Canada is rich enough to provide citizens with a vast array of opportunities but not enough powerful to be suspected of imperialistic ambitions. Being able to listen with attention to smaller countries and to speak to the more powerful ones without fear of being ignored or silenced, it has enough weight to aspire to play a constructive role in international affairs. Having been founded on respect for diversity, it is well placed to serve as friendly interpreter or peace-keeper in conflicts arising elsewhere. We should be proud of the unique place which Canada occupies in the family of nations. But we must also be aware that our existence as a nation is perhaps more fragile today than at any other time since Confederation.

The most immediate threat to the unity of Canada arises from the ever-present possibility of

an eventual breakup of the country. The first area of concern is of course the threat of separation emanating from Québec. Less spectacular but perhaps no less dangerous in the long term, are two trends which are now observable in Canada, i.e. on the one hand, a tendency on the part of prosperous regions to question the sharing of wealth and opportunity which has become synonymous with our federal system of government, and on the other hand, a tendency, particularly in Western Canada, to disregard our political tradition in favour of egalitarian concepts borrowed from the American political culture. The American experience was built upon the more or less absolute supremacy of individual rights. Canada opted on the contrary for a somewhat imperfect blending of individual and collective rights. A leading feature of the Canadian experience has been an attempt to accommodate the coexistence of two leading languages in a political society whose composition has kept changing over the years. The principles upon which this coexistence was founded are now openly challenged not only by those who want to build a sovereign state in Québec, but also by those who would abandon the bilingual and bicultural character of Canada in favour of an American-inspired philosophy based exclusively on individual rights. If this latter approach were to prevail, I am afraid it would, over time, logically beget a very different Canada heralding the merits of multiculturalism but characterized in fact, almost everywhere, by English unilingualism, and from which Québec would likely have separated.

In the Trudeau years, equality between the French and the English languages was perceived as the best way to achieve national unity. We have accomplished significant progress in this direction. The most eloquent step towards linguistic equality was the enshrinement in the Constitution of a *Canadian Charter of Rights and Freedoms* in which certain linguistic rights are now explicitly guaranteed. But we have also learned from experience that linguistic equality can be fully achieved only in limited geographical areas or spheres of activity. From the standpoint of languages, the task of the future will consist:

- 1) in agreeing on some precise areas where there ought to be full equality between the two languages, for example in federal institutions, in the

courts and in access to primary and secondary education;

- 2) in guaranteeing some limited but well-defined rights to the linguistic minority in those areas where one language must for all practical purposes be predominant;
- 3) in encouraging more and more Canadians, in addition to mastering their own language, to acquire a working knowledge of the other official language.

The presence on the campus of the University of Alberta of the Faculté Saint-Jean, which provides a variety of undergraduate programs in French, and the right which francophone parents of Alberta now enjoy, thanks to the present government of the province, to send their children to publicly-financed French schools over whose management they have control, are two fine examples of what I have in mind. They take nothing away from the predominant place of English in this province but remind us that French is an essential dimension of our Canadian character. Under the *Canadian Charter of Rights and Freedoms*, access to primary and secondary instruction in French must be provided in all provinces wherever it is warranted by a sufficient number to children. But access to a college education in the official minority language is not required by the *Charter* and is thus truly expressive, where it exists, of the Canadian spirit at its best. The existence in Québec of an elaborate network of English-speaking public schools, community colleges and universities provide another example of what I have in mind. In Québec, educational services for the official language minority are available at all levels of education. Those services are provided by institutions which are run everywhere by anglophones and benefit from public funding on a basis of strict equality with the French speaking network.

To anyone who has followed the debates of the past fifty years on national unity, it should be obvious that in addition to language rights, a better definition of the place and role of the province of Québec and of Western provinces in the Canadian

federation will be needed if Canada is to reach durable unity.

The question of Québec was left in abeyance in the Constitution of 1867 and deplorably ignored in the Constitution of 1982. It has nonetheless emerged as a most fundamental and pressing issue. Québec is deeply different from other Canadian provinces on account of the language of the majority of its population, its Civil Code, its culture and institutions. For that reason, it has always refused and will continue to refuse being considered merely a province like the others. Its distinct character has been and remains a vital component of our Canadian identity. Québec wants to see its character more expressly recognized in our Constitution and more clearly accepted in the functioning of the federation. Whilst not asking for special privileges, it wants a recognition that will have real meaning and practical effects. Like many members of my generation, I gave up an interesting career in the private field in order to contribute as a full-time politician to the renewal of Canadian federalism along lines which must be acceptable to Québec and the rest of Canada. The closest we came to a solution was the Meech Lake Accord of 1987 which had to be abandoned three years later in the face of an opposition largely inspired from American egalitarian concepts and perhaps prompted by an exaggerated fear of words. We have found nothing better since the failure of the Meech Lake Accord in 1990 than the Calgary Declaration of 1997. The Calgary Declaration contains interesting overtures. But it remains too vague to be more than a modest starting point for discussion. In the absence of specific solutions, the attraction of sovereignty remains and will remain strong in Québec. Looking at these matters from a Western perspective, you might be tempted to conclude that they are not worth pursuing any further. But think of what we would all lose if Canada were to cease existing in its present form. A Canada with Québec will be better equipped to live side by side with the United States without running the risk of being gradually assimilated into the American culture. A Canada without Québec would be much weaker in this respect, not to speak of the centrifugal forces which would most probably undermine from within what would remain of its unity. A Québec separated from Canada would also, it seems to me, be in a much

weaker position to deal the United States and the international community.

As regards the Western provinces, nothing better illustrates the new horizons which they open for Canada than the composition of this autumn's graduating class at the University of Alberta. The names of the hundreds of students who received their degree today are an eloquent illustration of the highly diverse origins of the population of Western Canada. This diversity is a tremendous asset for our country. It should be encouraged to express itself in ways that will add to the richness of our common heritage. The Western provinces, with their growing populations and wealth, justly wish to have a greater say in national institutions and decision-making processes. It is incumbent upon all of us to seek solutions which will respond to the legitimate aspirations of Western Canadians while not losing sight of the principles upon which Canada was and must remain founded.

I firmly believe that our best interest lies in accepting, rather than trying in vain to deny or minimize, our differences. We must try to accommodate them within a political society whose watch words ought to be recognition, mutual acceptance, interdependence and unity. My generation worked hard in order to attain that goal. But it succeeded only partially. It will be your responsibility to continue the work which we have begun and to bring it to completion. May God give you courage, understanding, imagination, generosity, patience and perseverance in the pursuit of that most noble ideal. May your endeavors also be crowned with success.

DUALITÉ ET DIVERSITÉ SONT-ELLES CONCILIABLES?*

Je veux remercier l'Université d'Alberta pour le doctorat honorifique qu'elle m'a généreusement décerné aujourd'hui. J'accepte avec joie cette distinction élevée parce que j'y vois, par-delà ma modeste personne, l'expression de votre attachement, madame la Chancelière, à la dualité linguistique de notre pays et au rôle-clé que

l'histoire a dévolu à cet égard au Québec. Je l'accepte aussi avec humilité car je sais pertinemment que les seuls diplômes qui aient une valeur dans la vie réelle sont ceux qui sont décernés à des étudiants méritants au terme de longues années d'études ardues.

À vous, membres de la promotion de cet automne, j'adresse mes sincères félicitations pour votre réussite. J'adresse aussi un mot d'admiration aux personnes qui vous ont assistés dans votre long cheminement. En vous aidant comme elles l'ont fait, ces personnes ont rendu un service signalé non seulement à un fils, à une fille, à un frère, à une sœur ou à un ami, mais aussi à toute la société.

J'ai beaucoup d'admiration pour ceux et celles d'entre vous qui, renonçant à chercher des gains immédiats, envisagent de consacrer de nouvelles années de leur vie à la recherche gratuite du savoir. Je présume cependant que la majorité d'entre vous vous engagerez maintenant dans le monde des affaires ou des professions. Comme je fis moi-même un choix identique il y a quelque cinquante ans, à une époque où l'univers des options possibles au sortir des études universitaires était beaucoup plus limité qu'aujourd'hui, ne soyez pas étonnés si mes réflexions, même si je les destine à tous, vous donnent l'impression de porter surtout la marque de ma propre expérience.

Une fois engagés dans les affaires ou la pratique d'une profession, votre premier devoir sera évidemment d'exceller dans le domaine que vous aurez choisi. Votre diplôme attestera que vous avez appris avec succès les éléments essentiels de votre discipline. Mais il ne saurait être qu'un point de départ. Les connaissances se renouvellent continuellement, à un rythme sans cesse plus accélérer. Vous devrez en conséquence vous tenir au courant de tous les développements dans votre discipline et dans les domaines connexes. Afin d'exceller dans votre domaine, vous devrez agir de façon compétence et conscientieuse dans toutes les matières, petites et grandes, qui auront des rapports avec vos responsabilités professionnelles. Vous devrez en particulier servir le public avec dignité, honnêteté, respect, courtoisie et diligence. Vous devrez être disposé à modifier en tout temps vos manières de faire chaque fois que de nouvelles méthodes seront disponibles. Quoi que vous en pensiez, vous devrez aussi être disposés à agir dans

* Allocution prononcée à l'Université d'Alberta à l'occasion de la cérémonie automnale de collation des grades tenue à l'auditorium Jubilee à Edmonton, le 18 novembre 1998. Publié avec la permission de maître Paul Ryan et de la famille Ryan.

le respect des règles établies aussi longtemps qu'elles n'auront pas été modifiées par des procédures régulières.

À l'aide de vos connaissances théoriques et pratiques, vous aurez accès à un niveau plus élevé de confort matériel et à une plus grande mesure d'autonomie dans l'organisation de votre vie que la majorité de vos concitoyens. Mais si vos talents devaient servir uniquement à vous procurer une mesure plus forte de plaisir ou de puissance, ce serait là un tragique gaspillage. Plus vous apprendrez à connaître la marche de la société, plus vous verrez que l'insécurité, la pauvreté et l'injustice sont très répandues parmi vos concitoyens. Vous constaterez aussi que l'amélioration de la société dépend non seulement des partis politiques, des gouvernements et des moyens de communication, mais aussi de votre engagement personnel au service de causes qui transcendent vos intérêts immédiats. De ceux et celles qui ont reçu davantage, on doit logiquement attendre davantage pour le service du bien commun.

La société dans laquelle chacun est appelé à vivre ne saurait être un univers abstrait et impersonnel. Elle doit avoir pour base un territoire précis. Elle doit avoir sa propre histoire. Elle doit être formée de membres qui, tout en étant différents à plusieurs égards, sont reliés entre eux par une même adhésion à des valeurs communes. Elle doit en d'autres termes être une nation. Parmi les valeurs qui aident à définir une nation, la langue, la culture, les normes éthiques, la religion, les coutumes, les lois et les institutions politiques occupent une place très importante. On entend dire toutes sortes de choses, de nos jours, au sujet de l'homogénéité croissante qu'engendre la mondialisation et du déclin présumé des nations. Mais nonobstant tous ces bruits, les nations continueront pendant longtemps d'être la structure première pour l'organisation de la vie en société. Il serait superficiel de croire que l'ère des nations est terminée. Les questions que l'on doit se poser à ce sujet portent non pas sur la survie des nations comme telles mais plutôt sur la nature et l'étendue des pouvoirs qu'exerceront les gouvernements nationaux et sur les frontières à l'intérieur desquelles chaque nation sera appelée à poursuivre son destin.

Si les perspectives que je viens d'évoquer sont justes, le Canada devrait normalement continuer à fournir le cadre social et politique à l'intérieur duquel vous serez appelés à vivre. Et nous devrions nous réjouir de cette perspective. Car notre pays forme sur cette moitié septentrionale du continent américain un pays distinct, prospère et libre. Ni trop grand ni trop petit, le Canada est suffisamment riche pour offrir à ses citoyens une vaste gamme de chances mais pas assez puissant pour qu'on puisse lui prêter des ambitions impérialistes. Capable à la fois d'écouter avec attention les pays plus faibles et de parler aux pays plus puissants sans craindre d'être ignoré ou réduit au silence, il a tout juste assez de poids pour être en mesure d'aspirer de bon droit à un rôle constructif dans les affaires internationales. Ayant été fondé sur le respect de la diversité, il est bien placé pour intervenir à titre d'interprète de bonne volonté ou de gardien de la paix dans les conflits qui surgissent ailleurs. Nous devrions être fiers de la place unique que, grâce à ces atouts, le Canada occupe dans la famille des nations. Nous devons par contre être également conscients que l'existence de notre pays est peut-être plus fragile aujourd'hui qu'à toute autre époque depuis les débuts de la fédération canadienne.

Parmi les dangers qui menacent l'unité du Canada, le plus immédiat est sans doute celui d'une éventuelle rupture du pays. La première source d'inquiétude provient à cet égard de la menace de séparation émanant du Québec. Même s'ils se manifestent de façon moins spectaculaire, deux courants d'opinion que l'on observe ces années-ci pourraient à long terme s'avérer tout aussi dangereux pour l'unité du pays. Un premier courant se manifeste dans les régions plus riches : il tend à remettre en question le partage de la richesse et des chances entre régions riches et pauvres que l'on identifie désormais avec l'expérience fédérale canadienne. Principalement répandu dans l'Ouest canadien, un second courant invite à déconsidérer la tradition politique canadienne au profit de concepts égalitaires empruntés à la culture politique américaine. L'expérience américaine s'est édifiée sur le fondement de la suprématie des droits individuels. Le Canada opta au contraire pour un système mixte où étaient appelés à cohabiter de manière imparfaite droits individuels et droits collectifs. La recherche d'une coexistence réussie entre deux langues principales au sein d'une même

société politique dont la composition n'a cessé de changer au cours des années a été jusqu'à maintenant un trait caractéristique de l'expérience canadienne. Les principes sur lesquels fut fondée cette coexistence sont maintenant ouvertement remis en cause non seulement par ceux qui veulent faire du Québec un état souverain mais aussi par ceux qui seraient prêts à troquer le caractère bilingue et biculturel du Canada pour une philosophie d'inspiration américaine, fondée exclusivement sur les droits individuels. Cette dernière conception, si elle devait l'emporter, finirait, je le crains fort, par engendrer à la longue un Canada très différent où l'on proclamerait bien haut les mérites du multiculturalisme mais où l'unilinguisme anglais prévaudrait en réalité presque partout, et donc le Québec aurait probablement cessé de faire partie.

Sous M. Trudeau, l'égalité des langues anglaise et française fut perçue comme le meilleur moyen de réaliser l'unité du pays. Des progrès majeurs ont été accomplis dans cette direction. L'enchâssement dans la Constitution canadienne d'une Charte des droits et libertés dans laquelle une place importante a été réservée à la protection de certains droits linguistiques en est l'illustration la plus éloquente. Mais l'expérience nous a aussi appris que l'égalité souhaitée ne peut se réaliser pleinement que dans un nombre limité de régions géographiques et de sphères d'activité. En matière de langues, la tâche des années à venir consistera :

- 1) à identifier certains domaines précis, tels les institutions fédérales, le système judiciaire et l'accès à l'enseignement primaire et secondaire, où la pleine égalité des deux langues devrait être un objectif commun à tous le pays;
- 2) à garantir à la minorité linguistique certains droits limités mais nettement définis dans les régions où, à toutes fins utiles, il faudra accepter que l'une ou l'autre des deux langues soit prédominante;
- 3) à encourager un nombre croissant de Canadiens et de Canadiennes à acquérir, outre la maîtrise de leur propre langue, l'aptitude à

communiquer aussi dans l'autre langue officielle.

La présence au sein de l'Université d'Alberta de la Faculté Saint-Jean, laquelle offre en français divers programmes de premier et de second cycle, et le droit que les parents francophones de l'Alberta se sont vu reconnaître, grâce au gouvernement de M. Ralph Klein, d'inscrire leurs enfants dans des écoles de langue française ayant droit à un financement public, égal et placées sous l'autorité de commissaires francophones, illustrent de manière intéressante en quoi pourrait consister l'approche que je suggère. Ces deux exemples ne diminuent en rien la prépondérance de la langue anglaise en Alberta mais ils nous rappellent que le fait français est une dimension essentielle du caractère canadien. L'accès de l'enfant à l'enseignement primaire et secondaire dans la langue de ses parents répond à une exigence de la Charte canadienne des droits et libertés, laquelle requiert que cet enseignement soit disponible partout où un nombre suffisant d'élèves le justifie. Par contre, l'accès à une formation universitaire dans la langue de la minorité linguistique n'est pas obligatoire en vertu de la Charte : là où il existe, il témoigne de ce qu'il y a de meilleur dans l'esprit canadien. Un autre exemple de ce que j'ai en tête nous est fourni par l'existence au Québec d'un réseau complet d'écoles publiques, de collèges communautaires et d'établissements universitaires anglophones. Ce réseau offre à la minorité anglophone une gamme complète de programmes éducatifs, à tous les niveaux d'enseignement. Les établissements qui le composent sont dirigés par des représentants de la communauté anglophone et bénéficient d'un financement public au même titre que les établissements francophones.

Pour qui a suivi l'évolution du débat constitutionnel au cours du dernier demi-siècle, il est devenu évident qu'il ne suffira pas de mieux protéger les droits linguistiques pour assurer l'unité du pays sur des bases durables. Il faudra aussi mieux définir la place et le rôle du Québec et des provinces de l'Ouest au sein de la fédération.

La question du Québec fut plus ou moins laissée en suspens dans la Constitution de 1867. Elle fut déplorablement ignorée dans celle de 1982. Elle a néanmoins revêtu avec les années une importance fondamentale, voire pressante. Le

Québec est profondément différent des autres provinces en raison de la langue parlée par la majorité de sa population, de sa culture, de son code civil et de ses institutions. Pour cette raison, il a toujours refusé et continuera de refuser de n'être qu'une province comme les autres. Son caractère distinct ayant été depuis les débuts du pays une composante majeure de notre identité canadienne, le Québec veut que ce caractère soit plus explicitement reconnu dans la Constitution et plus clairement accepté dans le fonctionnement de la fédération. Il ne demande aucun privilège mais il veut une reconnaissance qui ait une signification réelle et des effets concrets.

Comme plusieurs membres de ma génération, j'abandonnais un jour une carrière intéressante dans le secteur privé et m'engageais à plein temps dans la politique active afin d'y contribuer au renouvellement de la fédération selon des modalités acceptables au Québec et au reste du Canada. Avec l'Accord du lac Meech en 1987, nous vîmes très près d'une solution. Mais trois ans plus tard, il fallut renoncer à cette entente à cause d'une opposition largement inspirée de concepts politiques empruntés à la culture politique américaine et peut-être aussi d'une peur exagérée des mots. Nous n'avons rien trouvé de meilleur, depuis l'échec de Meech en 1990, que la Déclaration de Calgary de 1997. Celle-ci contient certes des ouvertures intéressantes. Mais elle est trop vague pour être autre chose qu'un point de départ plutôt modeste en vue de discussions éventuelles. En l'absence de solutions précises, l'attrait de la souveraineté demeure et continuera d'être fort au Québec. En observant ces choses à partir de l'Ouest canadien, vous pourriez être tentés de conclure qu'il n'y a pas lieu de perdre davantage de temps à en discuter. Mais pensez à ce que nous perdrions tous si le Canada, tel que nous le connaissons, devait cesser d'exister. Un Canada avec le Québec sera mieux équipé pour vivre côté à côté avec les États-Unis sans courir le risque d'une assimilation graduelle au sein de la culture américaine. Un Canada sans le Québec sera beaucoup plus faible pour affronter ce défi. Il devra en outre composer, selon toute probabilité, avec des forces centrifuges qui mineront fort probablement de l'intérieur ce qu'il lui restera d'unité. Un Québec coupé du Canada sera aussi à mon avis beaucoup plus faible pour transiger avec les États-Unis et la communauté internationale.

En ce qui touche les provinces de l'Ouest, rien ne saurait mieux illustrer les horizons nouveaux qu'elles ouvrent pour notre pays que la composition même du groupe de diplômés qui viennent de recevoir à l'occasion de cette collation des grades la consécration de leurs longues années d'études. La liste des noms de ces diplômés témoigne de l'extrême diversité des pays et des cultures d'où sont venus les habitants de l'Ouest canadien. Cette diversité est un atout extraordinaire pour le Canada. Nous devons faire en sorte qu'elle puisse s'exprimer sous des formes qui contribueront à l'enrichissement de notre patrimoine commun. Fortes d'une population et d'une richesse qui ne cessent de croître, les provinces de l'Ouest aspirent à juste titre à un rôle plus grand au sein des institutions canadiennes et des centres de décisions dont les choix affectent l'ensemble du pays. Il nous incombe à tous de chercher des solutions qui, tout en ne perdant pas de vue les principes sur lesquels le Canada fut fondé et doit continuer de reposer, feront droit aux requêtes légitimes de nos concitoyennes et concitoyens de l'Ouest du pays.

Je crois fermement qu'il est dans notre meilleur intérêt d'accepter nos différences plutôt que de chercher en vain à les nier ou à les minimiser. Nous devons chercher à leur faire une juste place au sein d'une société politique dont les valeurs-clés devraient être la reconnaissance, l'acceptation mutuelle, l'interdépendance et l'unité. Ma génération a consacré beaucoup d'efforts à la poursuite de cet objectif. Mais elle n'a connu que des succès limités. Il appartiendra à votre génération de poursuivre l'œuvre commencée et de la mener à terme. Puisse Dieu vous donner le courage, la capacité de comprendre, l'imagination, la générosité, la patience, la persévérance dont vous aurez besoin dans la poursuite de cet idéal très noble. Puissent aussi vos efforts être couronnés de succès.

Claude Ryan

LE DOSSIER CONSTITUTIONNEL : PERSPECTIVES DE CHANGEMENT*

Claude Ryan

Ayant suivi avec attention l'évolution du dossier constitutionnel depuis le référendum tenu au Québec en octobre 1995, j'accueille avec plaisir l'occasion que nous fournit ce colloque de l'Institut de recherche en politiques publiques de mettre en commun les impressions et les conclusions que nous pouvons en retenir.

Rappelons à titre de points de repère les principaux développements suivants :

- 1) l'adoption par le Parlement fédéral, en décembre 1995, d'une résolution reconnaissant le caractère distinct du Québec et d'une loi obligeant le gouvernement fédéral à obtenir l'assentiment préalable du Québec avant de soumettre un projet de modification constitutionnelle à l'approbation du Parlement fédéral¹;
- 2) le transfert aux provinces de la formation professionnelle de la main-d'œuvre;
- 3) l'abandon par le gouvernement fédéral de certaines conditions régissant l'utilisation des paiements de transfert en matière de santé, de services sociaux et d'enseignement postsecondaire;
- 4) la réduction des paiements de transfert fédéraux aux provinces dans le cadre du programme d'assain-

issement des finances de gouvernement fédéral;

- 5) l'harmonisation des prestations fiscales pour enfants versées aux familles par les deux ordres de gouvernement;
- 6) l'abrogation de l'article 93 de la *Loi constitutionnelle de 1867*² dans son application au Québec;
- 7) la création du Fonds fédéral d'aide à l'innovation;
- 8) la création des bourses du millénaire;
- 9) la Déclaration de Calgary³;
- 10) l'Entente fédérale-provinciale sur l'union sociale canadienne;
- 11) l'Avis de la Cour suprême du Canada sur la sécession du Québec⁴.

Plusieurs de ces développements ont eu des effets nettement favorables sous l'angle des positions traditionnelles du Québec : ce fut notamment le cas du rapatriement de la formation professionnelle et de l'abrogation de l'article 93. D'autres ont donné lieu à des ententes, tels l'harmonisation des prestations fiscales pour enfants et le fonds d'aide à l'innovation. D'autres enfin, notamment la création des bourses du

* Texte publié dans la revue Options Politiques, jan-fév, 2000, 42. Republié ici avec l'autorisation d'Options Politiques de l'Institut de recherche en politiques publiques (IRPP), de maître Paul Ryan et de la famille Ryan.

¹ P.L.C-110, *Loi concernant les modifications constitutionnelles*, 1^{re} sess., 35^e Parl., 1996 (sanctionné le 2 février 1996), S.C. 1996, c. 1.

² (R.-U.), 30 & 31 Vict., c. 3, art. 93, reproduit dans L.R.C. 1985, app. II, n° 5.

³ The Calgary Declaration (24 avril 1998), en ligne: Ontario Legislative Library <<http://www.ontla.on.ca/library/repository/mon/1000/10273337.html>>.

⁴ *Revoi relatif à la sécession du Québec*, [1998] 2 R.C.S. 217, en ligne: IIJCan <<http://www.canlii.org/ca/jug/csc/1998/1998csc63.html>>.

millénaire, l’Entente sur l’union sociale et les suites à apporter à l’Avis de la Cour suprême sur la sécession du Québec ont contribué à exacerber les rapports entre Québec et Ottawa. Quant à la Déclaration de Calgary, elle n’a eu, et pour cause, aucun impact significatif au Québec. De manière générale, la situation qui existait au lendemain du référendum de 1995 est demeurée la même. Le fossé constitutionnel qui sépare le Québec du reste du Canada depuis le rapatriement unilatéral de 1982 et l’échec de l’Accord du lac Meech est toujours là. Pour diverses raisons, aucun déblocage significatif ne semble devoir se produire dans les circonstances actuelles.

Au lieu de gémir sur cette situation contre laquelle, de manière immédiate, nous ne pouvons rien, j’y vois plutôt une invitation à réfléchir une fois de plus sur les désaccords qui sont à la racine des malaises entre le Québec et le reste du Canada. Je voudrais dans cette perspective soumettre à votre considération deux thèmes sur lesquels tout semble avoir été dit mais au sujet desquels des malentendus profonds subsistent toujours et semblent même en voie de s’accentuer. Le premier thème porte sur la dualité canadienne. Le second a trait au lien que nous, du Québec, établissons entre cette dualité et le rôle du Québec au sein de la fédération.

Dans son Avis sur la sécession du Québec, rendu public en août 1998, la Cour suprême énonçait quatre principes qui, à son avis, soutendent le système politique canadien, soit le principe fédéral, le principe démocratique, le constitutionnalisme et la règle de droit, et, enfin le respect des droits minoritaires⁵. Ainsi que le signalait peu après un juriste de l’Université Laval, Patrice Garant, la dualité linguistique ne figure pas parmi ces principes fondamentaux⁶. Comme la Cour suprême a pris soin de noter que son exposé n’avait pas la prétention d’être exhaustif, un commentaire me paraît s’imposer à ce sujet. Là où la Constitution affirme que le Canada compte deux langues officielles dotées chacune d’un statut d’égalité, le tribunal s’est plutôt borné à parler de droits minoritaires. Il est souvent question de diversité dans l’Avis de la

Cour suprême, mais jamais explicitement de dualité. Ce langage confond deux ordres différents de réalité, soit d’une part le principe de l’égalité des deux langues, lequel consacre l’existence au Canada de deux communautés linguistiques principales et formant chacune une société d’accueil distincte, avec son corollaire obligé qui est le respect dû aux locuteurs de chacune des deux langues en ce qui touche l'accès à certains services publics dans les provinces où elles forment une minorité de langue officielle, et d’autre part le respect dû aux minorités en général et plus particulièrement aux catholiques et aux protestants en matière scolaire et aux communautés culturelles en général. Les mots diversité et dualité renvoient à deux ordres de réalité différents. En les confondant, on amoindrit dangereusement l’importance de la dualité.

En relisant le texte de la Cour suprême, il est difficile de ne pas se souvenir de la Déclaration de Calgary. Les auteurs de la Déclaration n’en finissaient pas d’exalter la diversité canadienne. Mais la dualité linguistique fut à juste titre considérée par les communautés francophones hors-Québec comme étant la parente pauvre du document. Tout ce qu’il restait du principe d’égalité dans la Déclaration de Calgary, hormis le paragraphe consacré au caractère « unique » du Québec, c’était une vague mention de la « vitalité des langues anglaise et française » dans un bref paragraphe où étaient également célébrés les mérites, incontestables par ailleurs, des peuples autochtones et des communautés culturelles.

A l’instar de Graham Fraser, qui consacrait récemment un article à ce sujet dans *Le Devoir*⁷, je m’inquiète d’une manière de voir maintenant fort répandue au Canada anglais, qui tend à minimiser la dualité linguistique et culturelle du Canada en ramenant cette dualité à une question de rapports entre une majorité anglophone et une minorité francophone. Cette attitude trouve sa contrepartie au Québec chez ceux pour qui il ne saurait exister entre francophones et anglophones que des rapports de force réglés en vertu de la même distinction réductrice. Selon l’esprit de la Constitution canadienne, c’est plutôt dans l’optique de l’égalité fondamentale des deux langues officielles du pays et non pas en termes de

⁵ *Ibid.*

⁶ Patrice Garant, «Constitutionnalisme, primauté du droit et droit de sécession au sein d'une fédération», Communication présentée au Cinquième Congrès mondial de droit constitutionnel, Rotterdam, 12 au 16 juillet 1999 [non publiée].

⁷ Graham Fraser, «La dualité au programme» *Le Devoir [de Montréal]* (30 septembre 1999) A7.

rapports entre majorité et minorité, qu'il faut poser le problème des rapports entre anglophones et francophones.

Il ne suffit pas cependant d'énoncer le principe de l'égalité des deux langues. Il faut aussi en proposer une interprétation généreuse et cohérente. Selon une interprétation légaliste, la Constitution, en vertu du principe d'égalité, garantit des droits particuliers aux locuteurs de l'une et l'autre langue dans certaines situations qu'a pris soin de définir le législateur, mais là s'arrête sa portée concrète. Selon une interprétation plus large, le législateur, tout en inscrivant dans la Constitution un certain nombre de droits précis, a aussi voulu y inscrire un principe vivant capable de donner lieu à des développements pouvant favoriser la réalisation concrète de l'égalité. Si l'on souscrit à cette deuxième interprétation, on doit être disposé non seulement à interpréter généreusement les textes juridiques mais aussi à rechercher et à promouvoir dans un esprit libéral les conditions les plus aptes à favoriser la réalisation concrète du principe d'égalité dans le plus grand nombre possible de situations. Dès qu'on le perçoit non pas comme un idéal abstrait mais dans son rapport nécessaire aux populations qui les parlent, le principe de l'égalité des deux langues a des implications incontestables pour le statut des minorités de langue officielle. D'ores et déjà, il connaît d'ailleurs de nombreuses applications dans la pratique des gouvernements et aussi dans la jurisprudence des tribunaux ainsi qu'on vient de le voir dans le cas de l'Hôpital Montfort⁸.

Mais le principe de l'égalité a également des implications incontournables quant au statut et au rôle du Québec dans la fédération canadienne. On trouve au Québec plus de 85 % des francophones du Canada. Le Québec est en outre la seule province ayant une majorité francophone, les francophones y représentent en effet 83 % de la population. Sans préjudice du rôle dévolu aux communautés francophones, aux gouvernements des autres provinces et au gouvernement fédéral, sans préjudice non plus de ses responsabilités envers sa communauté anglophone, le Québec est le foyer majeur et le point d'appui principal de la

vie française au Canada. En raison de ce trait qui le distingue nettement des autres provinces, le Québec – tout en ayant le statut juridique de province – n'est pas et ne peut pas être une simple province comme les autres au sein de l'ensemble canadien. Il est un intervenant majeur et très différent, sans lequel le principe d'égalité perd son sens. Il faut comprendre dans cette perspective l'insistance avec laquelle le Québec exige d'être associé à toute décision pouvant affecter les structures et les règles de conduite constitutionnelles. C'est aussi dans cette perspective que se situe la détermination des gouvernements du Québec, quelle que soit leur couleur politique, à s'acquitter eux-mêmes de leurs responsabilités dans les domaines plus directement reliés au caractère distinct de la société québécoise.

Suivant la même logique, le Québec insiste pour que son caractère distinct soit plus explicitement reconnu dans l'ordre constitutionnel canadien, et ce d'une manière qui ne soit pas uniquement symbolique mais qui donne ouverture à des effets pratiques. Cette revendication effarouche encore nombre d'observateurs. Elle est néanmoins le prolongement normal d'une longue histoire qui remonte à la *Loi constitutionnelle de 1867* et qui a connu à l'époque contemporaine plusieurs développements intéressants (voir annexe 1). Ces développements, que je sache, n'ont créé d'injustice pour personne et n'ont aucunement mis en danger l'unité de pays. On n'en saurait dire autant de certaines rigidités, de certains revirements, de certaines décisions unilatérales dont les partenaires du Québec ont donné l'exemple à diverses reprises.

Quand je parle d'une reconnaissance qui aurait des effets pratiques, je ne pense pas à un chambardement radical dans le partage des compétences. Je m'opposai en 1991 au rapport Allaire parce que ce document proposait des changements majeurs dans le partage des pouvoirs sans que les auteurs en aient sérieusement mesuré les implications⁹. Après avoir dirigé sept ministères différents pendant un séjour de neuf ans au sein du gouvernement du Québec et été témoin du double échec de Meech et Charlottetown, j'en étais venu à conclure en 1994 que le partage des

⁸ *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 56 O.R.(3^e) 505 (CA), en ligne: IIJCan <www.canlii.org/on/cas/onca/2001/2001onca10003.html#sum>.

⁹ Jeau Allaire, *Un Québec libre de ses choix*, Montréal, Parti libéral du Québec, 1991.

compétences établi par la *Loi constitutionnelle de 1867* avait passablement bien résisté à l'épreuve du temps et qu'il ne m'apparaissait pas nécessaire de le modifier de fond en comble. Je demeure de cet avis. Je considère en conséquence qu'il serait plus sage dans les circonstances actuelles d'éviter de rouvrir tout le dossier du partage des compétences et de rechercher plutôt des améliorations ponctuelles dans la mesure où elles répondent à des besoins réels et démontrés. A titre d'exemples, j'avais retenu de mon séjour à la tête de sept ministères différents que des améliorations seraient souhaitables dans les secteurs du logement social, des affaires autochtones, des services correctionnels et du soutien à la recherche scientifique. A ces secteurs, d'autres ministres auraient sans doute ajouté la sécurité du revenu, la culture, le développement régional, les communications, l'aide à la petite et moyenne entreprise. Tous ces secteurs ont des liens directs avec le caractère distinct du Québec. La Commission Pepin-Robarts avait recommandé que de tels domaines soient objets de compétence partagée, avec prépondérance législative variable selon les champs et les modes d'intervention¹⁰. Cette avenue, dont les régimes de retraite canadien et québécois offrent un excellent exemple, fut trop vite écartée à l'époque. Il y aurait lieu de l'explorer de nouveau, en particulier en matière de sécurité du revenu et de culture.

Parmi les changements qui doivent être considérés comme impérieux et pressants, je situe en tout premier lieu l'encadrement du pouvoir fédéral de dépenser. Le pouvoir de dépenser m'apparaît comme une prérogative normale du gouvernement central dans une fédération. Je n'en conteste pas l'existence. Lorsque le gouvernement fédéral veut user de ce pouvoir pour instituer un programme à frais partagés dans un domaine relevant de la compétence provinciale, il ne devrait toutefois être habilité à le faire qu'après avoir obtenu le consentement d'une majorité satisfaisante de provinces et moyennant qu'une province, en particulier le Québec, n'ait pas à encourir de sanction financière si elle décide de ne

pas participer à un tel programme.

Le droit de veto du Québec m'apparaît toujours indispensable en raison de la dualité canadienne. La loi fédérale de 1995 a apporté à cet égard une amélioration appréciable pour le Québec mais seule une modification constitutionnelle pourra procurer en cette matière les garanties permanentes que le Québec exige à ce titre. Comme par ailleurs la loi de 1995 a introduit une rigidité excessive dans la procédure d'amendement, il faudra trouver une formule plus souple afin de pouvoir enchâsser éventuellement une nouvelle règle d'amendement dans la Constitution.

Nonobstant les changements survenus à notre époque dans la composition et la répartition de la population canadienne, la dualité linguistique et la réalité distincte du Québec demeurent les deux axes principaux autour desquels doit graviter toute recherche de solution au problème des rapports entre le Québec et le reste du Canada à l'intérieur du principe fédéral. On a tendance à disjoindre ces deux sujets, voire à les ériger l'un contre l'autre. Mais dans une perspective québécoise qui se veut fédéraliste, il n'est pas possible de les séparer. Toute solution durable devra prendre en compte l'un et l'autre volet. Le défi des prochaines années devra consister non pas à faire le silence sur ces réalités mais plutôt à chercher ensemble, pour les traduire dans nos arrangements constitutionnels et législatifs et dans nos pratiques administratives, des formules conciliaires avec d'autres aspects de la réalité canadienne, notamment le renforcement de l'union économique, le statut des peuples autochtones, l'équilibre entre les régions et les attentes des communautés culturelles, qui doivent également retenir notre attention mais dont il n'était pas possible de discuter dans le cadre forcément limité de cet exposé.

Claude Ryan

¹⁰ Canada, Royal Commissions and Commissions of Inquiry, *Task Force on Canadian Unity: A Future Together*, Hull, Canadian Government Publishing Centre, 1979; *Task Force on Canadian Unity: A Time To Speak*, Hull, Canadian Government Publishing Centre, 1979; et, *Task Force on Canadian Unity: Coming To Terms*, Hull, Canadian Government Publishing Centre, 1979.

ANNEXE 1

Exemples de reconnaissance du caractère distinct dans la tradition constitutionnelle et politique canadienne.

A) DISPOSITIONS CONSTITUTIONNELLES

- 1) la reconnaissance du droit civil québécois dans la *Loi constitutionnelle de 1867* (articles 93 et 94);
- 2) l'existence d'un régime linguistique spécial pour le Québec dans la *Loi constitutionnelle de 1867* (article 133);
- 3) l'obligation pour le gouvernement fédéral de choisir les juges des cours fédérales devant siéger au Québec parmi les membres du Barreau du Québec (*Loi constitutionnelle de 1867*, article 58);
- 4) l'insertion dans la Constitution en 1964 d'une disposition habilitant le Parlement fédéral à légiférer en matière de régimes de retraite mais spécifiant qu'en cas de conflit entre une loi fédérale et une loi provinciale, la loi provinciale aura prépondérance (article 94A);
- 5) l'insertion dans la *Loi constitutionnelle de 1982* de dispositions garantissant le droit de retrait d'une province, moyennant juste compensation financière, à l'endroit de toute modification constitutionnelle entraînant un transfert de compétence des provinces en faveur du Parlement fédéral (articles 38, 3 et 40);
- 6) l'insertion dans la *Charte canadienne des droits et libertés* (1982) de dispositions affirmant l'égalité juridique du français et de l'anglais dans les travaux du Parlement, l'administration et les cours de justice fédérales, etc

procurant l'accès à l'enseignement public primaire et secondaire dans leur langue aux enfants de communautés minoritaires de langue officielle (articles 16 à 23);

- 7) l'insertion dans la *Loi constitutionnelle de 1982* d'une disposition respectant la souveraineté du Québec en ce qui touche les critères d'admission à l'enseignement en anglais (articles 59, 2);
- 8) l'insertion dans la *Charte canadienne des droits et libertés*, au chapitre traitant de la liberté de circulation et d'établissement, de dispositions préservant une importante liberté de manœuvre pour le Québec en matière de mesures visant à améliorer la situation d'individus défavorisés économiquement ou socialement (article 6);
- 9) l'insertion dans la *Loi constitutionnelle de 1982* d'une disposition garantissant que la composition de la Cour suprême, laquelle doit comprendre parmi ses neuf membres, trois juges en provenance du Québec, ne pourra être modifiée sans l'accord du Québec (article 41);
- 10) l'adoption en 1997 d'une modification constitutionnelle affranchissant le Québec des contraintes de l'article 93 de la *Loi constitutionnelle de 1867* et autorisant la création de commissions scolaires linguistiques.

B) DISPOSITIONS LÉGISLATIVES ET/OU ADMINISTRATIVES

- 1) l'adoption par le Parlement fédéral en 1995 d'une loi rendant obligatoire l'accord préalable du Québec avant la présentation au Parlement d'une proposition de modification de la Constitution;

- 2) l'adoption par le Parlement fédéral en 1997 d'une résolution aux termes de laquelle le gouvernement fédéral et ses organismes sont tenus de prendre en compte la caractère distinct du Québec dans l'application des lois et la gestion des affaires du pays;
- 3) l'existence de réseaux publics de radio et de télévision en langue française desservant tout le pays mais ayant leur base principale au Québec et qui ont pu refléter et promouvoir avec une grande liberté la langue et l'essor de la culture au Québec;
- 4) l'existence depuis 1964 de la Loi fédérale sur les programmes établis en vertu de laquelle le Québec a pu prendre en charge sur son territoire, moyennant juste compensation financière, la gestion d'une trentaine de programmes pancanadiens à frais partagés;
- 5) les accords Gagnon-Tremblay-McDougall sur l'immigration, en vertu desquels le Québec participe activement à la sélection des candidats à l'immigration et assume l'entièr responsabilité de l'intégration des nouveaux arrivants en milieu québécois;
- 6) l'alternance de titulaires anglophones et francophones (les titulaires francophones émanant le plus souvent du Québec) dans les plus hautes fonctions du pays, notamment dans les postes de Gouverneur général, de Premier ministre fédéral, de Juge en chef de la Cour suprême, de Chef de l'état-major des Forces armées;
- 7) les arrangements concernant l'harmonisation des mesures fédérales et québécoises en matière de prestations fiscales pour enfants;
- 8) l'entente qui a permis le transfert au Québec de la formation professionnelle de la main-d'oeuvre;
- 9) l'entente qui a permis au Québec d'assumer la gestion entière du programme tripartite d'infrastructures;
- 10) les arrangements permettant l'implication directe du Québec, à titre de gouvernement participant, aux activités de la Francophonie internationale;
- 11) l'existence au Québec d'un système distinct de perception de l'impôt sur le revenu des particuliers.

CRISIS WHAT CRISIS? THE RECOGNITION ISSUE AND CANADIAN IDENTITY CRISES

Jack Jedwab

During his 1996 swearing-in ceremony, Québec Premier Lucien Bouchard spoke about the need for “a renewed recognition on the northern part of the continent of two profoundly different peoples.”¹ Explicitly referring to Québécois and Canadians, he added that these two peoples would soon have to decide upon their respective destinies. Those who are attached to both Québec and Canada will no doubt have difficulty situating themselves within the Premier’s observation. Still, his characterization remains representative of the way in which the national unity debate and the identity crisis that underlies it are often described by those who advocate Québec sovereignty. It also points to the extent to which an important number of Québécois — to be specific the province’s francophones — do not feel a strong attachment to Canada.

Until recently, many Québécois have cast the Canadian identity problem in terms of the ongoing — and generally unsuccessful — effort to acknowledge the binational or bicultural character of the federation. Failing such recognition, sovereignists in particular believe that the best way to resolve the troubling ambiguity that presumably arises from being both a Québécois and a Canadian, and the ensuing political consequences, is for the “two entities” to say goodbye to one another. Some federalists also believe that such a political divorce represents the solution to our identity crisis and thus to the broader unity issue. Indeed, a former provincial

Liberal politician made the case for the rest of Canada divesting, or ridding, itself of Québec. Reed Scowen maintains that the inability to satisfy what he describes as the never-ending demands of Québec nationalists justifies such a course of action.² He contends that by liberating itself from Québec’s ethnic nationalism, the rest of Canada would no longer be subjected to the identity-based conflict that it perpetually generates. It is an idea that likely reflects Scowen’s growing exasperation and that of a number of other federalists — notably those outside Québec — with the threat of separation. Whatever their political orientation, advocates of a split between Québec and the rest of Canada significantly minimize the identity problems that will arise in the two or more reconstituted entities.

As regards identity issues, for some time many federalists and sovereignists have attributed their respective plights to one another. They stress the divided national loyalties stemming from the attachment to two sociological and/or political nations. This view of the Canadian identity crisis has heavily influenced the type of solutions brought forth by government. The most popular example has been the call by an important number for the recognition of the English and French populations of the country as its two founding nations or peoples. Canada’s Royal Commission on Bilingualism and Biculturalism of the early 1960s was for many, a laudable attempt to achieve this objective. During the 1960s, certain Québec politicians sought acknowledgement of the equality of the two founding groups. In his book,

¹ Lucien Bouchard, “Discours d’assermentation prononcé par le premier ministre du Québec” (Acceptance speech at swearing-in ceremony, January 29, 1996), online: Gouvernement du Québec <http://www.premier.gouv.qc.ca/general/discours/archives_discours/1996/janvier/dis19960129.htm> [translated by author].

² Reed Scowen, *Time to Say Goodbye: The Case for Getting Québec Out of Canada* (Toronto: McClelland & Stewart Inc., 1999).

Equality or Independence, the late Québec Premier Daniel Johnson Sr. called upon the recognition by Canada of the “equality of its two linguistic and cultural communities, its two founding peoples, its two societies, its two nations in the sociological sense of the term.”³ As one of Québec’s most prominent sociologists put it, Johnson’s formulation “could not have been clearer.”⁴

Since the 1970s, the recognition of Québec’s particular status has perhaps been the dominant approach to addressing the identity component of the national unity issue (this has also been referred to as conferring special status on Québec). Since that decade, the focus has moved away from the recognition of Canada’s French fact to the constitutional enshrinement of the specificity of Québec with a focus on its linguistic and cultural characteristics. The rest of Canada recognizing Québec’s distinct character (as was attempted with the Meech and Charlottetown Accords) does not explicitly require the recognition of two societies in the country. Indeed, it may be argued that this approach is not fundamentally dualistic in that there has been no direct acknowledgement of the particular attribute of the rest of Canada. As we shall observe, certain federalists and sovereignists have recently attempted to address this presumed omission by insisting that the rest of Canada constitutes a nation and that it is part of a multinational federation. In what follows, we will briefly examine the recent efforts at status recognition as a solution to the national question and the latest proposals aimed at responding to Canada’s identity crisis.

Apart from efforts aimed at status recognition, federal governments have for nearly four decades developed at least two other solutions to dealing with the Québec-Canada conflict. Another approach might be described as “inclusion”; that is, the effort made to increase the presence of francophone Canadians in the federal decision-making apparatus. Perhaps the best example of this has involved the integration of francophones into the Canada’s civil service so that their representation be equal to their overall share of the Canadian population. Finally, the federal

government has attempted to reinforce regional identities via the transfer or decentralization of jurisdiction to the provinces. The idea behind this was to give the provinces a greater sense of autonomy. In the case of Québec, a prime example of this is to be found in the Ottawa-Québec immigration agreements of 1978 and 1990 (otherwise known as the Cullen-Couture and the McDougall-Gagnon-Tremblay agreements).⁵ Such transfer of authority can often have an asymmetrical dimension wherein one province may acquire jurisdiction in an area not extended to the other provinces. As approaches to the unity issue, status recognition, inclusion and the reinforcing of regional identities are very often interrelated. For example, from the perspective of the federal government, it may be argued that both inclusion and recognition were addressed in the conferring in 1969 of official status on the English and French languages.⁶ Others may counter that the federal *Official Languages Act* did not sufficiently take into account the desire on the part of the provinces to strengthen regional identities in regard to language issues.⁷

While there may be debate over the relative merits of the three approaches, many observers will agree that the least successful of these approaches has been the effort to recognize Québec’s distinct character. As former Québec Senator Claude Castonguay has remarked, the failures in this regard (i.e. Meech and Charlottetown) have only fuelled identity and unity crises and subsequently weakened the resolve of many Québécois to stay in the federation.

Some see the evolution from an English/French to a Québec/Canada recognition model as reflecting a shift from linguistic and cultural considerations to geographic ones. Still, this evolution reflects the overwhelming concentration of French-speakers in Québec and English-speakers outside the province. Whether recognition models are rooted in geography or language, these formulas inevitably confront the phenomenon of regional attachments, diversity

³ As cited in Fernand Dumont, *Raisons Communes* (Québec: Boréal, 1995) at 38 [translated by author].

⁴ *Ibid.*

⁵ Immigration Canada, *Canada-Québec Accord (Relating to Immigration and Temporary Admission of Aliens)* (Hull: Public Affairs Centre, 1991).

⁶ *Official Languages Act*, S.C. 1968-1969, c. 54.

⁷ Jack Jebwah, “La crise identitaire québécoise ne se réglera pas avec l’indépendance” *La Presse* (28 September 1999) B3.

and multiple identities. The rise of multiple expressions of identity and the increased mixing or “métissage” of the population represent a fundamental dilemma for all those who continue to insist upon bi-national solutions to Canada’s collective conundrum. In short, the boundaries or frontiers that protect linguistic and regional identities are not as rigid as some may assume.

The constant growth and diversification of the population both outside and within Québec have made it increasingly more difficult to reconcile linguistic and cultural differences. They have created equally complex issues within Québec in regard to recognition, inclusion and regional identification within that province. Recently, Québec sovereignists have encountered problems that in many ways resemble those that federalists have confronted in responding to Canadian identity questions.

It is hard to imagine that previous experiments with recognition formulas will succeed in the near future. Some sovereignists and a small group of federalists have nonetheless been crafting a new proposal that they believe can reconcile the identity needs of Québec and Canada (often referred to as “the rest of Canada” or “English Canada”). The supposed new model might be described as adding an additional “nation” to the bi-national recognition approach. Referring to their proposal as the multinational federation, its proponents contend that Canada is unwilling to acknowledge its multinational character, namely the presence of the English Canadian, Québécois and Aboriginal nations.⁸ The idea that Canada recognize itself as a multinational federation is a formula that is as flawed as the bi-national concept. In effect, it is based on three divergent notions of nationhood that would be extremely difficult to reconcile. Indeed, such a multinational, or to be precise, tri-national pact, is unlikely to resolve the complex identity needs of the federation.

HISTORIC RECOGNITION: THE ROYAL COMMISSION ON BILINGUALISM AND BICULTURALISM

Rooted in Canada’s history, some will trace the origins of the recognition effort as far back as 1774 with the adoption of the *Québec Act*⁹ in the aftermath of the British Conquest of New France. The *Act* recognized the right to profess the Catholic faith, the French language and the civil law tradition. Yet others will direct us to the Confederation agreements and the debate over whether they constituted a compact between English and French cultures or a pact between the contracting provinces of the 1867 arrangement. It is worth noting that whatever one’s position is on this debate, it would be hard to make the case that the 1867 agreement was a “two-way” deal between Québec and the rest of Canada.

It may be contended that the first major attempt to address the Canadian identity question in the twentieth century emerged with the Royal Commission on Bilingualism and Biculturalism (RCBB).¹⁰ Its deliberations remain a crucial reference for those who wish to understand the identity debates of the last four decades of the twentieth century. During the early 1960s, the RCBB defined certain parameters that continue to influence the contemporary discussion over the recognition of the French fact in Canada.

The RCBB reported that relations between English and French Canadians had deteriorated to a point where the two groups’ will to live together was in jeopardy. Canadians were thus warned that while they might not be fully conscious of it, their nation was perhaps passing through its greatest crisis. In an effort to prevent this imminent disaster, the Royal Commission was mandated to inquire into and report on the existing state of bilingualism and biculturalism in Canada and to recommend measures whereby Canadian Confederation could be developed on the basis of an equal partnership between the two founding “races”— later replaced by the word “peoples.” While in the process of attempting to forge a deal between its founders, the

⁸ See for example Will Kymlicka, “Multinational Federalism in Canada: Rethinking the Partnership” in Roger Gibbons & Guy Laforest, ed., *Beyond the Impasse: Toward Reconciliation* (Montreal: IRPP, 1998) 15 and Michel Sarra-Bourret et al., *Manifeste des intellectuels pour la souveraineté* (Montreal: Éditions Fides, 1995).

⁹ (U.K.), 14 George III, c. 83.

¹⁰ Canada, Report of the Royal Commission on Bilingualism and Biculturalism, *General Introduction: The Official Languages*, vol. 1 (Ottawa: Queen’s Printer, 1967).

Royal Commission was also instructed to consider the contribution made by other immigrant and ethnic groups to the cultural enrichment of Canada.

It was commonly accepted that the notion of founding peoples was based on some combination of ethnic and linguistic characteristics. The Royal Commission sought an equal “partnership” or “biculturalism” between English and French Canadians in a manner that would ultimately supersede the country’s provincial boundaries. But the cultural pact was difficult to achieve in a society with an increasingly diverse ethnic composition and regional concentration in the two major linguistic groups. There seemed little hope of legislating a partnership between two founding races or peoples. Indeed, underlying this arrangement was the idea that there were two relatively monolithic ethno-linguistic groups in Canada. Many Canadians of origins other than British or French who objected to the Royal Commission’s initial pursuit of an “equal partnership between the two founding peoples” did so because they felt that it would bestow a particular status upon the charter groups that might place the others at a disadvantage.

Prior to the establishment of the RCBB, the federal government had not achieved much success in addressing the concerns of linguistic and ethnic minorities on those occasions when it had been called upon to intervene. Since Confederation, political and demographic realities reinforced the authority of provincial jurisdictions and ensured that they be charged with matters pertaining to minority language issues, notably in the school system. Regrettably, in a number of instances, the behavior of many provincial leaders outside of Québec as regards such concerns was far from exemplary and the commissioners thus viewed themselves as attempting to correct a historic wrong. During the 1960s, the federal authorities realized that there was a growing urgency to significantly re-evaluate the role of government with respect to language and cultural issues, particularly as regards minority communities. In doing so, Canada undertook a major political challenge with potentially significant ramifications for Canadian unity.

There was confusion as to just how the state would go about implementing biculturalism. From the debates of the RCBB, it never seemed clear beyond the acquisition of the two languages (French

and English), how this culturally dualistic objective would be attained. As ambiguously defined by the Royal Commission, the term biculturalism referred to the co-existence of two “distinct” ways of life which “obviously had much in common.” Although it took for granted what in this case was “distinct” or “common,” the Royal Commission claimed that:

Just as bilingualism should not lead to a *blend* of two languages so Canada’s cultural duality cannot be taken to mean a *mixture* of the two cultures; each has its own existence.... Culture is to the group rather what personality is to the individual: it is rare for a person to have two personalities or two styles of living at the same time.¹¹

In contrast to the description offered by the Royal Commission, then Prime Minister, Lester B. Pearson, argued that biculturalism did not imply that the nation’s social fabric would be characterized by the co-existence of two separate cultural societies. In his 1964 Throne-Speech, Pearson stated that “for one thing English and French cultural are not and cannot be separate and distinct from each other or other cultural strains in Canada.” He added that “there should be no pressure on one to absorb the other, but they should develop along with each other, each, I hope, influencing the other.”¹²

The “cultural” survival of French Canadians was at the very core of the debates of the 1960s. While certain Canadians spoke of an “equal partnership” between English and French Canadians on a national scale, others felt that the future of the French language and culture required that all energies be focused on the situation in Québec. As the RCBB embarked on its mission, a then provincial Liberal Cabinet Minister, René Lévesque, aptly expressed the latter view. In 1963, he stated that:

We must not mislead others into believing that biculturalism is a basic goal or value. It is infinitely more important to make Québec progressive, free and strong, than to devote the best of our energies to

¹¹ *Ibid.* at xxxi [emphasis in original].

¹² James Stewart, “National unity plea earns PM ovation” *Montreal Star* (21 February 1964) 1 at 4.

propagating the doubtful advantages of biculturalism. Moreover, if the French language is to be respected that will depend upon all the vigor, on the economic and political importance of Québec. This must become and must remain our first concern, by far out most decisive and constant preoccupation.¹³

LANGUAGE, IDENTITY AND RECOGNITION

After considerable deliberations, the significant initiatives to emerge in the aftermath of the report of the RCBB were the *Official Languages Act* (1969) and the federal policy on multiculturalism (1971). Thus, in the end the federal government opted for a policy of official languages but did not enshrine in law that there were two official cultures in Canada. Reconciling linguistic duality and cultural diversity in this way was not endorsed by Québec's political leaders of the day nor did it meet with the approval of the leaders of certain ethno-cultural minorities outside that province.

During the 1970s, the rejection of biculturalism returned to haunt the federal government. Originally intended as a protest against multiculturalism, the renewed support for biculturalism seemed to reinforce the idea that only the Québec state could provide substantive guarantees for the preservation of French Canadian culture. In the early years of the decade, then prominent journalist, Claude Ryan, argued that if Canada had any future, it would have to be based on the equality of the "two founding peoples."¹⁴ This required that every Canadian obtain a working familiarity with the two official languages and become acquainted with the culture of the two "leading" communities.¹⁵ Ryan concluded that the effort to resolve the question of linguistic parity without redressing cultural inequalities, would be

"have said good-bye, once and for all, to the possibility of a united country."¹⁶

Somewhat similar declarations were made by Québec Premier Robert Bourassa in his reaction to the federal bilingual/multicultural initiative. Bourassa argued that the policy of multiculturalism was highly unsuited to Québec "where the predominant population group is linguistically and culturally French, where a large minority is linguistically and culturally English, and where there are many minorities having other linguistic and cultural origins."¹⁷ The Premier claimed that the federal government's policy was founded on a questionable dissociation of culture from language.

Both Ryan and Bourassa concluded that the multicultural approach adopted by the federal government contradicted the idea of attaining equality between the two founding peoples through the development of a bilingual and bicultural nation. Under the circumstances where the federal government presumably expressed the intention to assume responsibility for the promotion of all cultures, Bourassa concluded that "Québec must take on within its own territory the role of the prime defender of the French language and culture ... in North America and it proposes to do this with all the means at its disposal. This does not mean that there will be the slightest discrimination against other cultures."¹⁸

MAKING THINGS OFFICIAL

The strategic approach adopted by Québec to address its linguistic and cultural concerns in some ways resembled that pursued by the federal authorities. Whereas the federal government created a commission on bilingualism and biculturalism in the early part of the decade, in the late 1960s the Québec government established a commission of inquiry to look into the position of the French language in the province. In 1974, it adopted legislation making French the only official language of Québec.¹⁹ Under Bill 22, however, a number of references to the English language were designed to demonstrate a continued attachment to some degree

¹³ René Levesque, "A Strong Québec Takes Precedence Over a Bicultural Canada" (originally published in *Le Devoir*, 5 July 1963) trans. in Frank Scott & Michael Oliver, eds., *Quebec States Her Case: Speeches and Articles from Québec in the Years of Unrest* (Toronto: MacMillan, 1964) at 144-145.

¹⁴ Claude Ryan, "Canada: Bicultural or Multicultural?" in Howard Palmer, ed., *Immigration and the Rise of Multiculturalism* (Toronto: Copp Clark Publishing, 1975) 147 at 148.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Robert Bourassa, "Objections to Multiculturalism" in Palmer, ed., *supra* note 14, 151 at 152.

¹⁸ *Ibid.*

¹⁹ *Official Language Act*, S.Q. 1974, c. 6 (also known as Bill 22).

of linguistic duality. In 1977, the Parti Québécois government adopted the *Charter of the French Language*²⁰ (Bill 101), which offered less recognition of the English language in Québec than did Bill 22. As one analyst noted, where Bill 101 used the term “languages other than French,” Bill 22 specifically referred to the English language.²¹ Perhaps ironically, some regard the approach to languages other than French as stipulated in sections of Bill 101 as being more classically pluralistic than the previous legislation. Québec’s political leaders believed that the bilingual-multicultural framework adopted by the federal authorities would result in the continued expression of multi-ethnicity in the English language both outside of Québec and, for that matter, within the province. By consequence, the unilingual-pluralistic framework of Bill 101 was viewed as parallel to the federal model in a manner that would address Québec’s concerns over the future of the French language. Thus, Bill 101’s chief architect Camille Laurin explained that:

[I]n order to live together in the same nation, the various ethnic groups which make it up must be able to speak and understand each other. Hence, a national language and common culture are useful, although they do not preclude the continued use of ethnic languages and maintaining of individual cultures.²²

During the 1980s, the recognition effort evolved away from the idea of a bi-cultural arrangement based upon English-French ethno-national dualism to the establishment of a formula that might reconcile Québec and the rest of Canada. This was prompted by the growing affirmation of Québec nationalism which culminated in the election of the Parti Québécois in 1976, the adoption of the *Charter of the French Language* in the following year, and, in 1980, a referendum on Québec sovereignty and an association with Canada. One year after the referendum defeat of the sovereignists, the federal government repatriated the Constitution and, with the exception of Québec, all the provinces signed on. Québec political leadership protested that it had been excluded from the process. In 1982, the federal

government adopted a *Charter of Rights and Freedoms* which included the recognition that: “English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.”²³ It is apparent that since Confederation several recognition formulas have attempted to address the issue of linguistic identity.

FROM MEECH TO CHARLOTTETOWN

In the late 1980s, the federal government revised its *Official Languages Act* and added to the existing articles of that law a commitment to “enhancing the vitality and supporting the development of English and French linguistic minority communities, as an integral part of the two official language communities of Canada, and to fostering full recognition and use of English and French in Canadian society.”²⁴ The same law also “recognizes the importance of preserving and enhancing the use of languages other than English and French while strengthening the status and use of the official languages.”²⁵ The vitality clause was adopted in the very midst of the debate over the constitutional accord that was aimed at bringing Québec into the fold.

In June 1987, the Meech Lake Accord stated prominently that any interpretation of the Constitution must recognize that Québec forms a distinct society within Canada, and affirmed the role of the Québec government and legislature “to preserve and promote the distinct identity of Québec.”²⁶ Although the emphasis was placed upon protection for a francophone population not confined to, but concentrated in Québec, the distinct society clause also recognized the presence of Québec anglophones as part of a fundamental characteristic of Canada; namely, its English-French duality.

²⁰ R.S.Q. 1977, c. C-11.

²¹ William D. Coleman, “From Bill 22 to Bill 101: The Politics of Language under the Parti Québécois” (1981) 14 Canadian Journal of Political Science 459 at 465.

²² Camille Laurin, “Ethnic Minorities in the New Québec” (1978) 10:1 Canadian Ethnic Studies 5.

²³ Canadian *Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, s.16(1), being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

²⁴ *Official Languages Act*, R.S. 1988, c. 38, Preamble.

²⁵ *Ibid.*

²⁶ *Meech Lake Constitutional Accord*, 3 June 1987 (text settled at second First Minister’s Conference in the Langevin Block, Ottawa), online: The Solon Law Archive <<http://www.solon.org/Constitutions/Canada/English/Proposals?MeechLake.html>>.

The Accord stipulated that the Constitution be interpreted in a manner consistent with the recognition of the existence of French-speaking Canadians centered in Québec but also present elsewhere in Canada, and English-speaking Canadians concentrated outside Québec but also present in Québec. This would constitute a fundamental characteristic of Canada as would the recognition that Québec constitutes a distinct society within Canada. Furthermore, the role of the legislature and the Government of Québec to preserve and promote the distinct identity of Québec was affirmed. Set to go into effect in June 1990 approximately one year to term the Accord lost its near unanimous approval when it confronted vigorous opposition from certain provincial leaders in Manitoba, New Brunswick and Newfoundland.

Much like the confusion over certain concepts during the RCBB, analysts attributed various, and sometimes contradictory, meanings to the distinct society clause. A perceptive editorialist noted that it was not possible for Québécois to be sure of the implications of their distinctiveness. One commentator attributed both the success and potential problems with the Accord to its imprecision.

Yet one authority remarked: “il n'est évidemment pas question de transcrire une théorie sociologique dans un texte juridique, d'énumérer tous les traits qui nous distinguent.”²⁷ Constitutional expert Gérald Beaudoin claimed that Meech Lake's declaration of distinctive merely translated a state of fact into law by reaffirming a fundamental element of Canadian dualism.²⁸ While linguistic duality is certainly an important characteristic of Canada, Beaudoin still regarded cultural duality, the prevailing view of the 1960s, as the basis upon which adjudicators should make decisions affecting the entire society. He rejected the idea of enumerating components of the distinct society that he believes would make interpretation of the cause too restrictive. Beaudoin concluded that “si l'on excepte la langue, la culture, le Code civil qui sont des constantes, la spécificité du Québec peut varier en intensité d'une époque à l'autre: confessionnalité des écoles, valeurs sociales, système d'éducation.

²⁷ Claude Morin, “Bourassa et les lendemains piégés” *Le Devoir* (6 December 1988) 7.

²⁸ See Gérald Beaudoin, “Avis D'Experts, D'Analystes et de Commentateurs” in *Le Devoir*, ed., *Le Québec et le Lac Meech* (Montréal: Guérin, 1987) 75 at 79.

Allons-nous à chaque génération ajouter ou retrancher à la déclaration sur la société distincte?”²⁹

Some observers attribute the rejection of the Meech Lake Accord to the invoking of the notwithstanding clause in the aftermath of the Supreme Court judgement which declared that the unilingual commercial signs provisions of the *Charter of the French language* were in violation of the right of freedom of expression.³⁰ The Parti Québécois' constitutional negotiator of the immediate post referendum period, Claude Morin, argued that English Canada was only prepared to accept Québec's distinctiveness when it behaved in a manner that was not distinctive. He suggested that English Canada regarded the clause as a symbol and merely recognized the French language and certain customs as rendering the society different. Morin contended that:

[Q]ue ses signataires savaient qu'ils signaient un document où l'on mentionnait que le Québec formait une société distincte, ils admettaient logiquement du même coup que celui-ci pourrait disposer de la latitude voulue pour se servir des moyens appropriés en vue de sauvegarder et d'affirmer son identité, surtout en matière linguistique.³¹

Morin urged the rest of Canada not to assume that the distinct society was symbolic rather than substantive. He argued that culturally and demographically, Canada's population is made up of two viable groups, the English Canadians – joined by most new Canadians – and the French Canadian group centered in Québec. The latter division, Morin suggests, describes the typical tendency of Canadian federalism and “if we do not take it into consideration we cannot understand either federal-provincial tension in the country or the history of Canada altogether.”³²

The failure of the Meech Lake Accord did not put an end to the search for a formula that would permit Québec to sign the Canadian Constitution.

²⁹ *Ibid.* at 80.

³⁰ *Ford v. Québec (Attorney General)*, [1988] 2 S.C.R. 712, online: CanLII <<http://www.canlii.org/ca/cas/scc/1988/1988sc94.html>>.

³¹ Morin, *supra* note 27.

³² Claude Morin, *Québec versus Ottawa: The Struggle for Self-Government, 1960-1972* (Toronto: University of Toronto Press, 1976) at 150.

Not long after the failure of the Meech Lake Accord, a new deal was negotiated by the federal and provincial political leaders. The 1992 Charlottetown Accord proposed the amending of the *Constitution Act* in a manner consistent with eight fundamental characteristics in what was referred to as a “Canada Clause.”³³ The Accord stipulated that Québec constitutes a distinct society within Canada that includes a French-speaking majority, a unique culture and a civil law tradition. Like its predecessor, the role of the legislature and the Government of Québec to preserve and promote the distinct identity of Québec was affirmed. But the Accord also called for the Aboriginal peoples of Canada to have the right to promote their languages, cultures and traditions, to ensure the integrity of their societies, and stipulated that their governments constitute one of the three orders of government in Canada. Amongst other identity traits included in the Canada Clause were commitments to: the vitality and development of official language minority communities throughout Canada; racial and ethnic equality in recognition of the contribution of citizens from many lands to the building of a strong Canada; the equality of male and female; respect for individual and collective human rights; and, a confirmation of the equality of the provinces with a recognition of their diverse characteristics. The Accord was to be submitted to the Canadian population for approval in a nationwide referendum where a majority of residents of each province would have to vote in favour. Thus, a majority of residents of each province, as opposed to a majority of Canadians, would have to agree on what might be described as the Canadian identity clause. In the end, the Accord was rejected by nearly every province in the country.

The Meech Lake and Charlottetown Accords respectively attempted to address Québec’s identity needs. In each case, certain non-Québecers sought recognition for aspects of their identity, fearing that inequities might arise between Québec and those groups and/or regions whose particular traits were not acknowledged in the Canadian Constitution. Aboriginal peoples seemed especially preoccupied by the idea that they would not obtain satisfactory constitutional recognition. These efforts at mutual

recognition failed, resulting in a resurgence of nationalist sentiment amongst Québec’s French population.

REDEFINING OURSELVES

On the question of identity, in their pre-referendum manifesto for a sovereign Québec, a leading group of intellectuals argued that Québécois form a people and have for some time made efforts to operate within the Canadian federalist framework. But Canada refuses to recognize Québec’s status as such and give it the tools it needs to develop fully. It is necessary to take note of the incapacity of Canada to see itself as a multinational state.³⁴ In order to get “beyond the impasse,” one federalist, Will Kymlicka, argues that “the real threat to Canada’s long-term stability remains the failure to reach a satisfactory arrangement with Canada’s non-immigrant national minorities — namely, the Québécois and the Aboriginal peoples.”³⁵ Philosopher Will Kymlicka claims that we need to accept that Canada is and will remain a multinational state — a federation of peoples. In effect he is proposing a model for recognition of Canadian identities that differs from the formulas seen thus far. In a recent essay, James Tully echoes the view put forth by Kymlicka. He notes that in multinational federations like Canada, it is essential to accord the status of peoples to the Québécois and the Aboriginal population and offer them a right to what he calls “internal self-determination.”³⁶ Only in this manner, he adds, will these two groups ever feel a greater attachment to a multinational Canada. Unlike Kymlicka, in Tully’s multinational federation, there are only two peoples or nations. In fact, Tully’s notion might be described as a new version of the two-nations theory.

In the multinational Canada proposed by Kymlicka, English-speaking Canadians must be persuaded that they have common interests as a linguistic community. These interests, he adds, are relatively similar to those of francophones or Aboriginals. Ironically, Kymlicka points to two

³³ The Charlottetown Accord, 28 August 1992, online: The Solon Law Archives <http://www.solon.org/Constitutions/Canada/English/Proposals/CharlottetownConsensus.html>.

³⁴ Michel Sarra-Bourret et al., *supra* note 8 at 80- 81.

³⁵ Kymlicka, *supra* note 8 at 15.

³⁶ James Tully, “Liberté et dévoilement dans les sociétés multinationales” (1999) 2 *Globe: Revue internationale d’études québécoises* 1.

major obstacles to his own idea and, for that matter, to the framework put forward by James Tully. First, Kymlicka acknowledges that “English-speaking Canadians have little or no sense of group identity — little or no sense that they form a distinct community within Canada.”³⁷ (I would argue that language is not the dominant marker of identity for English-speakers with perhaps the exception of those who live in Québec). Therefore, they must be convinced that they have similar “national” identity needs, something which Kymlicka acknowledges has virtually no popular resonance amongst English-speaking Canadians. But there are a number of other equally serious matters that would have to be overcome to attain the recognition of the three nations. Kymlicka, and to a somewhat lesser extent, Tully, pay little attention to the presence of francophones outside of Québec and English-speaking Canadians within the province.

In short, the proposal advanced by Kymlicka and Tully is based on three different notions of nationhood that would be difficult to reconcile. The “Québécois” nation would be based on the territory and the current boundaries. The rest of Canada’s national status would be based on the sharing of the English language, and the Aboriginals would, in theory, possess nations within these nations. Undoubtedly, were such a dubious formula implemented, the political value of “national” status would vary considerably.

Michel Seymour rightly notes that when Kymlicka uses the term “Québécois” in French, it is synonymous with francophone and thus not inclusive of other communities that reside in Québec.³⁸ It is legitimate to ask to what “nation” the English-speakers of Québec belong, not to mention those of neither English nor French mother tongue who may find themselves nationless. Pursuing the logic of language alone as the basis for nationhood leads to the conclusion that all English-speakers, including those in Québec, belong to the anglophone or Canadian nation, and all francophones, including those outside Québec, belong to the francophone nation. In Kymlicka’s three-nation pact, is membership to be defined by mother tongue, the language used at home or the

language people use in public life? How does the three-nation theory take into account dual or multiple attachments of members of each “nation”?

Yet another problem with the recognition of the sociological dimension of nationhood is that many in Canada do not distinguish it from the political nation. For many English-speaking and French-speaking Canadians, the idea of “la nation” and “le pays” are synonymous. Indeed, it is hard to describe the rest of Canada as constituting one nation. Were Québec to split, the rest of Canada might choose to reconstitute itself as three of four nations, thereby casting serious doubt upon the idea of three nations, though, ironically, not dismissing some form of multinationalism. Political scientist Alan Cairns has argued that “the search for the ROC’s reconstitution after Quebec’s departure would, other things being equal, likely privilege provincial governments, especially those of the wealthier provinces, and thus lead to a more fragmented, provincialized successor state than would be probable if haste could be avoided. It might even result in two or more separate polities.”³⁹

From an identity standpoint, the rest of Canada views Québec’s presence as a fundamental part of national identity. Indeed, in a poll conducted in 1998, some 88 percent agreed that French-Canadians made significant contributions to Canada. About 77 percent of anglophones “hors Québec” wanted their children to be taught French at school and 61 percent said that having two official languages was important to the meaning of being Canadian. If language is to be defined as a major marker of Canadian identity, it is in large part because of French, a language spoken by over 1.3 million persons outside Québec whose mother tongue is not French.⁴⁰

WE THE PEOPLE

A couple years after the referendum, Premier Bouchard stated that “[I]f English Canada wants

³⁷ Alan. C. Cairns, “Looking into the Abyss: The Need for a Plan C” in David R. Cameron, ed., *The Referendum Papers: Essays on Secession and National Unity* (Toronto: University of Toronto Press, 1999) 199 at 219.

³⁸ Michel Seymour, *Nationalité, citoyenneté et solidarité* (Montréal: Liber, 1999) at 165.

⁴⁰ Chris Cobb, “Anglos outside Québec value French culture: poll” *The Gazette* (22 December 1998) A10.

to hold a big contest to name us, we who are amenable, let them do it. It's a waste of time. We have to say it. We aren't interested in such a contest. We know what we are called. It's 'people of Québec'.”⁴¹ As noted previously, in the early 1960s, the Royal Commission on Bilingualism and Biculturalism was mandated to recommend measures whereby the Canadian federation could be developed on the basis of an equal partnership between what was then referred to as its two founding peoples. Some thirty-five years later, the term “people” as employed in the Canadian context has multiple meanings. For some Québécois, the use of the term may be equated with nationhood. For others, people may still imply “ethnicity” or maybe viewed as a form of civic recognition. According to one major survey, it is the less politically-oriented idea of being a people that elicits a high rate of acknowledgement amongst Québécois independent of their mother tongue.⁴² So it would seem that while, for many, Québécois constitute a people, so too do Canadians. The same CROP poll shows that a vast majority of Québécois regard themselves as being part of at least these two peoples.⁴³

VIVE LE QUANADA!

Kymlicka and Tully fail to address the issues that arise from those persons that have an attachment to more than one nation. Certainly, the ongoing debate over our constitutional future remains very much influenced by the issue of national identities. It is clear that over the past two decades, there has been a diminishing identification with Canada for a not insignificant number of the province's francophones. The extent to which one considers themselves a Canadian, Québécois, or both, is believed to be at the heart of the identity question. Public opinion polls have, in an effort to get to the bottom of the issue, obliged Québécois to decide whether they identified more with Québec or Canada. Often, the way in which a question is formulated on attachments to Québec and Canada has helped determine the outcome. Not surprisingly, such surveys have frequently uncovered an important

dichotomy along linguistic lines where a greater percentage of francophones chose Québec first while the overwhelming majority of non-francophones chose Canada. A CROP poll (March 27 to April 1, 1998) noted that some 80 percent of respondents saw themselves being both Québécois and Canadians, leading to the conclusion that they were “proud to be both Québécois and Canadians.”⁴⁴ A closer examination of the results, however, reveals that a slight majority of francophone respondents still viewed themselves as Québécois above all else (51 percent) and a near majority of anglophones see themselves as “Canadian First” (47 percent).⁴⁵

The reality regarding the Québec/Canada identity issue is frequently more complex than is revealed by numerous surveys. First, the respondents are invited to attribute their own meaning to the concept of national identity where there may be some confusion with the notion of ethnicity, citizenship and region. In effect, even the choice of being a “Québécois” first may simply imply that for some Canadians, “national” identification is less important than attachment to some ethno-national form of identity. After all, we know that respondents attribute different meanings to being a Québécois. In a series of articles in *Le Devoir* entitled “Pensez la nation québécoise,” Jocelyn Létourneau argues that thinking about the future of Québec without taking into account the centrality of the Canadian fact as part of the identity of Québécois, is akin to thinking about the future of Canada while neglecting the centrality of the French fact to Canadian identity.⁴⁶

In the event of a break-up, what would happen to the attachment to Canada felt by many Québécois? According to a former Québec Premier “nearly all non-francophones during the [1995] referendum reclaimed their desire to remain Canadian ... their interest dictates this attitude. Until a referendum is won they will stay as they are. Following that they will adapt. Until then they are Canadians and proud to be ... never will the Anglo-Québécois accept to exchange their attachment to a vast majority in Canada against

⁴¹ Philip Authier & Terrance Wills, “Bouchard to Chretien: ‘I dare you’” *The Gazette* (26 September 1997) A1.

⁴² Paul Wells “Not a tale of two solitudes: poll” *The Gazette* (4 April 1998) A7.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ Jocelyn Létourneau, “Ni nation québécoise, ni nation canadienne: Assumons l’identité dans sa complexité” *Le Devoir* (7 August 1999) A9.

minority status in Québec.”⁴⁷ Of course it is not just Québec anglophones that feel an attachment to Canada. A sovereign Québec would still have to contend with a potentially strong sense of such identity and the political expression that it might take.

A CRISIS OF IDENTITIES: QUÉBEC’S OWN CHARLOTTETOWN

Those Québécois who are thinking about the nation are increasingly conscious of this reality and, as such, are developing their own recognition formulas in the event that sovereignty is attained. In some ways, the formulas put forth by the sovereignists resemble the models unsuccessfully pursued by the federal government. In what might be described as Québec sovereignists’ version of the Charlottetown Accord, some call for the recognition of the francophone majority, the Aboriginal nations and the anglophone population as national minorities. Paradoxically, this implies that Québec itself is a multinational entity which risks being beset by the same problems as Canada. One thinker has suggested that a sovereign Québec recognize its three founding peoples (the francophones, anglophones and Aboriginals).⁴⁸ Indeed, Denys Delâge contends that if it fails to provide such recognition, a sovereign Québec will confront the same identity problems that Canada does today.⁴⁹ It is legitimate to ask whether these “peoples” would be vested with the right to self-determination. At the same time as Québec sovereignists attempt to give meaning within their project to the reality of diversity, they want the population to first see themselves as Québécois. According to a proposal developed by the leadership of the Bloc Québécois, “citizenship cannot be founded on such identity or community references as ethnicity, mother tongue and religion.”⁵⁰ The notion of belonging to the same political community and possessing a common civic reference — i.e. being Québécois — is the best response to growth of diversity. The Canadian

state continues to struggle with the issues of a strong sense of civic and national attachment and support for diversity and multiple identities. But there is ample reason to believe that a sovereign Québec will face equally important challenges involving recognition, inclusion and important manifestations of regional identity within its jurisdiction.

AFFIRMATION AND RECOGNITION

In a recent series of essays entitled “Reinventing Our Future,” *La Presse*’s Alain Dubuc suggests that the debate over Québec identity should be pursued by Québécois alone.⁵¹ He proposes that Québécois engage in a process of unilateral affirmation or what might be described as self-definition. Dubuc believes that the rest of Canada does not need to approve the way in which Québécois describe themselves in identity terms. Indeed, he contends that the continued pursuit of such recognition is symptomatic of a sort of “colonized culture.” This might be remedied by a unilateral affirmation of Québec’s identity, which Dubuc suggests take the form of a solemn declaration by the National Assembly that enunciates the population’s major characteristics. This strategy would only be practical if Québec’s political parties resisted the temptation of using it as a negotiating tool draw the rest of Canada into yet another recognition debate. As to Dubuc’s definition of Québécois’ identity, he suggests that something between the terms “people” and “nation” be used, and that the presence of an anglophone minority, the contribution of immigrants, and the role of the First Nations be properly acknowledged. He rightly notes that coming up with a satisfactory formula will be no easy task as some will insist that attachment to Canada be included in the definition of Québec identity.⁵²

One of the major contributions of Dubuc’s idea is that it resituates the national unity debate in terms of the political relationship between affirmation and recognition. Some Québécois will insist that there have been several examples of affirmation on the part of Québec since the Quiet Revolution that have not been properly recognized by the rest of Canada. But in the rest of Canada,

⁴⁷ Jacques Parizeau, *Pour un Québec souverain* (Montreal: VLB Éditeur, 1997) at 163 [translated by author].

⁴⁸ Denys Delâge, “Le Québec et les autochtones” in Michel Venne, ed., *Penser la nation québécoise* (Montréal: Québec-Amérique, 2000).

⁴⁹ *Ibid.*

⁵⁰ Pierre O’Neill, “Le Bloc Québécois relance le débat sur la redefinition du modèle québécois” *Le Devoir* (7 September 1999) A2.

⁵¹ “S’affirmer autrement” *La Presse* (24 February 2000) B3.

⁵² *Ibid.*

some may consider that the onus for generating identity-based recognition formulas to indeed be on Québécois. These undoubtedly remain complex issues that will continue to underlie the Canadian identity crisis. As our identity needs continue to evolve both within Québec and throughout Canada, so too may the debate over how we affirm ourselves and the type of recognition that is desired by Canada's collectivities move in new directions.

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LE RÉGIME TRUDEAU A-T-IL TRAHI LE RÉGIME DE 1867?

Stéphane Kelly

Trudeau a-t-il trahi la pensée des pères de 1867? La question mérite aujourd’hui d’être posée, aussi franchement que je le fais ici, tant nombre d’auteurs alimentent cette thèse depuis quinze ans. À lire les nouvelles publications sur cette période de notre histoire, on voit que la contestation de l’héritage Trudeau gagne du terrain. Certes, le trudeauïsme est bien en vie. La popularité des libéraux fédéraux demeure élevée. Même dans plusieurs cercles intellectuels, Trudeau reste une figure célébrée.

Je partage avec les critiques de Trudeau la conviction que les conséquences de son régime ont été néfastes sur la vie démocratique de ce pays. Toutefois, l’interprétation qu’ils proposent de 1982, du point de la vue de la tradition politique canadienne, me semble incomplète. Ces thèses reposent pour la plupart sur un dénominateur commun : 1982 serait, somme toute, une rupture avec notre tradition politique. Je ne suis pas d’accord avec cette idée et je tenterai de le démontrer tout au long de cet article. Je ne nie pas que certains éléments de 1982 aient été en rupture avec cette tradition. Seulement, des choses fondamentales nous échappent en ne soulignant pas les nombreux éléments de continuité.

Mais quelle serait la nature de cette rupture? Il existe trois variantes de la thèse de la rupture. La première prétend que le régime de 1867 aurait été le produit d’un pacte entre des provinces fondatrices, ou encore entre des peuples fondateurs. Adoptée sans l’assentiment du Québec, la réforme de 1982 marquerait ainsi une rupture avec cet esprit de bonne entente et de respect mutuel¹.

¹ Guy Laforest, *Trudeau et la fin d’un rêve canadien*, Sillery, Septentrion, 1992 et Paul Romney, *Getting it Wrong. How Canadians Forgot Their Past and Imperilled Confederation*, Toronto, University of Toronto Press, 1999. Laforest insiste plus sur un pacte entre des peuples, Romney sur un pacte entre

La deuxième variante met plutôt l’accent sur la rupture définitive de tout lien avec l’Angleterre. La réforme de 1982, en particulier le rapatriement de la constitution, confirmerait l’aliénation du Canada par rapport à la source qui la longtemps nourrie. Cette rupture d’un lien séculaire avec la mère-patrie serait le signe de l’amnésie collective des Canadiens². Un pas supplémentaire aurait été franchi dans la voie de l’américanisation.

La troisième variante soutient que 1982 mine un principe fondateur de notre régime politique, celui de la souveraineté parlementaire. La réforme de Trudeau aurait transféré le siège de la souveraineté vers l’instance judiciaire. Ce transfert, aux allures de coup d’État, serait l’œuvre d’un groupe social, désigné comme le Parti de la Cour³. Celui-ci compterait sur les tribunaux, plutôt que le parlement, pour faire adopter des réformes jugées impopulaires par la majorité de la population.

Je dois avouer que chacune de ces thèses met en évidence des faits qui me semblent fondés. Ces thèses prises individuellement ou ensemble, ne permettent toutefois pas de dégager l’essentiel de la réforme de Trudeau. Pour résumer ma pensée simplement, en une seule formule : la réforme de 1982 ne trahit pas 1867. Elle l’augmente.

Analyser la conformité de 1982 à notre tradition politique recèle une grande difficulté. Il faut avoir une idée précise de ce qui s’est passé entre 1867 et 1982. Peut-on identifier un élément de continuité qui rattacherait les différentes générations politiques qui se sont succédées

des provinces.

² Robert Martin, «A Lament for British North America» dans Anthony Peacock, dir., *Rethinking the Constitution*, Toronto, Oxford University Press, 1996, 3.

³ Rainer Knopff et F.L. Morton, *The Charter Revolution and the Court Party*, Toronto, Broadview, 2000.

depuis plus d'un siècle? Cet exercice théorique a généralement consisté à comparer le Canada avec les États-Unis. Pendant longtemps, l'exercice se borna à suivre les traces de Louis Hartz. Cela consistait à déterminer si notre pays était plus libéral que la nation américaine. En règle générale, nous nous accordions pour dire que notre pays était plus conservateur. Dans un livre désormais célèbre, George Grant a écrit :

L'impossibilité du conservatisme, à notre époque, signifie l'impossibilité du Canada. Nous, Canadiens, avons entrepris une tâche déraisonnable, en tentant de construire un pays conservateur, à l'âge du progrès, sur un continent que nous partageons avec la nation la plus dynamique du monde. Le sens de l'histoire moderne allait contre nous⁴.

Les auteurs de la synthèse républicaine ont bousculé cette façon d'envisager le problème. En plaçant de sérieux bémols à cette lecture, ils montraient que le libéralisme n'était peut-être pas l'idéologie fondatrice de la nation américaine. 1776 mettait aux prises deux idéologies : le républicanisme classique des patriotes versus le monarchisme commercial des loyalistes⁵. Le républicanisme imprima une marque indélébile sur la nation américaine, même si la pensée des fédéralistes allait par la suite modérer l'impulsion républicaine.

Les choses se passèrent différemment au Canada. Notre pays, attaché au projet loyaliste, embrassa plutôt les idées du monarchisme commercial⁶. Il y eut certes en ce pays des adeptes du républicanisme. Pensons à Louis-Joseph Papineau ou à William Lyon Mackenzie. Ces hommes se méfiaient du mouvement d'expansion et de centralisation de l'État, qu'il soupçonnait de corrompre les libertés politiques.

Les pères fondateurs, Cartier, Brown, Galt, Macdonald, étaient plus soucieux d'éviter l'expérience historique américaine. Le monarchisme commercial qu'ils chérissaient légitimait l'activisme étatique. L'instauration d'une société commerciale exigeait que la démocratie soit sévèrement réprimée⁷. Ils la qualifiaient de « tyrannie des masses ». Ils lui préféraient un régime de gouvernement mixte, où le pouvoir des Communes était scrupuleusement limité, par un frein aristocratique et un frein monarchique.

Ces envolées contre l'esprit républicain n'étaient pas des paroles en l'air. Les pères fondateurs passèrent à l'acte⁸. Le conseil législatif, fondé sur le principe électif depuis 1856, fut à nouveau réformé. Afin d'être bien certain de la nature aristocratique du futur sénat, les pères fondateurs revinrent à l'ancien ordre de choses. Ils s'opposèrent à ce que les sénateurs soient élus dans le nouveau régime. Sur ce continent où régnait l'égalité, plaident-ils, il était impératif de travailler à la création d'une véritable aristocratie.

Les pères plaçaient aussi des espoirs dans le frein monarchique. Ils lui assignèrent d'importantes fonctions. Les pères décidèrent que le chef de l'exécutif du nouvel État serait la Reine, que la métropole impériale garderait un veto sur la législation du parlement, que le choix du nom du nouveau pays et de ses symboles serait laissé à la discrétion de la Couronne. L'esprit antirépublicain du régime faisait dire au député rouge Jean-Baptiste-Éric Dorion, avec une ironie mordante :

Je répète donc que le système financier, chez nos voisins [américains], est de beaucoup supérieur au nôtre, et que l'on paie des salaires raisonnables aux employés publics; tandis qu'ici, nous sommes rendus à l'extravagance. Si je parle de tout cela, c'est parce que je suis opposé au projet et l'on veut créer une monarchie, un nouveau royaume, sur ce

⁴ George Grant, *Est-ce la fin du Canada? Lamentation sur l'échec du nationalisme canadien*, Montréal, Hurtubise HMH, 1988, à la p. 69.

⁵ J.G.A. Pocock, *Le moment machiavélien. La pensée florentine et la tradition républicaine atlantique*, Paris, Presses universitaires de France, 1997.

⁶ G. T. Stewart, *The Origins of Canadian Politics*, Vancouver, University of British Columbia Press, 1986.

⁷ Peter J. Smith, «The Ideological Origins of Canadian Confederation» dans Janet Ajzenstat et Peter J. Smith, dir., *Canada's Origins : Liberal, Tory, or Republican?*, Ottawa, Carleton University Press, 1995, 47.

⁸ Stéphane Kelly, *La petite loterie. Comment la Couronne a obtenu la collaboration du Canada français*, Montréal, Boréal, 1997.

continent, et que l'on désire avoir une cour, de la noblesse, un vice-roi et du clinquant⁹.

À l'instar des oppositionnistes du Bas-Canada, du Nouveau-Brunswick et de la Nouvelle-Écosse, Dorion adhérait à l'idée suivante : ce qui en théorie est bon pour la mère-patrie ne l'est pas nécessairement pour une colonie outre-mer¹⁰. L'argument de ces libéraux avait du sens. En l'absence d'une authentique aristocratie et d'une véritable monarchie, n'était-il pas irréaliste de tenter de reproduire ici le principe du gouvernement mixte? À moins, bien sûr, de se contenter d'un simulacre. Dans un passage fameux de *La démocratie en Amérique*, Tocqueville avait bien vu que l'idée du gouvernement mixte était une mystique commode pour une certaine catégorie de citoyens :

Ce n'est pas que, pour conserver la liberté, je crois qu'on puisse mélanger plusieurs principes dans un même gouvernement, de manière à les opposer réellement l'un à l'autre. Le gouvernement qu'on appelle mixte m'a toujours semblé une chimère. Il n'y a pas, à vrai dire, de gouvernement mixte (dans le sens qu'on donne à ce mot), parce que, dans chaque société, on finit par découvrir un principe qui domine tous les autres. L'Angleterre du dernier siècle, qu'on a particulièrement citée comme exemple de ces sortes de gouvernements, était un État essentiellement aristocratique, bien qu'il se trouvât dans son sein de grands éléments de démocratie ; car les lois et les mœurs y étaient ainsi établies que l'aristocratie devait toujours à la longue, y prédominer et diriger à sa volonté les affaires publiques. L'erreur est venue de ce que, voyant sans cesse les intérêts des grands aux prises avec ceux du peuple, on n'a songé qu'à la lutte, au lieu de faire

attention au résultat de cette lutte, qui était le point important. Quand une société en vient à avoir réellement un gouvernement mixte, c'est-à-dire également partagé entre des principes contraires, elle entre en révolution ou elle se dissout¹¹.

Même en admettant qu'un régime mixte puisse effectivement exister, encore fallait-il que les conditions du pays s'y prêtent. Dans le cas du Canada, une certaine ironie présida à son adoption en 1867. Les pères fondateurs s'en inspirèrent au moment même où celui-ci entrait en crise dans la mère-patrie. Ainsi, la révolution industrielle avait considérablement affaibli la monarchie et l'aristocratie. Cet affaiblissement ne contribuait cependant pas au renforcement de la branche démocratique. En fait, le déclin conjugué de l'aristocratie et de la monarchie pavait la voie à l'ascension d'une oligarchie. La nature ayant horreur du vide, il était inévitable, qu'un jour, les freins antidémocratiques soient accaparés mais par des membres d'une oligarchie. Ces gens que l'on dénommait, dans les feuilles politiques de l'époque, les *placemen*, c'est-à-dire les maquignons, les laquais, les créatures du régime. Le vide créé par ce déclin ne fut donc pas comblé par l'émancipation de la branche démocratique. Il ne l'a rendait pas plus libre et indépendante. Le vide a profité à cette oligarchie, que la révolution industrielle avait mis au monde. L'oligarchie avait appris à s'acheter un titre, et ainsi accéder à la Chambre des Lords ou encore à s'assurer des bons services d'un député influent aux Communes.

Néanmoins, le régime mixte anglais, plus vieux et plus achevé, résista mieux aux tendances oligarchiques que le régime canadien. Ces tendances furent sans doute favorisées par le caractère hétérogène du Canada sur le plan religieux, linguistique et géographique. Cette hétérogénéité, plaidait-on, justifiait notre tolérance à l'égard des pratiques de patronage. Celles-ci étaient un ingrédient essentiel à la gouverne d'un pays voué à la diversité. C'est le prix que nous devions payer pour aspirer être une réplique nord-américaine de la majestueuse monarchie britannique.

⁹ Jean-Baptiste-Éric Dorion, *Débats parlementaires sur la question de la confédération des provinces*, Québec, Hunter, Rose et Lemieux, 1865, à la p. 867.

¹⁰ Pour avoir un aperçu des mouvements d'opposition dans les Maritimes, consulter Janet Ajzenstat et al., *Débats sur la fondation du Canada*, édition française préparée par Stéphane Kelly et Guy Laforest, Québec, Presses de l'Université Laval, 2004.

¹¹ Alexis de Tocqueville, *De la Démocratie en Amérique* (1835), vol. 1, 2^e partie, chapitre 7, Paris, Robert Laffont, 1986, à la p. 243.

Les tendances oligarchiques de notre régime, au XIX^e siècle, étaient tout de même encadrées par certaines limites. La première de ces limites se trouvait dans l'idéologie du parti libéral¹². La dimension oligarchique du nouveau régime, qui éclata au grand jour lors du Scandale du Pacifique, inquiéta les libéraux durant tout le dix-neuvième siècle. Elle était constamment dénoncée par ses chefs, qu'il s'agisse de Dorion, de Mackenzie, de Blake ou même de Laurier. Les tendances oligarchiques étaient tenues en échec ou sous haute surveillance, par les positions libérales : la démocratisation des institutions politiques et civiques, l'opposition à l'activisme étatique, la décentralisation administrative.

Une deuxième limite existait dans le fait que le cabinet fédéral restait, dans une large mesure, tributaire de l'avis des députés aux Communes. La discipline de parti était nettement plus faible qu'aujourd'hui. Elle ne permettait ni au cabinet, ni au Premier ministre, de passer n'importe quelle pièce législative¹³. Lors de l'adoption de lois importantes, les ministres du cabinet avaient toutes les misères du monde à obtenir la loyauté de leurs députés. Logiquement, cette dépendance des ministres à l'égard des représentants du peuple les rapprochait du monde ordinaire.

Enfin, une troisième limite se trouvait dans le principe de l'autonomie provinciale¹⁴. Aujourd'hui associé à une forme douce de tribalisme, le principe de l'autonomie provinciale a pourtant été conceptualisé par les meilleurs esprits libéraux canadiens du XX^e siècle. Ce principe n'était pas seulement adopté par les premiers ministres provinciaux de l'époque, mais aussi par les ténors du parti libéral fédéral.

Ces trois limites, posées au pouvoir oligarchique, firent les frais de la redéfinition du libéralisme canadien, à partir du début du XIX^e siècle. Cette redéfinition fut principalement opérée par W.L. Mackenzie King. D'abord favorable au libéralisme classique de ses prédécesseurs, au

début de sa carrière, Mackenzie King s'ouvrit graduellement à la nouvelle conception libérale, plus moderne, qui gagnait du terrain à la même époque en Angleterre. À partir des années 1930, le parti de Mackenzie King rivalisait avec le parti conservateur pour accentuer ce grand mouvement de centralisation étatique de l'État fédéral. Il ne fallait plus compter sur le parti libéral pour faire contrepoids à la vision oligarchique de l'État canadien.

Il était sans doute difficile d'imaginer, à l'époque de Mackenzie King, que les fruits de la prospérité pouvaient être redistribués autrement que par la centralisation étatique. Le Canada adhéra d'autant plus facilement au welfare state que ce choix était en continuité directe avec le régime de 1867. L'État conservait son côté paternel. Jadis, le Canadien était un sujet. Désormais, il était un bénéficiaire. L'idée qu'il pût être avant tout un citoyen restait hérétique. Dans des textes pénétrants, aujourd'hui oubliés, André Laurendeau suggérait que l'héritage monarchiste perpétuait une mentalité de sujets dans la politique canadienne. Caressant le rêve d'une république du Canada, il pressait ses contemporains de sortir de l'ornière coloniale :

La république est une idée positive. Elle peut réunir les Canadiens de toute origine : c'est dans ce sens une force unifiante. Elle se dresse comme un idéal saisissable, au bout de l'évolution politique canadienne. Elle peut apparaître comme la fin des petites querelles stérilisantes. Elle est centrée exclusivement sur nous. Non seulement elle ne ferme pas la porte aux collaborations internationales éventuelles : on ne peut collaborer que dans la mesure où l'on est libre. La république, c'est la liberté politique au Canada. Bien plus qu'un simple drapeau ou qu'un hymne, elle proclame notre maturité, la fin d'une longue adolescence¹⁵.

Au sortir de la Seconde Guerre mondiale, les intellectuels canadiens trouvèrent dans la social-

¹² Frank Underhill, *In Search of Liberalism*, Toronto, Macmillan, 1960.

¹³ Donald Savoie, *Governing from the Center. The Concentration of Power in Canadian Politics*, Toronto, University of Toronto Press, 1996.

¹⁴ Robert Vipond, *Liberty and Community*, Albany, State University of New York Press, 1991.

¹⁵ André Laurendeau, «Indépendance et république» (1948) 32 L'Action nationale 95.

démocratie une idée qui d'une part revampait l'héritage des pères fondateurs, d'autre part accentuait la singularité de l'expérience canadienne en Amérique du Nord. L'État, au Canada, n'avait pas à revoir ses fondements. Il pouvait continuer sa longue marche, en agglomérant en son sein un nombre croissant de bénéficiaires. L'activité politique consistait, pour un nombre croissant de groupes sociaux et d'organisations, à quémander une large gamme de biens et de services à l'État. Afin de répondre à la demande, l'État édifiait une technocratie sophistiquée et expansive. Le jour n'était pas loin où les parlementaires n'oseraient plus remettre en question l'avis éclairé des technocrates. Accepter un tel musellement de la branche démocratique était un sacrifice jugé bénin. Il y avait une belle promesse d'abondance pour le plus grand nombre.

Nous pouvons maintenant mieux voir comment plusieurs des éléments fondamentaux de 1982 étaient manifestement conformes à l'esprit de 1867. J'en retiens quatre.

Le premier élément a trait à la nature du régime politique. Trudeau ne la changea pas. Le régime était fondé sur le principe du gouvernement mixte, en toute conformité avec l'esprit de 1867. Sur le plan des principes, le Canada était donc appelé à demeurer une monarchie constitutionnelle. Le régime de 1982 reproduit le problème de 1867 : l'absence d'une effective séparation des pouvoirs. Le Canada de 1867 pouvait toujours entretenir un rêve de monarchie ou d'aristocratie. Mais il est étonnant qu'en 1982, Trudeau ait voulu maintenir cet héritage. Si la monarchie de la nouvelle constitution est purement imaginaire, sa mystique produit néanmoins un effet bien réel. Dans l'esprit des Canadiens, elle perpétue l'idée qu'ils sont des sujets, des bénéficiaires passifs d'une panoplie de droits, que la Couronne daigne leur octroyer.

Le deuxième élément de continuité, que 1982 confirme, a justement trait à l'énorme concentration du pouvoir dans les mains d'une petite minorité, et plus spécifiquement, dans celles du premier ministre. Dans la première partie de ce siècle, le parlement fut marginalisé; dans la seconde partie, ce fut au tour du cabinet de l'être. Cette tendance proprement oligarchique était déjà en germe en 1867. C'était le grand rêve de John A.

Macdonald de gouverner à la façon d'un monarque. Ce rêve, le père fondateur ne put toutefois jamais le réaliser. Les pouvoirs de l'époque étaient plus décentralisés, les députés plus indépendants, le libéralisme plus républicain. On l'a déjà dit, le Canada est de plus en plus gouverné à la façon d'une cour. Le problème est d'autant plus grave que nos courtisans, des non-élus triés sur le volet, n'ont pas à rendre de compte à l'électorat. Le pouvoir du premier ministre, dans ce contexte, devient gigantesque, beaucoup plus grand que, par exemple, celui de son homonyme en Angleterre. On a beau dire que le premier ministre est élu tous les quatre ans. Il faut être naïf pour penser que cet élargissement de la puissance du premier ministre est un signe de vitalité de notre vie démocratique.

Le troisième élément de 1982, déjà en germe en 1867, est la vision hiérarchique et impériale du cabinet fédéral. La genèse impériale de la fédération canadienne, en 1867, explique la présence dans notre régime d'éléments quasi-fédéraux : le caractère très centralisé du pouvoir judiciaire, la fonction du lieutenant-gouverneur, les pouvoirs de réserve et de désaveu, le pouvoir déclaratoire et l'octroi des pouvoirs résiduaires au palier fédéral, les pouvoirs d'urgence, ainsi que celui de dépenser. Le Canada a peut-être coupé son lien colonial avec Londres en 1982, mais le régime a conservé plusieurs résidus impériaux. Le fédéral s'est institué juge et gendarme à l'égard de provinces, qu'il traite de plus en plus comme des colonies¹⁶.

Enfin, le quatrième élément a trait au processus politique menant à la réforme de 1982. À l'instar de 1867, cette réforme a été adoptée sans solliciter la souveraineté populaire, à moins de penser que les sondages d'opinion publique en sont un bon substitut. On peut toujours pardonner l'attitude de John A. Macdonald au siècle dernier. L'homme n'a jamais prétendu être un grand démocrate. Lui qui se targuait d'être le plus monarchiste des Canadiens. Trudeau aimait se réclamer de la démocratie, celle qui faisait faire de grands bonds à l'humanité. La façon dont la constitution de 1982 a été adoptée traduisait un profond scepticisme face à la démocratie. Ainsi,

¹⁶ Guy Laforest, «Réflexions sur la nature du Canada» (novembre 1997) Options politiques 48.

aucune législature provinciale, exceptée celle du Québec, tint un débat sur le nouvel accord constitutionnel¹⁷. En 1865, la barre avait été placée plus haute : des débats se tinrent dans les quatre provinces fondatrices. Bien que critiques à l'égard de la démocratie, Cartier, Brown, Macdonald étaient plus attachés aux libertés parlementaires que les pères de la constitution de 1982.

Cette réforme constitutionnelle a perpétué des tendances oligarchiques datant de l'époque coloniale. Nous avons hérité d'un système de cooptation des élites politiques propre à la métropole de l'empire britannique. Ce système est fondé sur une figure légendaire du parlementarisme britannique : le *placemen*. Dans *The Party System*, Hilaire Belloc et Cecil Chesterton en ont proposé un tableau saisissant :

The Placemen is a historic figure in English politics. [He] ... is the man who enters politics as a profession with the object of obtaining one of the well-paid offices in the Ministry. His mode of operation will necessarily vary according to his talents and temperament. Sometimes he will enter endeavour to earn the gratitude of the governing group by voting steadily according to the dictation of the Whips ... by coming to the rescue of the Ministers, and defending them when their followers prove restive, by always being ready to put down « blocking » motions to prevent the discussion of inconvenient topics, or to move « shelving » amendments or inconvenient motions. Sometimes he plays a bolder game, assumes the airs of an independent member, criticises the Government from time to time, ask inconvenient questions, and makes itself a mild nuisance to the Front Benches and the Whips. But by this sign the mere Placemen may always be known that, though he may ask questions or raise matters slightly inconvenient to his « leaders », he will never hint at existence of things inconvenient to both Front Benches and awkward to the Party

System as a whole, for on this system he proposes to fatten¹⁸.

Les conséquences de ce système sur la politique furent cependant plus graves. L'Angleterre avait, après tout, un vrai roi et une vraie aristocratie. Lord Acton écrivait : « Le pouvoir corrompt, le pouvoir absolu corrompt absolument »¹⁹. Le Canada était en effet moins bien préparé pour résister aux tendances oligarchiques de la politique de masse. Depuis longtemps, ces tendances oligarchiques apparaissent, aux yeux des Canadiens, comme une loi d'airain, contre laquelle on ne peut que baisser les bras. Ainsi, en 1827, paraissait une modeste plaquette démontant les mécanismes de la politique coloniale. Son auteur, qui s'attribua le nom de Loyal canadien, dépeignait les mœurs politiques particulières de ces Canadiens français envoûtés par le lustre de la Couronne. Lisons, pour conclure mon propos, un long extrait de ce très vieux texte, qui nous semble pourtant si familier :

Mais peut-on attendre ces notions de justice de l'homme qui n'a pas la commission de Gouverneur, il est vrai, mais qui, secondé par quelques commis subalternes des bureaux du Conseil et de l'Assemblée, décide en Dictateur de toutes les mesures dont nous sommes les témoins... Beaucoup de bonheur et de succès dans les spéculations du commerce l'ont porté aux premiers rangs de la société, ce qui lui ferait le plus grand honneur, s'il y eut conservé de la modestie de la modération; mais, ce qui rend son orgueil plus insupportable, c'est que sans perdre la rouille de grossièreté d'un balayeur, il est enivré de sa bonne fortune et bouffi de l'arrogance d'un parvenu. Ses vertus patriotiques sont exaltées au point d'être devenu un ridicule. Il est si chaud Britannique que l'apparition, le nom d'un Français, l'usage de sa langue dans une colonie anglaise, lui occasionnent des spasmes convulsifs, et des distorsions de nerfs, semblables à ceux que produit la batterie

¹⁷ Ce ne fut pas le cas en 1865 et 1866.

¹⁸ Hilaire Belloc et Cecil Chesterton, *The Party System*, London, Stephen Swift, 1911, aux pp. 44-45.

¹⁹ John Emerich Acton, *Essays on Freedom and Power*, Boston, The Beacon Press, à la p. 364.

galvanique d'un cadavre. Il est opiniâtre, abondant dans son propre sens, altier et insolent dans son impatience à souffrir la contradiction, au point de s'irriter contre les obstacles que la nature et la justice opposent à ses désirs frénétiques d'innovations, au point de ne pouvoir comprendre que la masse de la population du pays n'est pas à blâmer parce qu'elle ne peut pas empêcher que ses ancêtres aient été Français²⁰.

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²⁰ *Adresse à tous les électeurs du Bas-Canada par un Loyal canadien*, Montréal, Spectateur canadien, 1827. L'auteur de cette brochure est le chef du parti canadien de l'époque, Louis-Joseph Papineau.

CULTURES, LANGUAGES, NATIONS: CONCEPTIONS AND MISCONCEPTIONS*

Kenneth McRoberts

It has become a commonplace that the nation-state is dead — or at least is in mortal danger. Its capacity as a state has been severely eroded by the forces of globalization and regional integration: supra-national organizations and global corporations have assumed powers and prerogatives which, within the nation-state ideal, belong to the state.

But the nation-state has lost more than its state; it has also lost its nation – in part because of these very external forces. Whereas the nation-state ideal presumed that a single national language would prevail throughout its territory, languages with deep historical roots have reappeared within the same state. In some cases, this has involved the revival of long *dormant* languages — as in Wales or Scotland — but in other cases it has meant the return to public space of languages that had been excluded, indeed banned, as was Catalan under the Franco regime. In some settings immigration has served to break the national language's monopoly by reinforcing other languages, as in the United States, where Spanish has gone from being a marginal, and essentially private language, to a major one that is increasingly intruding into the public realm despite the erstwhile efforts of some English-only advocates to keep it out.

The nation-state was supposed to have a single national culture. Yet, virtually all of the self-styled nation-states, whether France or the United States, are increasingly preoccupied with the cultural diversity that manifestly exists among their citizens and are actively debating formulas such as multiculturalism, interculturalism and so on.

Finally, direct challenges to the very title of “nation” have emerged from within nation-states,

whether from indigenous peoples, as in the United States or Mexico, or from longstanding populations which never had accepted the pretensions of nation-state but are now better placed to make their opposition known, such as the Basques or the Catalans.

In short, after dominating so much of recent Western history, the notion that states should be nations and, as such, should have a single language and a single culture, seems to have lost most of its driving force.

For its part, Canada managed to avoid this ill-fated struggle to construct a nation-state — at least until recently. Coming late to the struggle, it has tried to build a nation-state with a difference — one with two national languages. Yet, for all its originality, this effort has been no more successful than the others. Indeed, in the case of Canada it has served to bring the state to the brink of collapse.

Historically, Canada did not qualify as a nation-state and most Canadians seem to have accepted that. Clearly, Canada did not have a single national language. At the time of Confederation in 1867, about 70 percent of the population spoke English and 30 percent French.¹ In the new province of Québec, people of French

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¹ According to the 1871 census, 60.5 percent of Canadians were of British origin, with 3.1 percent of French origin and 8.4 percent from other groups (Charles Castonguay, “The fading Canadian duality” in John Edwards, ed., *Languages in Canada* (Cambridge: Cambridge University Press, 1998) at Table 2.1).

descent constituted about 78 percent of the population.² In the other provinces, they were small minorities: 16 percent in New Brunswick, 4.7 percent in Ontario and 8.5 percent in Nova Scotia.³

At the time, it was also generally recognized that with language came culture. Nor was there much difficulty in identifying the terms of the cultural divide between Anglophones and Francophones. Difference in predominant religion was a good starter, but people had no trouble discerning many other differences as well.

Francophones tended to see themselves as constituting a distinct nation within Canada. Their leaders had adopted the very term in the 1820s, to denote the *nation canadienne*. As Anglophones increasingly appropriated the term ‘Canadian’ for themselves as well, Francophones turned to the idea of a *nation canadienne-française*. Under the clerical and conservative leadership that had become dominant within French Canada by the time of Confederation, there was no question of the *nation canadienne-française* becoming a full-fledged nation-state of its own. Indeed, in the Church’s eyes, states of all kind were quite suspect. But there was also no doubt that Francophones constituted a nation.

For their part, English-speaking Canadians tended to see themselves as members not of a nation within Canada, or even a nation that was coterminous with Canada, but of a much larger entity. They were people of British nationality who were creating a British nation in Canada and were remaining integrally part of the British Empire. In one of Sir John A. Macdonald’s oft-quoted phrases, the new Canada was to be “a British nation, under the British flag and under British institutions.”⁴

Out of these circumstances emerged a political practice and tradition that could accommodate, if not explicitly recognize, these differences. Canada

was not formally binational. Nonetheless, its founding document, the *British North America Act, 1867*,⁵ guaranteed a certain status for French along with English in the federal Parliament and courts, as well as in the province of Québec. Moreover, the principle of federalism was adopted precisely because of the concerns of French-Canadian leaders that the interests of their nation would be subordinated to those of Anglophones who would be the overwhelming majority within the new Canadian government. Indeed, the rhetoric of the time could not have been more explicit as to the importance of federalism to preserving the French-Canadian nationality – to quote *La Minerve*, a leading *Blue* newspaper, “[i]n giving ourselves a complete government we affirm the fact of our existence as a separate *nationality*, as a complete society, endowed with a perfect system of organization.”⁶ Indeed, on the day of the Confederation’s birth, the newspaper declared that “[a]s a distinct and separate nationality, we form a state within the state. We enjoy the full exercise of our rights and the formal recognition of our *national* independence.”⁷ Apparently, the very choice of “Confederation” to denote the new political arrangement was a deliberate attempt to find a term, however misleading, that would placate the desire of French Canadians to enjoy maximum autonomy.

During the early decades of Confederation, the federal principle took root among Anglophone Canadians as well. Political economy and partisan rivalries combined to make the Ontario government a leading champion of provincial rights, especially under the leadership of Premier Oliver Mowat. Mowat joined with Québec premier Honoré Mercier, to organize the first interprovincial conference, held in Québec City in 1887. At the conference, the assembled premiers, who came from all but Conservative-controlled British Columbia and Prince Edward Island, not only called for constitutional changes to limit the federal government’s powers, but celebrated the theory that Canada itself was based on a compact among the several colonies from which it was derived. According to this compact theory,

² Richard J. Joy, *Languages in Conflict* (Toronto: McClelland & Stewart, 1972) at 91.

³ See Richard J. Joy, *Canada’s Official Languages: The Progress of Bilingualism* (Toronto: University of Toronto Press, 1992) at 71, 93 and *ibid.* at 77.

⁴ As quoted in P.B. Waite, *The Life and Times of Confederation, 1864-1867*, 2d ed. (Toronto: University of Toronto Press, 1962) at 22.

⁵ (U.K.), 30 & 31 Vict., c. 3.

⁶ As quoted in A. I. Silver, *The French-Canadian Idea of Confederation, 1864-1900* (Toronto: University of Toronto Press, 1982) at 41 [emphasis added].

⁷ *Ibid.*

developed by the Québec judge T. J. J. Loranger, the constitution could not be changed without the consent of all the successors to the original colonies, the provincial governments.⁸ By the end of the nineteenth century, virtually all prominent politicians, Anglophone as well as Francophone, endorsed the compact theory of Canada.

For Francophones, however, the notion of provincial rights was a double-edged sword. In the hands of Anglophone-dominated provincial governments, it could be used to legitimize actions that suppressed the linguistic rights of their Francophone minorities. Indeed, during the first few decades, most provincial governments, other than Québec, acted in precisely this fashion. Accordingly, at the turn of the century a leading French-Canadian nationalist, Henri Bourassa, developed a new version of the compact theory of Canada. According to Bourassa, there was a *double compact*: a *political* contract among the colonies and their provincial successors, and a *national* contract between the Anglophones and Francophones.⁹ While this national contract had originated in the United Canadas, Bourassa argued that it extended throughout the new Canada, including the new territories to the West. For Bourassa, this second contract did not replace the one among the provinces. The province of Québec had a special importance as the “particular inheritance” of French Canadians. The two contracts were to remain together in an uneasy co-existence.

To be sure, there was a tension here. English Canadians subscribed only to the first notion of a compact, namely the one among provinces, and had little patience for the notion of a compact between French and English, assuming that they had even heard of it. French-Canadian attachment to the notion of a compact among the provinces was essentially focussed on the province of Québec. Québec’s autonomy was precious, not

simply because it was a successor to one of the British colonies, but because it was the heart of French Canada. It continued to be the only province with a French-Canadian majority. In the words of *La Minerve*, it was the home of a “separate nationality.”¹⁰

Nonetheless, neither notion of a compact, whether it was among colonies or between nationalities, was compatible with the idea of a nation-state. English Canadians may have rejected the idea of a binational Canada, but as long as they understood Canada to be a compact among all the provinces, the federal government could not be the state of a Canadian nation. It was simply “the federal government,” or maybe the “Dominion government,” but not the “national government.”

External developments, most particularly the experience of two world wars, led Anglophone Canadians to begin to develop the notion of a Canadian “nation” that was not simply a projection of a British nationality. Moreover, in the wake of the Second World War, the federal government began to present itself as a “national” government, undertaking a series of measures, such as the creation of the Canada Council, to support the development of a “national” culture. It also created a welfare state to ensure that all Canadians, as members of the Canadian nation, would enjoy certain basic services whatever may be their province of residence.

Yet, these notions did not take in Québec. During the two wars, most French Canadians resisted the notion of conscription for overseas service, seeing in it a continued subservience to Britain. Moreover, the federal government’s post-war intrusions into provincial jurisdiction, in the name of the Canadian nation, were stoutly resisted by the Duplessis government with the clear or grudging support of most of the French-Canadian political and intellectual leadership.

With Québec’s Quiet Revolution in the 1960s, pressures developed for a much more explicit recognition of the original notions of Canada as a compact, both between Anglophone and Francophone nations but also among the provinces, or at least with the Province of Québec.

⁸ T. J. J. Loranger, *Letters Upon the Interpretation of the Federal Constitution Known as the British North America Act, (1867)* (Quebec City: printed at the *Morning Chronicle* office, 1884). See also R. Cook, *Provincial Autonomy, Minority Rights and the Compact Theory, 1867-1921* (Ottawa: Queen’s Printer, 1969) at 29-31.

⁹ Henri Bourassa, *Le Patriotisme canadien-français: ce qu'il est, ce qu'il doit être: discours prononcé au Monument National, le 27 avril 1902* (Montreal: CIE de Publication de la Revue canadienne, 1902) at 8, as translated and quoted in R. Cook, *ibid.* at 57.

¹⁰ *Supra* note 6.

Within French Québec, an old middle class of liberal professionals, coupled with the clergy, had lost hegemony to a new middle class of salaried professionals. This new middle class had arisen largely from within Church-related organizations that continued to provide education and social services to Québec's Francophones. During the 1950s, this class was leading the call for an expansion in the functions of the Québec government to raise the general welfare of Francophones but also to open up opportunities for Francophones in the Québec economy, where ownership was largely in English-Canadian and American hands and management positions tended to be held by Anglophones. Joining them were leaders of Québec's union movement, especially the Confédération des travailleurs catholiques du Canada (CTCC), which was largely restricted to Québec Francophone workers. With the election of the Liberal Party under Jean Lesage in June 1960, the new Francophone middle class was able to exercise a new influence within the Québec government. Indeed, rapid expansion of the Québec state provided a new base for its members. For its part, the CTCC had become the Confédération des syndicats nationaux (CSN), and it pushed the Lesage government into a reformist direction with considerable success.

Out of these processes, the old idea of a French-Canadian nation was soon replaced with the idea of the nation of Québec. Only in Québec, it was argued, was there a Francophone majority. Thus, only in Québec could a modern society function fully in French. The continued assimilation of Francophones outside Québec was proof of that. The Québec provincial government would have to be a "national" government — indeed, the state of the Québec nation.

Starting in the 1960s, young Francophones began to view themselves not as French Canadian, let alone simply Canadian, but as Québécois. Yet, they were not exclusively Québécois either. There was too much of a common past for that. Even now, most Québec Francophones see themselves as Canadian, but as a secondary and more purely political identity. Their *national* identity is as Québécois.

During the 1960s, the federal political leadership sought to find formulae and approaches

to accommodate this national affirmation in Québec. In the course of this decade, leaders of all three parties explicitly recognized the presence of a Québécois or Francophone nation within Canada and approved measures, such as an asymmetrical federalism, to accommodate the desires of the Québec government, as a national government, to assume responsibilities that were exercised by the federal government in the rest of Canada.

Moreover, the Liberal government of Lester Pearson established a commission, the Royal Commission on Bilingualism and Biculturalism, with a mandate to "report on the existing state of bilingualism and biculturalism in Canada and to recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races ["peuples fondateurs"], taking account of the contribution made by other ethnic groups to the cultural enrichment of Canada."¹¹

Now, three decades later, the Commission has been largely forgotten. Yet, it seems to me that in its report the Commission offered an understanding of Canada in which especially language, but also culture, is properly situated within its social context. The vision that emerges is not that of a nation-state but of a Canada which is indeed truly bilingual and bicultural. I believe that much of Canada's present-day difficulty stems from the failure to appreciate the Commission's insights and to seek to render language and culture compatible with the goal of a single Canadian nation.

The Commission's structure closely reflected its mandate to explore Canada's linguistic and cultural duality. It had co-chairs, an Anglophone and a Francophone. The latter, André Laurendeau, was the leading French-Canadian journalist of the time and a major figure within French-Canadian nationalist circles. Laurendeau was the spiritual leader of the commission. Indeed, his conception of language, culture and Canada largely shaped the Commission's deliberations. The committee had eight other members, four Anglophones and four Francophones. It must be said that only two

¹¹ Canada, Royal Commission on Bilingualism and Biculturalism, *Preliminary Report* (Ottawa: Queen's Printer, 1965) at 151.

members were of non-British, not-French origin — once again, one was mainly Anglophones and the other was mainly Francophone.

At the beginning of the first Book of its Report, in several pages called “the blue pages” in which it outlined how it intended to interpret its mandate, the Commission succinctly presented its vision of Canada. There, the Commission was very clear that bilingualism was a state that existed in Canada as a whole, not with individual Canadians, stating that “[w]e know that complete bilingualism — the equal command of two languages — is rare and perhaps impossible.”¹² Thus, if Canada is bilingual it is because it contains within it two linguistic communities. Nor is it the responsibility of the Canadian government to propagate individual bilingualism because “if everyone in a bilingual state becomes completely bilingual, one of the languages is rendered superfluous” and will disappear.¹³ Thus, in interpreting its mandate to enquire into the state of bilingualism in Canada, the Commission focussed not on individual bilingualism but the state of English and French “each being considered by itself” since “the question of the life and vigour of each language must have priority.”¹⁴ And, of course, it found that French was the language whose “life and vigour” was deficient in much of Canada. And while it was concerned with the strength of Francophone communities throughout Canada, the Commission fully recognized that Francophone life was largely concentrated in Québec. Indeed it declared that it recognized “the main elements of a distinct French-speaking society in Québec.”¹⁵

On this basis, the Commission recommended that the *de facto* equality of English and French that then existed in Québec’s political institutions should be made the formal model for two other provinces, Ontario and New Brunswick, but *only* those provinces. Otherwise, it proposed that within provinces particular census tracts, characterized by a significant presence of

members of the official-language minority, should be declared bilingual districts. Moreover, when it came to looking at the language practices in the work place the Commission recommended that *in Québec* “the principal language of work” should be French.¹⁶

Similarly, within the federal public service, it recommended the creation of French-language units which would operate primarily in French. In other words, a bilingual public service would depend not on individual bilingualism but institutional bilingualism.

Similar to a conception of bilingualism that rested on two linked linguistic communities was the Commission’s conception of biculturalism. Once again, Canada as a whole was bicultural, not individual Canadians. Indeed, individual biculturalism would amount to a person “having two personalities or two styles of living at the same time” a condition that the Commission saw as rare and also quite unhealthy.¹⁷ Thus, Canada contained “two dominant cultures … embodied in distinct societies.”¹⁸ At the same time, the Commission insisted that these two societies, and cultures, must be open and should welcome newcomers. For this reason, it was very careful to avoid the term “ethnicity.” At the same time, if only for tactical reasons, the Commission generally eschewed the term “nation.” Thus, Québec was the site of a “distinct society.”¹⁹

Despite the Commission’s insistence that its conception of biculturalism did not involve any notions of ethnicity, the Commission encountered some fierce opposition to biculturalism – primarily from Ukrainian-Canadian leaders who contended that biculturalism relegated them to second-class status. Nonetheless, to the very end of their deliberations, the Commissioners remained firmly committed to their bicultural view of Canada. This is true of Book IV, entitled *The Cultural Contribution of the Other Ethnic Groups*.²⁰ Even commissioner Rudnyckji, who had proposed

¹² Canada, Royal Commission on Bilingualism and Biculturalism, *General Introduction* (Ottawa: Queen’s Printer, 1967) at xxviii.

¹³ Canada, Royal Commission on Bilingualism and Biculturalism, *Book I: The Official Languages* (Ottawa: Queen’s Printer, 1967) at 12.

¹⁴ *Supra* note 12 at xxviii.

¹⁵ *Ibid.* at xxiii.

¹⁶ Canada, Royal Commission on Bilingualism and Biculturalism, *Book III: The Work World* (Ottawa: Queen’s Printer, 1966) at 559.

¹⁷ *Supra* note 12 at xxxi.

¹⁸ *Ibid.* at xxxiii.

¹⁹ *Ibid.*

²⁰ Canada, Royal Commission on Bilingualism and Biculturalism, *Book IV: The Cultural Contribution of the Other Ethnic Groups* (Ottawa: Queen’s Printer, 1970).

national status for third languages in particular regions, shared in that consensus.²¹

Having squarely rooted both language and culture with communities, rather than individuals, the Commission offered an expansive interpretation of the other key term in its mandate: “equal partnership.” Since “language and cultures are essentially collective phenomena,”²² the Commission argued, equality between language and cultures can exist only if there is equality between the communities in which they are located. Laurendeau wanted to take the Commission one step further: the centrality of Québec to the Francophone community meant that “equal partnership” had to extend to the relationship between Québec and the rest of Canada and thus had to be addressed through change in Canada’s political institutions and in their constitutional framework.²³ But he could not create a consensus on this point within the Commission.

On the other hand, Québec politicians, both in the Québec provincial government and in the federal cabinet itself, did make the argument that, as the site of a “distinct society” or even nation, Québec should assume a different or even special status within Canadian federalism. Prime Minister Pearson himself referred publicly to Québec as “a nation within a nation”²⁴ and applied broadly a scheme of “opting out,” a distinctly Canadian creation whereby Québec could abstain from participating in federal-provincial programs, and even some exclusively federal programs. It would maintain its own programs, while the federal funds that it would otherwise have received would, typically, be secured through enhanced “tax room.” Invariably, the same arrangement was made available to the other provinces, and invariably to did not take advantage of it. The New Democratic Party formally approved such arrangements, having already recognized at its founding convention that federalism is “the only system that can assure the joint development of the two nations which originally joined together to

create Canadian society, as well as the development of other ethic groups in Canada.”²⁵

Still, however much it eschewed the term “nation,” it was the Commission that offered a comprehensive understanding of Canada’s underlying social reality. The Commission confronted Canada’s underlying linguistic, cultural and national duality in a way that had never been done before – and has never been done since.

However well-founded may have been its vision of Canada, several factors worked against the Commission. Division among the Commissioners over the constitutional question prevented the Commission from ever addressing the matter. Instead, after repeated and inconclusive discussions, the Commission finally ran out of time and ended its operations in January 1971 without a final book spelling out its conclusions. But the Commission was also severely weakened by the sudden death of Laurendeau in 1966. Finally, and most important of all, by 1968 Canadians were presented with another vision of Canada that radically differed from the Commission’s yet came from within Québec – under the leadership of Pierre Elliott Trudeau. For many Anglophone Canadians, the confrontation with Canada’s cultural and linguistic duality, and especially its national duality, had been painful. It collided with the sense of a Canadian nation that had been slowly emerging over the post-war years. With Trudeau they did not have to abandon that idea. In April of 1968, Trudeau won the Liberal Party leadership and became Prime Minister. Three months later, in a federal election, the Trudeau Liberals won a strong parliamentary majority, including the overwhelming majority of Québec seats.

During the 1950s and 1960s, in a remarkable body of essays and pamphlets, Trudeau articulated a quite coherent vision of Canada, as he wanted it to be. A central theme was the rejection of nationalism, indeed the promotion of any collectivity, in favour of the celebration of the individual. The nationalism of the sociological nation was fiercely rejected – it bred intolerance

²¹ See Kenneth McRoberts, *Misconceiving Canada: The Struggle for National Unity* (Don Mills, ON: Oxford University Press, 1997) at 123.

²² *Supra* note 12 at xxxix-xliii.

²³ *Supra* note 11.

²⁴ Peter C. Newman, *The Distemper of Our Times* (Toronto: McClelland & Stewart, 1968) at 320.

²⁵ A. Lamoureux, *Le NDP et le Québec, 1958-1985* (Montréal: Les Éditions du Parc, 1985) at 116, translated in McRoberts, *supra* note 21 at 290.

and fascism. But in some of his writing Trudeau also took on the nationalism of the state. It too could be irrational and dangerous. The nation and state should be kept separate he argued. Citing Lord Acton, he celebrated the state that contained several nations precisely because the nationalism of such a state would be counter-productive, legitimizing the separate nationalisms of the several nations within the state. In one passage he even talked of Canada as a “multinational state.”²⁶

As Prime Minister, Trudeau remained firm in his rejection of the nationalism of the sociological nation, especially if it were the Québec nation. But with time, little remained of his opposition to *state* nationalism, including that of the Canadian state. Indeed, as Prime Minister he pursued with determination and energy a vision of Canada that was clearly rooted in the idea of a Canadian nation-state. Canada was at last to become one nation. Ultimately, Trudeau was prepared to sacrifice even federalism to that ideal. Language and culture had to be made compatible with the idea of a single nation. In the process, the Commission’s understanding of Canada had to go. Bilingualism was radically reconceived. Biculturalism was discarded altogether.

Trudeau was relentless in his struggle to entrench bilingualism and language reform. However, the underlying rationale for his reforms was light years away from that of the Commission. In effect, he defined Canada’s linguistic duality in terms which he found more amenable, but which were sociologically problematic.

For Trudeau, language policy, as everything else, had to be framed in terms of the individual. The issue was one of whether Canadians, indeed all Canadians, could choose between the two languages when it came to dealing with the state and whether, as elected representatives, they could use it in the legislature. And the logic applied not just to the federal government, but to all the provincial governments as well. By the same token, a bilingual Canada was one in which

individuals were themselves bilingual. Being able to function in both English and French stood as the quintessential Canadian experience. The issue was not one of the health and development of two linguistically-defined *communities*. As Trudeau declared at the Senate hearings on the Meech Lake Accord,

Bilingualism unites people; dualism divides them. Bilingualism means you can speak to the other; duality means you can live in one language and the rest of Canada will live in another language, and we will all be good friends, which is what Mr. [René] Lévesque always wanted.²⁷

Beyond a strong normative commitment to individual rights and individual choice, Trudeau’s vision of language and language policy for Canada was also shaped by his political agenda of undermining the claims of Québec nationalism. This too was a compelling reason to conceive language rights on a pan-Canadian basis and pursue a bilingualism that went from “coast to coast.” As Trudeau declared in 1968, if minority language rights are entrenched throughout Canada then “the French-Canadian nation” would stretch from Maillardville in B.C. to the Acadian community on the Atlantic Coast:

Once you have done that, Quebec cannot say it alone speaks for French Canadians. ... Mr. Robarts will be speaking for French Canadians in Ontario, Mr. Robichaud will be speaking for French Canadians in New Brunswick, Mr. Thatcher will speak for French Canadians in Saskatchewan, and Mr. Pearson will be speaking for all French Canadians. Nobody will be able to say, “I need more power because I speak for the French-Canadian nation.”²⁸

On this basis, the federal government adopted the *Official Languages Act* in 1969,²⁹ which outlined a variety of services that Canadians might receive from the federal government wherever

²⁶ Pierre Elliott Trudeau, “New Treason of the Intellectuals” *Cité libre*, as reproduced in Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan, 1968) at 164.

²⁷ *Senate Debates* (30 March 1988) at 2993 (Hon. Pierre E. Trudeau).

²⁸ George Radawski, *Trudeau* (Scarborough, ON: Macmillan – NAL, 1978) at 286.

²⁹ S.C. 1968-69, c. 54.

they might be located. The *Act* also contained provisions for the Official Language Districts that the Commission had contemplated, but these were never put into effect. By the same token, the federal government strongly encouraged all provincial governments to adopt official bilingualism. Thus, the ill-fated Victoria Charter of 1971, a constitutional package that was abandoned because it did not have the approval of Québec, contained a set of language rights which were designed to apply to all provincial governments should they opt for this. The *Charter of Rights and Freedoms*,³⁰ adopted in 1982, guarantees in s. 23 the right of parents whose language is the minority language in a province to have their children educated in that language in public schools. In the early 1970s, the Trudeau government established a program of transfers to the provincial governments to fund minority-language education.

At the same time, the Trudeau government became heavily involved in encouraging personal bilingualism, in particular by providing extensive funding for second language education. By 1990-1991, Ottawa was transferring close to \$82 million to the provincial governments to support second-language education. Central to this effort was the phenomenon of French-language immersion schools. Beyond supporting immersion education, the federal government heavily funded the organization which spearheaded support for immersion schools, *Canadian Parents for French*.

During the 1970s, the Trudeau government did develop a program of support for Francophone minority communities outside Québec, as well as the Anglophone community of Québec. Yet, when it came to framing the right to minority-language education in the *Charter*, the government was content to guarantee the right of parents to choose such an education for their children without too much concern over whether minority communities could effectively control the institutions that provided the education.

Ultimately, the federal government's language reforms have been quite successful in terms of the

notion of bilingualism that was dear to Trudeau: personal bilingualism. Within the Canadian population as a whole, bilingualism went from 13 percent in 1971 to 17.7 percent in 2001.³¹ Bilingualism is especially high among recent graduates of secondary schools: 14.7 percent among Anglophones outside Québec aged 15-19.³² Similarly, among Québec Francophones bilingualism went from 28.7 percent in 1981 to 36.6 percent in 2001.³³ Of course, these results are based on simple declarations; they are not directly verified.

On the other hand, the Francophone community, which had been the primary concern of the Commission when it examined Canadian bilingualism, has continued its longstanding decline. Within Canada as a whole, the proportion of the population speaking French as its first or primary language has fallen from 25.7 percent in 1971 to 22 percent in 2001.³⁴ More to the point, outside Québec the number of individuals using French as their home language has declined from 675,920 in 1971 to 612,895 in 2001.³⁵ Indeed, the proportion of people of French mother tongue who do not use it at home has risen from 27 percent in 1971 to 39.4 percent in 2001.³⁶

In short, extending the formal right of individuals to choose between languages, and even increasing the number of individuals with a certain knowledge of the second language, do not in themselves assure the survival and development of a community of people who function primarily in that language. By that standard, Canadian bilingualism has declined.

When it came to the Commission's other notion, biculturalism, Trudeau and his associates did not simply redefine it as they did with bilingualism, they supplanted it with something very different. As I have already noted, biculturalism did stir up a certain opposition

³¹ Statistics Canada, *Profile of Languages in Canada: English, French and Many Others* (2001 Census: analysis series) (Ottawa: Statistics Canada, 2002) at 13, online: Statistics Canada <<http://www12.statcan.ca/english/census01/Products/Analytic/companion/lang/pdf/96F0030XIE2001005.pdf>>.

³² *Ibid.*

³³ *Ibid.* at 14.

³⁴ *Ibid.* at 28.

³⁵ *Ibid.*

³⁶ *Ibid.* at 31.

among some groups of neither British nor French descent. Yet, it is also clear that Trudeau had his own concerns about biculturalism. Simply put, he feared that, especially as it had been interpreted by the Commission, biculturalism might in fact serve to insinuate the idea of two nations. And to that he was very much opposed. He said as much in a mid-1960s *Cité libre* article that he co-authored, responding to the Commission's Preliminary Report with a withering critique of its notion of biculturalism.³⁷

Instead, the Trudeau government opted for "multiculturalism." In announcing his government's new policy of multiculturalism, in 1971, Trudeau was very clear as to what he was rejecting: "biculturalism does not properly describe our society; multiculturalism is more accurate."³⁸ Indeed, even in presenting multiculturalism, Trudeau managed to do so in terms that reflected his own commitment to the individual, dwelling less on the policy's first principle of supporting cultural groups and more on its second principle of assisting *members* of cultural groups to overcome barriers to their personal participation in Canadian society with the declaration that the policy "is basically the conscious support of individual freedom of choice."³⁹

Clearly, the vision of multicultural society is a generous one. Canadian multicultural policy has been rightly regarded as an important innovation worthy of study by international scholars and policy-makers. At the same time, it has had its critics. In its early years, Canadian multicultural policy tended to reflect the preoccupations of those who had championed it: largely white, second- and third-generation Canadians of non-British, non-French descent. For them, multiculturalism was about preserving cultures through support of folklore and cultural activities. This in turn, engendered a certain public criticism. Subsequently, the policy has focussed more on problems of economic and social discrimination, especially among the growing numbers of "visible minorities." But in the public mind, the original focus — cultural preservation — seems to have

stuck — and provides a continuing basis for criticism.

As a general statement about Canadian society, whatever the specific policy thrust, multiculturalism does pose some problems. There is the matter of combining bilingualism, or the recognition of two official languages, with the recognition, and indeed promotion, of an infinite number of cultures. First, why should the languages of other cultures also not be recognized and promoted? Indeed, the federal government has been drawn into maintaining programs for the "non-official languages." But, second, does this mean that there is no overarching culture associated with each of the two official languages? Are Francophones and Anglophones indeed no more than groups of individuals who happen to speak different languages — in other words, English-speaking Canadians and French-speaking Canadians? Predictably, the reaction among intellectual and political leaders in Québec, whether Robert Bourassa, Claude Ryan or Guy Rocher, was that the deliberate rejection of biculturalism in favour of multiculturalism did indeed serve to deny the existence of a Francophone culture and society, and that this may have been the primary intent.

In retrospect, one might argue that the notion of a bicultural Canada was doomed, a mere artifact of the 1960s. For most Canadians, biculturalism was inescapably wedded to the idea of two founding peoples, however much the Commission may have wished to present it otherwise. Inevitably, then, biculturalism would be unacceptable in contemporary Canada, given the radical changes that have taken place in its demography thanks to immigration from so many parts of the world. Yet, based upon a projection in time back over several decades, such a line of argument may miss the effect of multicultural policy itself.

The fact of the matter is that, during the 1960s, opposition to biculturalism in favour of multiculturalism was quite concentrated. Ukrainian-Canadian leaders were vigorously opposed but leaders of other groups, such as German-Canadian and Italian-Canadians, were not. It is far from clear that the Trudeau

³⁷ See McRoberts, *supra* note 21 at 308.

³⁸ *House of Commons Debates* (8 October 1971) at 8581 (Hon. Pierre E. Trudeau).

³⁹ *Ibid.* at 8546 (Hon. Pierre E. Trudeau).

government had to reject biculturalism, unless it had reasons of its own for doing so. At the same time, once the federal government did adopt multiculturalism, and proceeded to define Canada in these terms, bilingual but multicultural, then it gave official sanction to the contention that the concept of biculturalism was ethnically based on two founding peoples.

Within a bicultural vision of Canada, the federal government could still have developed its programs to support the cultural activities of a wide range of groups. The Commission had recommended as much. And there would have been no difficulty in pursuing what has in any event become the primary focus of federal multicultural policy: the elimination of racial and ethnic barriers to mobility.

Indeed, whatever may be the official definition of Canada, the fact remains that it is still profoundly bicultural. Like it or not, the Canadian reality is still one of two societies: an Anglophone one centered outside Québec and a Francophone centered in Québec. However ethnically and racially diverse these two societies may have become, especially the Anglophone one, and however much their cultural frameworks have been adapted through negotiations with new populations, they still persist as distinct entities. In terms of media, popular culture and the structures of civil society, Canada arguably has become even more bicultural. Anglophone Canadians may denote their society as simply “Canada,” rather than English Canada or even English-speaking Canada; Francophones in Québec may see their society as simply “Québec.” The fact remains that Canada continues to house two overarching cultures and societies.

Finally, when it came to the notion that there should be political recognition and accommodation of the nationalism of *nations* within Canada, the Trudeau government’s attitude was straightforward — in terms of Canada’s political institutions there could be only one nation, the Canadian nation. In particular, there was no tolerance for the Québec government’s contention that within its jurisdictions *it* represented a nation, whether it be the French-Canadian nation or the Québec nation. This was,

of course, the traditional understanding of the role of the Québec government. Back at Confederation, French-Canadian leaders saw the purpose of the Québec government in precisely these terms, as is evidenced by the quotations from *la Minerve*. It was for this reason that they had insisted that the new British North America had to be federal. This understanding of the role of the Québec government was compatible with the notion of a Canada based on a compact. It had no place in a Canada that was a nation-state.

Indeed, Trudeau’s personal determination to remake Canada as a nation-state was so strong that he was prepared to discard even the principle of federalism itself. In a speech of major portent that Trudeau made to Parliament in early 1980, he declared that

We [the Members of Parliament] are the only group of men and women in this country who can speak for every Canadian. We are the only group, the only assembly in this country, which can speak for the whole nation, which can express the national will and the national interest.⁴⁰

He even went so far as to proclaim it a good thing that the Fathers of Confederation had given the powers of disallowance and reservation to the federal government so that it could intervene against a province that was acting “contrary to the national interest.”⁴¹ After all, “when there is a conflict of interest, not of laws, which will be judged by the courts, the citizens must be convinced that there is a national government which will speak for the national interest and will ensure that it does prevail.”⁴² And he repeatedly used the same reasoning to justify repatriating the constitution without the consent of the Québec provincial legislature — or indeed without a majority of all the provinces.

Within such an understanding of Canada there was, of course, no reason why the federal government should not seek to patriate the constitution, augmented by a bill of rights, without

⁴⁰ *House of Commons Debates* (15 April 1980) at 32 (Hon. Pierre E. Trudeau).

⁴¹ *Ibid.* at 33 (Hon. Pierre E. Trudeau).

⁴² *Ibid.*

the approval of the provincial governments, as the Trudeau government threatened to do, or over the objection of Québec alone, as it did do.

Thanks in part to the Trudeau constitutional reforms of 1982, the discourse of Canada as a nation-state has become dominant. It may be systematically rejected in Québec, by federalists and sovereigntists alike, but it has the overwhelming support of Canadians in the rest of the country.

The fact of the matter is that this notion of a Canadian nation-state has had a powerful appeal to English-speaking Canadians. By the mid-twentieth century, the old idea of Canada as a British nation, integrally linked to the Commonwealth if not the Empire, had lost all credibility. The post-war rise of the United States to world hegemony had sharpened concern over American economic and cultural domination. As Anglophone Canadians cast about for a new conception of Canada, the Trudeau vision of a bilingual, multicultural nation had much to commend it. Bilingualism and multiculturalism distinguished Canada from its “melting pot” southern neighbour — at least at the level of national myths. And it promised to integrate Québec Francophones with the rest of Canada to form a single nation.

It may be that the notion of a “bilingual nation” is inherently problematic. After all, the concept of nation stresses commonality and shared experience but differences in language imply quite the opposite. Nor can they be readily resolved through personal bilingualism. To define bilingualism as the quintessential national experience would be to restrict it to a restricted stratum of the nation. Beyond that, as the Commission recognized, two or more languages within the same state will tend to be concentrated in territorially defined centres of dominance. Indeed, their survival depends on such segregation. Yet, this requirement of territorial division is bound to pose problems for national unity. Beyond fostering attachments to regions rather than the nation as a whole, it can hinder mobility within the nation. Nonetheless, Canada’s linguistic duality was too important to be denied.

If Canada is to be a nation, then it would have to be as a bilingual one.

Yet, while the dominant Canadian political discourse has moved to the nation-state model, the underlying social and cultural reality of Canada has, if anything, moved in the opposite direction. While personal bilingualism may have increased, thanks in particular to the federal government’s support French immersion, Canada’s two linguistic communities have in fact become more territorially distinct. As measured by the language normally used at home, French speakers’ share of the total population outside Québec declined from 4.4 percent in 1971 to 2.7 percent in 2001.⁴³ They now represent less than 3 percent of the populations of all provinces but Québec and New Brunswick.⁴⁴ Paralleling the decline of the Francophone minorities has been the decline of the single Anglophone minority, that of Québec. From 14.7 percent of Québec’s population in 1971, Anglophones had fallen to 10.5 percent in 2001.⁴⁵ Here, out migration has been the primary cause.

By the same token, while Anglophone Canadians have become firmly wedded to the idea of a Canadian nation, Québec Francophones have become more and more attached to the notion of a Québec one. By 1990, the overwhelming majority of Québec Francophones, 59 percent, identified themselves as “Québécois”; in 1970, only 21 percent had done so.⁴⁶ And the proportion seeing themselves as Canadians had fallen to 9 percent, from 34 percent in 1970.⁴⁷

Beyond that, over the last two decades a new idea of nationhood has emerged, that of the “First Nations,” among Canada’s Aboriginal Peoples. This has served to raise in a new context the very same issues of accommodating national identities and national needs within a common state. Once again, the ideal of a Canadian nation-state has been placed in question.

⁴³ *Supra* note 31 at 28.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* at 27.

⁴⁶ Maurice Pinard, “The Dramatic Reemergence of the Quebec Independence Movement” (1992) 45:2 *Journal of International Affairs* 471, at Table 3.

⁴⁷ “Portrait des Québécois” *L’actualité* 16:1 (January 1991) 13 at 13-16.

In short, over the last three decades, Canada has been more and more caught up in the contradiction between the discourse and political institutions of a nation-state and the cultural and social reality of a multi-national state.

Out of this contradiction came the debacle of the Meech Lake Accord. A modest set of changes designed to secure Québec's adherence to the new Canadian constitution, the Accord mainly would have formalized practices and arrangements there were already in effect. But it also contained a clause declaring the Québec constituted a "distinct society" — the very phrase that the Commission on Bilingualism and Biculturalism had formulated. But in the Canada of the late 1980s, this term was no longer acceptable. It conflicted with the new idea of a Canadian nation-state that most Anglophone Canadians had come to accept — and they massively rejected the Accord. The collapse of the Meech Lake Accord in turn produced a profound reaction among Québec Francophones, who saw English-Canadian rejection of the Accord as a rejection of their own existence as a distinct collectivity within Canada. As a result, support for Québec sovereignty surged dramatically, reaching over 60 percent of all Québeckers. This profound sense of rejection in turn largely explains how in 1995 the Québec government came so incredibly close to securing a "Yes" vote in its referendum on Québec sovereignty.

So, Canada is more than ever a multi-national state in terms of its underlying social and cultural reality. Yet, it is also more than ever a nation-state in its dominant discourse and political institutions. As a result of this contradiction, political debate in Canada remains fixated on Québec sovereignty or independence — the political option that is clearly desired by neither the majority of Québeckers nor the majority of the rest of Canada. Nor are First Nations seeking full sovereignty.

The fact remains that in the 1960s, and over subsequent decades, Canada has produced some very promising theorizations about accommodating linguistic and cultural diversity. As well, it has experimented with some innovative political practices such as asymmetrical

federalism. Perhaps Canadians might yet abandon the illusions of the nation-state.

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CANADA: MODÈLE D'ÉTAT MULTICULTUREL POUR LE MONDE?

Claude Couture

Après l'échec de l'Accord du Lac Meech¹ en 1990, le gouvernement conservateur de l'époque mit sur pied une vaste consultation populaire pour mieux comprendre l'opinion des Canadiens au sujet des réformes constitutionnelles. *Le Forum des citoyens*², présidé par Keith Spicer, rencontra près de 400 000 Canadiens, visita 42 universités et collèges, reçut 10 000 lettres et 75 000 appels téléphoniques. Au Québec, lancée en décembre 1990, la commission Bélanger-Campeau reçut 200 mémoires et 600 soumissions³. D'autres formes de consultations furent organisées. Par exemple, toujours en décembre 1990, le sous-comité conjoint Sénat-Chambre des communes sur la formule d'amendement à la Constitution commença ses travaux un mois avant la présentation du rapport Allaire au Québec en janvier 1991. En septembre de la même année, le Comité parlementaire sur la Constitution de Dorothy Dobbie et Claude Castonguay (remplacé par Gérard Beaudoin) fut aussi formé et soumis un rapport le 28 février 1992⁴. Toutes ces consultations menèrent aux longues négociations de 1992 et finalement à l'Accord de

Charlottetown⁵ de juillet–août 1992. D'une certaine façon, aucun autre pays du monde occidental ne fut ainsi mobilisé de façon démocratique et non violente pour en arriver à un nouveau contrat constitutionnel. Les principales dimensions de ces discussions de 1990 à 1992 avaient été la question des relations anglophones-francophones, la reconnaissance des Premières Nations et la place du multiculturalisme. Aussi, aucun autre pays du monde occidental n'a été aussi loin dans la représentation symbolique de ces dimensions dans ses institutions constitutionnelles. En ce sens, le multiculturalisme canadien, qui ne peut être séparé des autres dimensions, est unique. Pour expliquer ce phénomène, nous proposons un texte en trois parties : d'abord un rappel du contexte créé pour les institutions de l'ère Trudeau; ensuite un résumé des débats américains et canadiens sur les origines idéologiques du Canada et, en particulier, l'apport récent dans ce débat de l'historien Gérard Bouchard; enfin, selon la perspective de ces débats, il sera proposé une interprétation du processus menant à Charlottetown et de la *clause Canada* de l'accord de 1992, deux indices qui montrent le caractère unique de la reconnaissance de la diversité au Canada.

LE CONTEXTE

Meech et Charlottetown ont été dans le prolongement direct des questions sans réponses laissées par les institutions de 1982. Ces

¹ 3 juin 1987 (texte juridique signé par les premiers ministres à Langevin Block, Ottawa), en ligne: UNI <<http://www.uni.ca/meech.html>>.

² Le Forum des citoyens sur l'avenir du Canada, *Rapport à la population et au gouvernement du Canada*, Ottawa, Approvisionnements et Services Canada, 1991.

³ Ottawa, *Les rapports Bélanger-Campeau et Allaire*, Bibliothèque du Parlement, Service de recherche, BP-257F, 1991.

⁴ *Un Canada renouvelé : rapport du Comité mixte spécial du Sénat et de la Chambre des communes*, Ottawa, Imprimeur de la Reine, 1992.

⁵ Voir en ligne: le Gouvernement du Canada <http://www.pco-bcp.gc.ca/aia/default.asp?Language=F&Page=consfile&Sub=TheHistoryofConstitution&Doc=charlottetown_f.htm>.

institutions, la *Charte*⁶ en particulier, avaient en effet été instaurées au nom d'une logique des droits individuels, alors qu'en fait, les principales dimensions de la *Charte* reposaient sur un équilibre complexe entre les droits individuels et les droits collectifs. Il importe donc de rappeler brièvement le contexte de ces principales dimensions et leur ambiguïté⁷.

LA LOI SUR LES LANGUES OFFICIELLES

La question linguistique fut évidemment récurrente dans l'histoire du Canada. Dès 1839, dans son célèbre rapport, Lord Durham avait conclu à l'impossibilité d'une cohabitation de deux communautés linguistiques au sein d'un même État⁸. Ainsi, dans l'*Acte d'Union, 1840*⁹, l'article 41 stipulait l'unilinguisme anglais à la Législature. Toutefois, la victoire des réformistes de Lafontaine-Baldwin et l'obtention du gouvernement responsable en 1848 furent deux facteurs qui eurent comme résultat l'abrogation de cet article et la reconnaissance subséquente du français. Plus tard, l'article 133 de la *Loi constitutionnelle de 1867*¹⁰ garantissait l'égalité du français et de l'anglais en ce qui concernait les activités du Parlement fédéral et les tribunaux fédéraux. Le même principe s'appliquait à la province du Québec et, à partir de 1870, à la province du Manitoba. Cet article 133, de même que l'article 93 sur l'éducation, contribuèrent à créer cette perception au Québec d'un « pacte » entre les nations ou deux principales communautés linguistiques, du moins en termes numériques, en 1867.

Cette perception, qu'il importe qu'elle ait été justifiée ou non, fut assez brutalement démentie par les événements des années 1885 à 1913 : la

seconde rébellion des Métis, la pendaison de Riel, l'abolition du français et des écoles confessionnelles au Manitoba en 1890, l'absence de reconnaissance explicite de l'égalité du français et de l'anglais lors de la création de l'Alberta et de la Saskatchewan et le règlement 17 en Ontario, bref des événements qui ont sérieusement ébranlé l'idée, du moins chez les francophones au pays, que les Canadiens français et les Canadiens anglais puissent vivre côté à côté sans menace pour leurs institutions et leur langue. Ainsi, une certaine asymétrie dans la reconnaissance de l'égalité du français et de l'anglais a-t-elle provoqué chez plusieurs Canadiens français du Québec un changement de perception quant au « pacte ». Or, pour sa part, Pierre E. Trudeau, proposa une société juste. Dans *Les années Trudeau*, l'ancien rédacteur de *Cité libre* définit ainsi l'objectif de la société juste :

Dans une telle conjoncture, ce qui m'attira vers la politique, ce n'était plus le désir de lutter pour la liberté, celle-ci étant en quelque sorte devenue le combat d'hier. Dans mon esprit, la valeur à privilégier dans la poursuite de la société juste était plutôt l'égalité. Non pas l'égalité à la Procuste bien sûr, où tous seraient ramenés à une certaine moyenne. Mais l'égalité des chances.[...] Or le Canada me semblait un pays bâti des dieux pour poursuivre une politique de la plus grande égalité des chances. Pays jeune, pays riche, pays utilisant deux langues, pays pluraliste par les ethnies et les religions, pays immense à régions géographiques diverses, pays à forme fédérative, le Canada avait de plus une tradition politique ni complètement libertaire ni complètement étatiste, mais qui au contraire reposait sur la collaboration nécessaire des gouvernements avec le secteur privé, et sur l'action directe de l'État pour protéger les faibles contre les

⁶ *Charte canadienne des droits et libertés*, partie I de la *Loi constitutionnelle de 1982*, constituant l'annexe B de la *Loi de 1982 sur le Canada* (R.-U.), 1982, c. 11 [Charte].

⁷ Pour cette section sur le contexte, voir Claude Couture, *La loyauté d'un laïc : Pierre Elliott Trudeau et le libéralisme canadien*, Paris, Harmattan, 1996 [Couture, «La loyauté»].

⁸ *Le rapport Durham*, trad. par Denis Bertrand et Albert Desbiens, Montréal, Éditions Sainte-Marie, 1969.

⁹ (R.-U.), 3-4 Vict., c. 35, reproduite dans L.R.C. 1985, app. II, n°4.

¹⁰ (R.-U.), 30 & 31 Vict., c. 3, reproduite dans L.R.C. 1985, app. II, n°5 [*Constitution, 1867*].

forts, les démunis contre les biens nantis¹¹.

Ainsi, la *Loi sur les langues officielles* de 1969¹², votée à la suite des recommandations de la Commission sur le bilinguisme et le biculturalisme, visa à corriger une asymétrie évidente quant à l'application de l'article 133 de la *Constitution*, 1867. Mais pour Trudeau, il s'agissait de créer un climat de justice pour la langue française librement choisie par des individus et non de protéger une communauté. La *Loi sur les langues officielles*, l'un des fleurons de la politique trudeauiste, a eu un impact évident, surtout hors Québec; ne pas le reconnaître relève de la mauvaise foi. Selon un rapport du Conseil du Trésor pour 1995-96, 29 % des postes dans la fonction publique fédérale étaient occupés par des francophones¹³. Par ailleurs le nombre de postes bilingues depuis 1969 est passé à 31 %, un sommet¹⁴. Ainsi, en rectifiant ainsi près d'un siècle de non-application de l'article 133, le gouvernement de Pierre E. Trudeau, malgré la rhétorique sur les droits individuels, se trouva *de facto* à appliquer une politique d'action positive en vue de redresser une situation institutionnelle qui marginalisait les Canadiens français. En d'autres mots, par cette politique, on chercha à créer un espace institutionnel collectif favorable à l'épanouissement des francophones. D'où l'idée que la notion de droits collectifs, en équilibre avec celle des droits individuels, était déjà présente dans la *Loi sur les langues officielles* de 1969. En somme, la première intervention fondamentale de Pierre E. Trudeau en tant que politicien impliqua non pas une opposition entre droits individuels et droits collectifs, mais un subtil équilibre entre ces deux notions. Cet aspect se retrouva dans d'autres politiques, qui doivent être mises en relation avec la question des droits linguistiques.

¹¹ Pierre Elliott Trudeau «Des valeurs d'une société juste», dans Thomas S. Axworthy et Pierre Elliott Trudeau, dir., *Les années Trudeau. La recherche d'une société juste*, Montréal, Le Jour, 1990, 381 à la p. 382. Nous avons déjà développé cette analyse des institutions de l'ère Trudeau dans Couture, «La loyauté», *supra* note 7.

¹² L.C. 1968-1969, c. 54.

¹³ «La fonction publique fédérale n'a jamais été aussi francophone et bilingue», *Le Franco* (11 octobre 1996) 1.

¹⁴ *Ibid.*

LE MULTICULTURALISME

Depuis les années 1960, le multiculturalisme est devenu l'une des dimensions politiques essentielles du Canada¹⁵. Le multiculturalisme fit écho à la problématique du biculturalisme des années 1960 et aux débats concernant les relations entre Canadiens anglais et français. La présence d'une population française et catholique au Canada a posé d'emblée, en 1867, la question de la différence dans une société à majorité anglophone et protestante. Près d'un siècle après la Confédération, les tensions entre les Canadiens français et les Canadiens anglais firent craindre aux Canadiens d'origines diverses, ni française, ni anglo-américaine, mais de plus en plus nombreux, qu'une composante essentielle de la société canadienne pourrait être oubliée, voire marginalisée. Le groupe le plus actif, dans les années 1960, fut celui des Ukrainiens qui réclamèrent la reconnaissance d'une « troisième force »¹⁶. Ainsi, le volume IV de la Commission Laurendeau-Dunton traita de la question de l'apport culturel des « autres Canadiens »¹⁷. Seize recommandations, à partir des données contenues dans ce volume, furent présentées par les commissaires. Et le 8 octobre 1971, Pierre E. Trudeau annonça l'intention du gouvernement fédéral de se lancer dans la promotion du multiculturalisme. Il s'exprima en ces termes :

Aux yeux de la Commission, du gouvernement et, j'en suis sûr, de tous les Canadiens, il ne peut y avoir une politique

¹⁵ Pour cette section, voir aussi Yasmeen Abu-Laban, «Liberalism, Multiculturalism and the Problem of Essentialism» (2002) 6:4 *Citizenship Studies* 459; et, Richard J.F. Day, *Multiculturalism and The History of Canadian Diversity*, Toronto, University of Toronto Press, 2000; Ian Angus, «Cultural Plurality and Democracy» (2002) 25 *International Journal of Canadian Studies* 69; Richard Day, «Can there be a Postcolonial Multiculturalism? A Response to Ian Angus» (2002) 26 *International Journal of Canadian Studies* 127.

¹⁶ Yasmeen Abu-Laban, «The Politics of Race and Ethnicity: Multiculturalism as a Contested Arena» dans James P. Bickerton et Alain-G. Gagnon, dir., *Canadian Politics*, 2^e éd., Peterborough, Broadview Press, 1994, 242; Voir aussi Yasmeen Abu-Laban et Christina Gabriel, *Selling Diversity*, Peterborough, Broadview Press, 2002.

¹⁷ Canada, *Rapport de la Commission royale d'enquête sur le bilinguisme et le biculturalisme*, vol. IV, Ottawa, Imprimeur de la Reine, 1967.

culturelle pour les Canadiens d'origine française et britannique, une autre pour les autochtones et encore une pour tous les autres. Car, bien qu'il y ait deux langues officielles, il n'y a pas de culture officielle, et aucun groupe ethnique n'a la préséance. Il n'y a pas un citoyen, pas un groupe de citoyens qui soit autre que canadien, et tous doivent être traités équitablement.

La Commission était persuadée que l'adhésion à un groupe ethnique ne dépend pas tellement de l'origine ou de la langue maternelle, mais du sentiment d'appartenir au groupe et de ce que la Commission appelle « la volonté collective du groupe d'exister ». Le gouvernement partage ce point de vue.

Tout homme verrait sa liberté entravée s'il se trouvait enfermé pour toujours dans un compartiment culturel déterminé uniquement par sa naissance ou sa langue. Il est donc essentiel que tout Canadien, quelle que soit son origine ethnique, puisse apprendre au moins l'une des deux langues dans lesquelles le pays conduit les affaires publiques.

Le multiculturalisme dans un cadre bilingue apparaît au gouvernement comme le meilleur moyen de préserver la liberté culturelle des Canadiens. Une politique de ce genre devrait permettre de réduire la discrimination et la jalousie qu'engendrent les différences de culture. Pour que l'unité nationale ait une portée personnelle profonde, il faut qu'elle repose sur le sens que chacun doit avoir de sa propre identité; c'est ainsi que peuvent naître le respect pour les autres, et le désir de partager des idées, des façons de voir. Une politique dynamique de multiculturalisme nous aidera à créer confiance en soi qui pourrait être le fondement d'une société où régnerait une même justice pour tous [...].

En appliquant sa politique de multiculturalisme dans un cadre bilingue, le gouvernement apportera son aide de quatre façons différentes :

Premièrement, compte tenu de ses ressources, le gouvernement s'efforcera d'aider tous les groupes culturels canadiens qui ont manifesté le désir et la volonté de développer la capacité de s'accroître et d'ajouter à la vie canadienne, et dont le besoin d'assistance est évident, qu'il s'agisse de petits groupes faibles ou de groupes importants et fortement organisés.

Deuxièmement, le gouvernement aidera les membres de tout groupe culturel à surmonter les barrières culturelles qui les empêchent de participer pleinement à la société canadienne.

Troisièmement, le gouvernement favorisera les rencontres et échanges entre tous les groupes culturels du Canada dans l'intérêt de l'unité nationale.

Quatrièmement, le gouvernement continuera d'aider les immigrants à apprendre au moins l'une des deux langues officielles et à s'intégrer entièrement dans la société canadienne¹⁸.

On remarquera encore une fois que cet énoncé de politique renvoie à des catégories collectives. Dans la mesure en effet où le multiculturalisme devait s'inscrire dans un cadre bilingue, le principe fut manifestement de favoriser l'intégration harmonieuse de groupes de diverses origines au sein de l'une ou de l'autre (ou des deux à la fois) communautés nationales et linguistiques d'origine européenne. La promotion du multiculturalisme dans le cadre du bilinguisme impliquait forcément la reconnaissance de différences de contextes pour des individus provenant de cultures et de groupes

¹⁸ *Débats de la Chambre des communes*, (8 octobre 1971) à la p. 8546.

différents. Là encore, il ne semble y avoir eu aucune opposition entre, à tout le moins, la notion de collectivité et celle de droits individuels.

LE LIVRE BLANC SUR LES AUTOCHTONES

Dans le but, sans doute, d'atteindre encore une fois les objectifs d'une société juste, dans le sens d'une égalité des citoyens, le gouvernement de Pierre E. Trudeau présenta en 1969 un Livre Blanc sur la question autochtone. Le Livre Blanc proposait l'abolition graduelle du ministère des Affaires indiennes et de la *Loi sur les Indiens*¹⁹ dans un délai de cinq ans. On prévoyait également l'élimination du statut d'Indien. Or, ce programme fit peu de cas des revendications autochtones, notamment la reconnaissance des traités et la légitimité de certaines revendications territoriales.

Ainsi, depuis la fin du XIX^e siècle, les Autochtones s'étaient regroupés en diverses associations²⁰. Les Nisga'a en particulier furent très militants en Colombie-Britannique, et ce, dès 1890. Par la suite, deux autres associations furent formées, les Tribus alliées de Colombie-Britannique, en 1915, et la Fraternité des Autochtones de la Colombie-Britannique, en 1931. En Ontario et au Québec, l'une des premières associations, formée en 1918, fut la Ligue des Indiens du Canada. À partir de la Seconde Guerre mondiale, les associations proliférèrent : en 1939, l'Association des Indiens de l'Alberta; en 1944, les Indiens de la Saskatchewan; en 1943, la Fraternité des Indiens d'Amérique du Nord²¹.

Face aux revendications des Autochtones, deux Commissions d'enquête furent formées, la première en 1946-48, et la seconde en 1959-61. Les travaux de ces deux commissions eurent comme résultat de susciter une nouvelle vague de militantisme. En 1960 au niveau fédéral, en 1965 en Alberta et en 1969 au Québec, le droit de vote fut accordé aux Autochtones. Ce fut donc dans ce contexte de militantisme que le gouvernement Trudeau présenta son Livre Blanc. Ce document,

nous l'avons déjà fait remarquer, fut reçu avec beaucoup d'hostilité. Ce qui, cependant, fit reculer le gouvernement, fut la décision de la Cour suprême du Canada dans l'affaire *Calder* en 1973²². Malgré le vote en défaveur de la nation Nisga'a, le principe des titres de propriété autochtones établis en fonction d'une réinterprétation de la Proclamation royale de 1763 fut reconnu. L'année suivante, un Bureau des revendications autochtones entreprit la lourde tâche de traiter les revendications territoriales autochtones. Ensuite, il fut reconnu en 1982, dans la *Loi constitutionnelle*, plus précisément dans la *Charte*, à l'article 25, et dans l'article 35 de la *Loi*, le principe des droits des peuples autochtones du Canada, notamment les droits ancestraux ou issus de traités²³. L'exemple autochtone fit apparaître, une fois de plus, qu'on ne peut dissocier les individus de leur contexte spécifique.

De fait, le point culminant de la carrière de Pierre E. Trudeau fut évidemment le rapatriement de la Constitution canadienne et l'inclusion d'une charte des droits et libertés. Or nous avons déjà fait remarquer que dans la *Charte*, les droits collectifs des Autochtones sont reconnus par l'article 25. Mais ce n'est pas le seul article à caractère collectif. L'article 15 sur le droit à l'égalité, notamment l'égalité selon le sexe, les articles 16 à 22, sur les langues officielles, l'article 23 sur les droits à l'instruction dans la langue de la minorité, constituent une forme de protection pour les individus faisant partie de collectivités précises. Ainsi, la *Charte* constitua un délicat exercice d'équilibre entre les articles s'inscrivant dans une stricte perspective des droits individuels (articles 1 à 15) et les articles que nous venons d'énumérer.

On voit donc que les institutions de l'ère Trudeau ont subtilement articulé les notions de droits collectifs et de droits individuels. Une telle articulation n'est certainement pas incompatible avec les théories contemporaines de la justice. Charles Taylor et James Tully ont bien fait ressortir l'importance de situer la question des droits individuels dans des contextes spécifiques,

¹⁹ L.R.C. 1985, c. I-5.

²⁰ Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples From Earliest Times*, Toronto, McClelland and Stewart, 1992.

²¹ *Ibid.*

²² *Calder c. Procureur général de la Colombie-Britannique*, [1973] R.C.S. 313.

²³ Gerald R. Alfred, *Heeding the Voices of Our Ancestors*, Toronto, Oxford University Press, 1995.

concrets²⁴.

En 1971, John Rawls publia justement une *Théorie de la justice* par laquelle il chercha à définir des institutions sociales qui garantiraient un équilibre dans la satisfaction des aspirations des individus²⁵. Aucun groupe ne devrait avoir un avantage moral à long terme sur un autre. À partir de ce point de départ, nous devons construire un contrat social dans lequel on retrouverait une sincère inquiétude quant au bien-être de chacun, en raisonnant à partir de l'élimination systématique, face à différentes possibilités, de la plus répréhensible²⁶.

Les principes ici sont donc : 1) que chaque individu a le droit à la plus grande liberté possible si elle est compatible avec la liberté des autres; 2) que les inégalités sociales doivent être confrontées à l'ouverture de postes et de places dans des conditions qui favorisent une égale opportunité; 3) les inégalités sont temporairement justifiées si elles permettent d'éviter, à court terme, des situations pires. Ainsi, la persécution, la discrimination et l'oppression politique sont

²⁴ James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge, Cambridge University Press, 1995; Charles Taylor, *Rapproche les solitudes*, Québec, Presses de l'Université Laval, 1992. Voir aussi Guy Laforest, *De la prudence*, Montréal, Boréal, 1993.

²⁵ Dans *A Theory of Justice*, Cambridge, Cambridge University Press, 1971 à la p. 507, John Rawls a notamment écrit : « This account of the basis of equality calls for a few comments. First of all, it may be objected that equality cannot rest on natural attributes. There is no natural feature with respect to which all human beings are equal, that is, which everyone has (or which sufficiently many have) to the same degree. It might appear that if we wish to hold a doctrine of equality, we must interpret it in another way, namely as a purely procedural principle. Thus to say that human beings are equal is to say that none have a claim to preferential treatment in the absence of compelling reasons. The burden of proof favors equality : it defines a procedural presumption that persons are to be treated alike. Departures from equal treatment are in each case to be defended and judged impartially by the same system of principles that hold for all; the essential equality is thought to be equality of consideration ».

²⁶ *Ibid.* à la p. 242, Rawls a aussi écrit : « Viewing the situation from the legislative stage, one may decide that the formation of paramilitary groups, which the passing of the statute may forestall, is a much greater danger to the freedom of the average citizen than being held strictly liable for the possession of weapons. Citizens may affirm the law as the lesser of two evils, resigning themselves to the fact that while they may be held guilty for things they have not done, the risks to their liberty on any other course would be worse. Since bitter dissensions exist, there is no way to prevent some injustices, as we ordinarily think of them, from occurring. All that can be done is to limit these injustices in the least unjust way ».

incompatibles avec la liberté « égale ». Par ailleurs la règle de l'opportunité égale garantit une égalité des chances de réussite, peu importe la classe sociale d'origine. En somme, certaines théories libérales contemporaines, même lorsque le point de départ se trouve sans référence aux origines sociales ou autres, *the veil of ignorance*, aboutissent à une reconnaissance de la situation concrète des individus, donc de leur contexte dans une collectivité²⁷. En ce sens, Meech et Charlottetown ont été dans le prolongement direct de ce que 1982 avait ouvert comme possibilités.

MEECH ET CHARLOTTETOWN

Nous n'entrerons pas dans les détails d'une saga constitutionnelle qui mobilisa pendant plusieurs années toute une société. Remarquons toutefois que très peu de sociétés, voire aucune, comme nous l'avons fait remarquer en introduction, ont été ainsi mobilisées de façon démocratique, sans guerre civile, pour discuter de la refonte du contrat social et politique fondamental du pays. Aux deux accords dits du lac Meech et de Charlottetown, Pierre E. Trudeau s'opposa cependant avec véhémence en dénonçant notamment la notion de « droits collectifs » appliquée aux Québécois francophones en particulier, aux Autochtones et aux femmes²⁸. En fait, le texte de l'Accord de Meech spécifiait que :

1. L'interprétation de la Constitution du Canada doit concorder avec

- la reconnaissance que l'existence d'un Canada francophone, concentré mais non limité au Québec, et celle d'un Canada anglophone, concentré dans le reste du pays mais présent au Québec, constituent une caractéristique fondamentale de la fédération canadienne;
- la reconnaissance que le Québec forme au sein du Canada une société distincte.

²⁷ *Ibid.* à la p. 259.

²⁸ André Picard, « Trudeau denounces accord» *The Globe and Mail* (2 octobre 1992) A1.

2. Le Parlement et les législatures des provinces, dans l'exercice de leurs compétences respectives, prennent l'engagement de protéger la caractéristique fondamentale du Canada mentionnée au paragraphe (1)a).

3. L'Assemblée nationale et le gouvernement du Québec ont le rôle de protéger et de promouvoir le caractère distinct de la société québécoise mentionné au paragraphe (1)b)²⁹.

Sans aucun doute, par rapport au concept de « société distincte », définie différemment dans Charlottetown, Trudeau souleva quelques objections pertinentes et légitimes³⁰. Par exemple :

S'agit-il de la collectivité canadienne-française qui vit dispersée un peu partout au Canada? Évidemment non, puisque l'idéologie dominante au Québec se fiche éperdument du bilinguisme au Canada, et que devant les tribunaux elle prend fait et cause pour les gouvernements d'Alberta et de la Saskatchewan lorsque celles-ci suppriment les droits francophones acquis avant même l'entrée de ces provinces dans la Confédération en 1905. S'agit-il plutôt de la collectivité québécoise tout entière? Non plus, car cette « collectivité » s'appelle « province » et ses pouvoirs sont déjà reconnus explicitement par l'Acte constitutionnel de 1867. Il ne peut donc s'agir que d'une collectivité distincte à l'intérieur du Québec, mais laquelle encore? Certainement pas la collectivité anglophone, puisque la loi québécoise nie qu'elle puisse avoir des droits collectifs dans certains domaines : l'école et l'affichage, par exemple. Éliminons également les aborigènes, puisqu'on leur a clairement fait comprendre qu'ils ne pouvaient pas constituer une « société distincte » avec droit à l'auto-

détermination, le vocable ayant déjà été réservé par des Québécois d'une autre race³¹.

Ces questions étaient certainement légitimes. Toutefois par son insistance à opposer les droits collectifs aux droits individuels dans le cadre de ces débats sur l'Accord du lac Meech et l'Entente de Charlottetown, Pierre E. Trudeau a de nouveau contribué à répandre cette perception selon laquelle les Canadiens français du Québec sont « collectivistes ». Pourtant nous avons vu que les institutions de l'époque Trudeau sont elles-mêmes caractérisées par un équilibre entre des aspects collectifs et les droits individuels. La question est donc non pas d'opposer ces deux notions mais de trouver une solution qui permette un équilibre acceptable. Cet équilibre avait-il été pleinement atteint en 1982? Difficilement.

La première source de déséquilibre dans la *Loi constitutionnelle de 1982* tient donc au fait que la protection pour les droits linguistiques dans les articles 16 à 22 crée un espace de développement favorable au Canada français. Mais si la logique de l'argumentation tient au principe de l'opposition entre des droits collectifs et des droits individuels, pourquoi accorder au Canada français et, incidemment, à la collectivité canadienne-anglaise (après tout la langue anglaise est aussi protégée) une reconnaissance explicite dans les articles de la *Charte* portant sur les droits linguistiques.

Par conséquent, une politique fondée strictement sur le principe des droits individuels n'aurait-elle pas impliqué la seule énonciation de ces droits dans les articles 1 à 14 de la *Charte* et aucune référence aux droits linguistiques? Dans la mesure où, justement, les droits linguistiques, de même que les droits des Autochtones et le droit à l'égalité furent définis et inscrits dans la *Charte*, le Canada s'est doté d'institutions originales dans le contexte occidental. De plus, le processus menant à Charlottetown n'a fait qu'exprimer une culture politique fascinée par l'équilibre entre les communautés et les individus.

²⁹ Un dossier du Devoir, *Le Québec et le lac Meech*, Montréal, Guérin, 1987 à la p. 26.

³⁰ Philippe Dubuisson, « L'entente de Charlottetown » *La Presse* (6 septembre 1992) A5.

³¹ Pierre E. Trudeau, « Trudeau dit non : De la pauvreté de la pensée nationaliste au Québec» *L'actualité* 17:15 (1 octobre 1992) supp. I.

LES QUESTIONS IDENTITAIRES

LE DÉBAT AMÉRICAIN SUR LES IDENTITÉS

Ces dernières remarques soulèvent toute la question de l'identité canadienne, notamment par rapport à l'identité politique américaine. Or, une approche importante dans l'étude des origines politiques des États-Unis fut celle de l'école dite du consensus. Élaborée par Louis Hartz dans les années 1950 pour l'étude des États-Unis, cette théorie fut reprise au Canada par des auteurs comme Kenneth McRae, Gad Horowitz, André J. Bélanger et, au moins implicitement, par Pierre E. Trudeau, en plus de susciter aux Etats-Unis même de nombreux débats³². Le concept clé de la théorie hartzienne est le « fragment idéologique » : au moment de la colonisation européenne du monde à partie du XVI^e siècle, l'Europe aurait constitué un tout idéologique formé de deux principaux fragments : le fragment communautaire/féodal et le fragment individualiste. Ces deux fragments ont formé par la suite des points de repère dans un spectre idéologique composé, de gauche à droite, du socialisme, du libéralisme radical, du libéralisme « whig », du conservatisme « tory » et du féodalisme. Selon leur point d'origine et la situation idéologique particulière de leur métropole au moment de la colonisation, les sociétés nouvelles fondées aux États-Unis, au Canada, en Amérique latine et en Australie ont par conséquent développé une culture en fonction d'un de ces principaux fragments idéologiques. Par exemple, aux États-Unis, le fragment idéologique individualiste, associé à la pensée du philosophe John Locke (d'où l'utilisation de

l'expression « fragment lockien »), se serait imposé après la Révolution américaine au point de devenir la dimension essentielle de la société américaine. Au contraire, au Canada français et en Amérique latine, selon cette théorie, l'absence de vraies révolutions libérales aurait eu comme conséquence la perpétuation du fragment « féodal/communautaire ». En d'autres mots, les sociétés coloniales d'origine anglo-saxonne, y compris le Canada anglais, seraient « lockiennes », les autres, dont le Canada français, seraient restées « féodales ».

Une autre école de pensée importante sur les origines politiques américaines fut celles inspirées de l'oeuvre de J.G.A. Pocock qui insista sur l'influence politique de la Renaissance italienne pour expliquer le radicalisme anglo-américain des XVII^e et XVIII^e siècles³³. Pocock utilisa l'expression *d'humanisme civique* pour décrire cette *tradition atlantique* au XVIII^e siècle et la culture anglo-américaine. Cette tradition politique fut la principale forme d'opposition en Grande-Bretagne aux nouvelles formes de propriété, de commerce et de finance amenées par la domination du parti *Whig* ou *Court Party*. L'opposition prit au contraire le nom de *Country Party* et s'attaqua à la corruption engendrée par le nouveau commerce. Ainsi, en Angleterre et dans les treize colonies de la Nouvelle-Angleterre, se développa une pensée politique opposée à la corruption créée par le commerce. Pour contrer cette influence négative, la tradition républicaine de l'humanisme civique s'inspira de l'œuvre de Machiavel sur l'Antiquité pour défendre l'idéal d'une société fondée sur la rigueur morale et la lutte contre la corruption. Thomas Jefferson aurait, dans le contexte américain, symbolisé cette tendance politique.

LE DÉBAT CANADIEN INSPIRÉ DU DÉBAT AMÉRICAIN

³² Pour le Canada voir Peter J. Smith, «The Ideological Origins of Canada» (1987) 20 Canadian Journal of Political Science 3; Pour les Etats-Unis : Bernard Bailyn, *The Ideological Origins of the American Revolution*, Cambridge, The Belknap Press, 1967 et Gordon S. Wood, *The Creation of the American Republic 1776-1787*, Williamsburg, The University of North Carolina Press, 1969. La thèse opposée à celle de Hartz, fut: J.G.A. Pocock, *The Machiavellian Moment : Florentine Political Thought and the Atlantic Republican Tradition*, Princeton, Princeton University Press, 1975. Pour la littérature plus récente, voir : Gordon S. Wood, «Rambunctious American Democracy» (2002) 49:8 The New York Review of Books 20; Robert A. Dahl, *How Democratic Is the American Constitution?*, New Haven, Yale University Press, 2001; et, Michael Novak, *On Two Wings : Humble Faith and Common Sense at the American Founding*, San Francisco, Encounter Books, 2002.

³³ Pocock, *ibid.*

Au Canada, plus récemment, un auteur francophone important, Gérard Bouchard, a cherché à appréhender la dynamique de l'évolution identitaire des pays « neufs » en s'inspirant du

débat sur les origines idéologiques³⁴. Cette dynamique serait produite par deux éléments opposés, la continuité et la rupture, à partir desquels s'édifient les modèles A ou B de la genèse des pays neufs, c'est-à-dire les pays issus du colonialisme européen. Ainsi, le modèle A, selon Bouchard, est celui de la continuité et constitue une reproduction de la mère-patrie ou de la région-mère. Le discours identitaire au sein d'une société neuve qui émane du modèle A est celui de l'identique à la fois par rapport aux origines du pays neuf vis-à-vis de sa métropole mais aussi par rapport à leur destin commun. Au contraire, dans ce qu'il appelle le modèle B, une collectivité neuve « tourne le dos » à la mère-patrie et cherche à se reproduire dans la rupture et la différence. Certes, prévient Bouchard, il est impossible de trouver l'un ou l'autre de ces deux modèles à l'état pur. Ces modèles interagissent constamment et ne peuvent être conçus et appliqués que dans une perspective dialectique.

Le cas de l'Amérique latine fut à cet égard, selon Bouchard, très intéressant. De façon générale, l'évolution de l'Amérique latine depuis le XVI^e siècle peut davantage être associée à la rupture plutôt qu'à la continuité. Mais le parcours ne fut pas linéaire. Après une première période « continuiste », les Créoles (Blancs nés en Amérique) en arrivèrent à développer une américanité opposée à la culture européenne. Au Mexique, comme ailleurs en Amérique latine, a écrit Bouchard, « il est remarquable que les plus anciennes expressions du sentiment de l'identité nationale incluaient l'indianité comme composante essentielle »³⁵.

La rupture avec les métropoles espagnoles et portugaises a été complétée au XIX^e siècle lors des mouvements d'indépendance politique. Toutefois, plusieurs éléments de continuité ont perduré après l'acquisition de l'indépendance politique, notamment la langue, la religion et de nombreux emprunts à la culture savante européenne. La complexité sociale, culturelle et politique du continent a par la suite freiné l'élan de l'américanité et de l'indianité pour faire place à

l'échec du processus de rupture, voire à l'avènement d'une période de « réeuropéanisation », comme en Argentine et au Mexique sous le régime de Porfirio Diaz³⁶.

Cela dit, selon Bouchard, la différenciation et la rupture restent des acquis de l'Amérique latine. L'américanité, certes, est inachevée et fragile mais réelle. L'acquisition de l'indépendance politique constitue une immense différence par rapport au Québec. Alors que l'Amérique latine entraînait dans une période d'indépendance politique au XIX^e siècle, le Québec, entre 1840 et 1940, donc après l'échec des Rébellions de 1837-1838, entraînait au contraire dans une longue période continuiste. Ainsi, le Québec aurait traversé un certain nombre de périodes toutes marquées par le processus de continuité et de rupture. Par exemple, de 1608 à 1700, la Nouvelle-France aurait été une expérience de continuité, laquelle fut de plus en plus remise en question de 1700 à 1760³⁷. La Conquête, bien sûr, a tout chambardé, créant une période de transition de 1760 à 1791. Ce fut au cours de cette période de transition qu'une identité « canadienne » s'est formée au contact du colonialisme britannique, provoquant une période de rupture entre 1800 et 1838. L'échec des Rébellions en 1837-1838 provoqua cependant une fixation de l'identité dans le culturel et dans l'attachement aux origines françaises. S'en est suivie une période de remise en question à partir de 1940, voire de réaffirmation de l'objectif de rupture lors de la Révolution tranquille des années 1960. Dès lors, l'identité québécoise moderne serait potentiellement « vraie », puisque politique, par opposition à la « fausse identité canadienne-française » fondée sur le culturel³⁸. Mais cette « vraie » identité ne s'est pas encore complètement démarquée de l'ancienne. « L'identité nationale » n'est plus canadienne-française (à l'ancienne manière) mais elle n'est pas encore intégralement

³⁴ *Genèse des nations et cultures du Nouveau Monde*, Montréal, Boréal, 2001.

³⁵ *Ibid.* à la p. 195.

³⁶ *Ibid.* à la p. 205.

³⁷ *Ibid.* à la p. 80.

³⁸ *Ibid.* à la p. 178.

québécoise³⁹. Un peu plus loin, il écrit, « [l]e champ des allégeances est plus fragmenté que jamais. On dirait que le Québec est arrivé à un carrefour où toutes les fidélités, toutes les options, anciennes et nouvelles, se trouvent réunies : celles qu'il avait écartées, celles qu'il n'avait empruntées qu'à moitié et celles qu'a fait émerger son histoire récente »⁴⁰. En d'autres mots, pour développer son potentiel « humaniste civique » dans la tradition atlantique de reconnaissance des minorités et de développement d'un multiculturalisme franco-phone plus poussé qu'au Canada, le Québec devrait, selon Bouchard, rompre avec sa métropole politique, le Canada et à travers le Canada la Grande-Bretagne. Or le Québec a hésité à rompre. Est-ce la seule collectivité neuve dont l'avenir est hypothéqué par un lourd passé de continuité? Non. Trois exemples présentés par Bouchard montrent que la voie continuiste a été suivie par d'autres collectivités neuves. Ce sont l'Australie, la Nouvelle-Zélande, le Canada. Du XIX^e siècle jusqu'aux trois dernières décennies du XX^e siècle, ces trois collectivités neuves ne se sont pas affirmées en fonction de leur différence avec la mère-patrie mais plutôt en continuité. Trois facteurs ont formé cependant ces sociétés à se redéfinir : le déclin de l'Empire britannique après 1945, l'immigration massive et la combativité autochtone pour la reconnaissance notamment de leurs droits territoriaux. La pression de ces trois facteurs a profondément ébranlé l'identité continuiste dans ces trois collectivités. En cela, d'ailleurs, ces trois sociétés neuves se distinguent des États-Unis qui ont rompu dès 1776 avec la Grande-Bretagne.

En résumé, Bouchard, reprenant ici le modèle de Louis Hartz (1950), montre que les États-Unis ont développé une identité et une culture fondées sur l'individualisme et la liberté, rompant ainsi avec les mentalités collectives de la vieille Europe. Toutefois, il existe aussi un « autre » récit américain qui est celui des exclus de la société américaine, descendants d'esclaves, Autochtones, immigrants, qui ont été longtemps marginalisés par un discours national fondé sur la « mission

civilisatrice des Anglo-Saxons en Amérique »⁴¹. Certes, Gérard Bouchard reconnaît cet aspect, mais conclut néanmoins que les États-Unis forment pleinement une société du nouveau monde, en rupture avec la vieille métropole.

Pour Bouchard, alors que les autres collectivités, malgré le caractère parfois inachevé de leur processus de rupture, ont réussi à obtenir leur indépendance politique, le Québec est la seule nation du nouveau monde, parmi les nations étudiées, à ne pas jouir de l'indépendance politique. C'est aussi la seule nation d'Amérique au XIX^e siècle à s'être enfermée dans un discours unique et continuiste, et ce, de 1840 à 1940. En fait, la longue période continuiste de 1840 à 1940 a sans doute beaucoup contribué à retarder l'avènement au Québec d'une identité « vraie », fondée sur l'objectif de rupture.

CONCLUSION

Dans la tradition des théories de Louis Hartz, reprise par Gérard Bouchard, les pays neufs, en particulier les États-Unis, auraient développé une tradition libérale fondée sur l'individualisme. Or le libéralisme est évidemment une doctrine complexe formée d'écoles de pensée parfois opposées. Ainsi, dans un essai sur le libéralisme, André Vachet a identifié les principales thèses (en l'occurrence la liberté, la sécurité, l'égalité et la propriété) et les principaux thèmes (rationalisme, naturalisme et individualisme) du libéralisme⁴².

La composante d'une forme de libéralisme par rapport à une autre tient à une différence de hiérarchie dans l'articulation de ces thèmes et thèses. Ainsi, le libéralisme dit classique qui est socialement conservateur accorde une priorité à l'articulation entre la propriété et l'individualisme. Mais au contraire, une autre tradition libérale insiste sur l'égalité, celle, notamment, de Rousseau, de Thomas Paine et de William Cobbett. Depuis deux siècles, la forme élitiste du libéralisme s'est souvent retrouvée dans les institutions des pays occidentaux. Au contraire, la forme plus égalitaire fut plus populaire et moins institutionnelle. Si, comme l'ont soutenu

³⁹ *Ibid.* à la p. 179.

⁴⁰ *Ibid.*

⁴¹ *Ibid.* à la p. 357.

⁴² *L'idéologie libérale*, Paris, Anthropos, 1970.

récemment certains auteurs⁴³, les institutions américaines ont été au départ antidémocratiques et élitistes et le sont demeurées jusqu'à aujourd'hui, par contraste, le Canada a développé des institutions qui reflètent à la fois l'élitisme et l'aspect progressiste d'un certain libéralisme. C'est ce que James Tully a appelé l'étrange multiplicité du Canada⁴⁴. Les étapes de cette étrange multiplicité ont marqué l'histoire du Canada mais aussi ses institutions. En ce sens, le bilinguisme et le multiculturalisme s'inscrivent d'abord et avant tout dans la résistance concrète de plusieurs groupes, dont les Canadiens français, peuple à la fois colonisateur et colonisé, à faire respecter leurs droits et dans la résistance de ces groupes non français et non britanniques d'origine à l'uniformité culturelle dans les institutions politiques. Une forme donc de libéralisme populaire de résistance a imposé des changements dans des institutions libérales. Ainsi, les circonstances de ces luttes ont permis d'inscrire la diversité et l'histoire au moins partiellement dans les institutions du pays et ce contrairement aux États-Unis où la constitution, et notamment le *Bill of Rights*, a fait peu de place, sinon aucune place, à la reconnaissance même partielle de la diversité. En ce sens, le modèle américain n'est pas nécessairement un modèle de rupture par rapport à l'élitisme de l'ancienne métropole. Son libéralisme est conservateur. Hartz et Bouchard ont donc tort, me semble-t-il. Le Canada, loin d'être un pays par définition *continuiste*, a au contraire des institutions, notamment issues de l'*Acte de l'Amérique du Nord britannique* en 1867 et de la *Loi constitutionnelle de 1982* ou d'autres aspects, qui reflètent au moins partiellement la diversité, comme c'est le cas pour le bilinguisme et le multiculturalisme. En ce sens, le processus menant à Charlottetown et la *clause Canada* ont parfaitement reflété cette diversité et la richesse d'une autre tradition politique, unique au monde occidental, où toutes les dimensions sont liées.

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⁴³ Dubuisson, *supra* note 30.

⁴⁴ *Supra* note 24.

ANNEXE

TEXTE DE L'ACCORD DE CHARLOTTETOWN

LES CITOYENS ET LES COLLECTIVITÉS

La clause Canada

Il conviendrait d'incorporer en tant qu'article 2 de la *Loi constitutionnelle de 1867* une nouvelle clause qui exprimerait les valeurs fondamentales du Canada. Cette disposition Canada guiderait les tribunaux dans leur interprétation de l'ensemble de la Constitution, y compris de la *Charte canadienne des droits et libertés*.

La *Loi constitutionnelle de 1867* est modifiée par insertion, après l'article 1, de ce qui suit :

2.(1) Toute interprétation de la Constitution du Canada, notamment de la *Charte canadienne des droits et libertés*, doit concorder avec les caractéristiques fondamentales suivantes :

a) le fait que le Canada est une démocratie attachée à un régime parlementaire et fédéral ainsi qu'à la primauté du droit;

b)le fait que les peuples autochtones du Canada, qui ont été les premiers gouvernants du territoire, ont le droit de promouvoir leurs langues, leurs cultures et leurs traditions et de veiller à l'intégrité de leurs sociétés, et le fait que leurs gouvernements forment un des trois ordres de gouvernements du pays;

c)le fait que le Québec forme au sein du Canada une société distincte, comprenant notamment une majorité d'expression française, une culture qui est unique et une tradition de droit civil;

d)l'attachement des Canadiens et de leurs gouvernements à l'épanouissement et au développement des

communautés minoritaires de langue officielle dans tout le pays;

e)le fait que les Canadiens sont attachés à l'égalité raciale et ethnique dans une société qui comprend des citoyens d'origines multiples dont la contribution à l'édification d'un Canada fort reflète sa diversité culturelle et raciale;

f)l'attachement des Canadiens au respect des droits et libertés individuels et collectifs;

g)l'attachement des Canadiens au principe de l'égalité des personnes des deux sexes;

h)le fait que les Canadiens confirment le principe de l'égalité des provinces dans le respect de leur diversité.

(2) La législature et le gouvernement du Québec ont le rôle de protéger et de promouvoir la société distincte.

LA JUDICIARISATION DE LA POLITIQUE, LES DROITS DES MINORITES ET LE NATIONALISME CANADIEN*

Linda Cardinal

Ce texte propose un commentaire sur les rapports entre le droit et la politique à partir de trois cas de figure : le phénomène de la judiciarisation de la politique, la question des droits des minorités linguistiques, et le nationalisme canadien. Trois thèmes qui méritent un développement à part, mais qu'il faut aussi tenter d'analyser comme des éléments d'un tout car ils sont liés, bien que de façon contradictoire. En effet, si la judiciarisation de la politique a favorisé le développement des droits linguistiques au Canada et la démocratisation de la justice, elle a aussi coïncidé avec l'avènement d'un nationalisme des droits fondé exclusivement sur la référence à des droits individuels pancanadiens, une idéologie qui rend difficile l'accordement entre les groupes. Dit autrement, nous avons été témoin, au Canada, de l'avènement d'un populisme des droits qui, paradoxalement, a favorisé le rétrécissement de l'espace politique canadien au profit d'un mouvement de réconciliation de la nation avec elle-même heurtant de front l'idée d'une ouverture à l'Autre qu'a rendu possible une certaine tradition canadienne fondée sur le binationalisme. Pour dire les choses encore plus brusquement, obsédé par son unité, le Canada a cherché de plus en plus à fusionner avec lui-même. Il a fondé son identité sur un nationalisme des droits, un nationalisme apparemment civique, sauf que celui-ci a, jusqu'à présent, fait peu de place au débat démocratique, notamment au débat sur les institutions politiques et à l'aménagement de rapports plus justes entre les groupes nationaux et ce, malgré une représentation de soi fondée sur la diversité.

LA JUDICIARISATION DE LA POLITIQUE

L'on a beaucoup péroré sur le thème de la judiciarisation de la politique au Canada. À la différence de la plupart des commentateurs de la question, David Smith, dans son remarquable ouvrage, *The Invisible Crown. The First Principle of Canadian Government*¹ — malheureusement passé inaperçu en milieu francophone — a souligné que le mouvement, tel que nous le connaissons aujourd'hui, dans toute son ampleur, ne commence pas en 1982 avec l'adoption de la *Charte*², mais plutôt avec la mise sur pied du Programme de contestation judiciaire³. Nous avons aussi tenté de documenter davantage la question en montrant le lien intime entre le phénomène de la judiciarisation de la politique, le Programme et le rôle clé de l'exécutif dans la promotion de la logique des droits⁴. Ainsi, dès les années soixante-dix, la judiciarisation est voulue, du moins souhaitée par l'exécutif afin de mieux lutter contre les provinces et d'accroître la légitimité du gouvernement fédéral comme unique lieu d'identification à une nation juridique fondée sur des valeurs définies dorénavant par des juges

* Ce texte a été possible grâce à une subvention du CRSH sur le thème de la culture politique des droits au Canada.

¹ Toronto, University of Toronto Press, 1995.

² *Charte canadienne des droits et libertés*, partie I de la *Loi constitutionnelle de 1982*, constituant l'annexe B de la Loi de 1982 sur le Canada (R.-U.), 1982, c. 11 [Charte].

³ Le Programme de contestation judiciaire [Programme], lancé en 1978, a été créé par l'exécutif au but de clarifier, grâce au financement de causes types d'importance nationale, les dispositions constitutionnelles relatives aux droits à l'égalité et aux droits linguistiques. Voir généralement en ligne : Programme de contestation judiciaire du Canada <<http://www.ccpjc.ca>>.

⁴ Linda Cardinal, «Le pouvoir exécutif et la judiciarisation de la politique au Canada. Une étude du Programme de contestation judiciaire» (2000) 20:1 Politique et Sociétés 43.

au lieu de faire appel aux élus ou aux citoyens pour en débattre démocratiquement au sein de l'espace public.

David Smith considère que la judiciarisation de la politique au Canada est venue principalement d'une prise de conscience des limites du pouvoir exécutif à l'égard des provinces canadiennes. Selon Smith, plus les provinces jouent un rôle dans la gestion des affaires de la fédération canadienne et adopter leurs lois, plus le gouvernement fédéral comprend qu'il ne peut plus comme au XIX^e siècle, se prévaloir de son pouvoir de désaveu à leur égard de même qu'il ne peut uniquement s'en tenir à demander des avis au judiciaire dans ses conflits avec les gouvernements provinciaux. De toute façon, dès la fondation du Canada, il est tenu pour acquis que le gouvernement fédéral n'utilisera pas son pouvoir de désaveu dans le domaine des questions d'ordre culturelles, linguistiques ou religieuses⁵.

De plus, pendant les années 1960 et 1970, la question linguistique, la montée du néo-nationalisme au Québec et du Parti québécois viennent accentuer les difficultés du gouvernement fédéral, notamment à l'égard du Québec. L'adoption de la *Charte de la langue française* du Québec en 1977⁶ — la Loi 101 — consacrant le français, langue de travail ainsi que langue officielle du Québec en matière législative et judiciaire constitue un événement déterminant au pays. Force est de constater que c'est à partir de ce moment que le gouvernement décide de la mise sur pied du Programme. Il choisit expressément la voie de la judiciarisation au détriment d'une autre voie possible tout à fait compatible avec les traditions constitutionnelles canadiennes, notamment celle de la négociation ou du compromis politique.

Ces quelques éléments de contexte révèlent qu'à partir des années 1970, le gouvernement fédéral, plus précisément l'exécutif, cherche à se donner de nouveaux moyens dans le règlement de ses conflits avec les provinces, notamment en qui

a trait à la question linguistique. Dans ce domaine, les références plus traditionnelles à l'idée de convention, de compromis historique et à la possibilité de négociations ne représentent pas des voies de solution pour l'exécutif. La mise en place du Programme constitue le meilleur moyen de régler le conflit sur la langue et les minorités linguistiques en le déplaçant vers les tribunaux. Soulignons également que ces derniers sont amenés à se prononcer sur une foule d'autres questions dans le domaine identitaire. En effet, à la même époque, soit en 1986, les Juges ont eu à décidé du contenu des valeurs canadiennes dans l'arrêt *Oakes*⁷ alors qu'un tel débat aurait aussi pu avoir lieu dans l'enceinte du Parlement ou avec les citoyens. Pour revenir au Programme de contestation judiciaire, même s'il réalise un travail remarquable au plan de la démocratisation de la justice au Canada, notamment après 1985, notre hypothèse est qu'il est aussi au service des aspirations de l'exécutif d'amener les Juges à poser des jugements sur des questions d'ordre politique comme la question linguistique afin de mettre fin une fois pour toute au débat sur la langue. L'exécutif tire ainsi profit d'une telle stratégie car sa légitimité se voit renforcée comme principal gardien des valeurs canadiennes. Or, qu'en est-il des effets pervers de la judiciarisation de la politique dans le domaine des droits linguistiques? Dit autrement, le gouvernement fédéral a-t-il réussi à rendre plus acceptable les droits des minorités linguistiques, notamment ceux des francophones vivant à l'extérieur du Québec en favorisant leur judiciarisation?

LES DROITS DES MINORITÉS LINGUISTIQUES

À bien des égards, la judiciarisation des droits a fait faire un bond important aux minorités de langue officielle au Canada, notamment en leur octroyant le droit de gérer leurs écoles. De façon plus générale, celle-ci a aussi servi à faire avancer la théorie judiciaire des droits linguistiques qui reconnaît l'importance d'accorder une forme de droits collectifs aux minorités de langue officielle. Ainsi, les tribunaux ont réussi à faire accepter le besoin de mesures spéciales à l'intention des

⁵ Pour plus de détails sur la question du pouvoir de désaveu, voir le remarquable ouvrage de Robert Vipond, *Liberty and Community: The Failure of the Canadian Constitution*, Albany, The University of New York University Press, 1991.

⁶ L.R.Q. 1977, c. C-11.

⁷ *R. c. Oakes*, [1986] 1 R.C.S. 103, en ligne: IIJCan <<http://www.canlii.org/ca/jug/csc/1986/1986csc7.html>>.

minorités de langue officielle au Canada. Dans les arrêts *Beaulac*⁸ et *Arsenault-Cameron*⁹, les Juges ont posé les jalons d'une théorie judiciaire des droits collectifs qui somme les législateurs de tenir compte des objectifs de la loi sur les langues officielles lorsqu'ils adoptent des mesures à l'intention de leurs citoyens, notamment celui de voir au développement et à l'épanouissement des minorités de langue officielle.

Toutefois, le discours sur les droits linguistiques a aussi pris une orientation contradictoire. Dit autrement, celui-ci génère des effets pervers. À titre d'exemple, l'idée de voir dans les droits linguistiques un droit fondamental a servi à conforter l'avènement d'un populisme juridique. De plus, à chaque fois que les minorités linguistiques choisissent de porter une cause devant les tribunaux, c'est afin de s'assurer d'une reconnaissance constitutionnelle de leurs droits linguistiques sans toujours, par ailleurs, se demander dans quelle mesure ces nouvelles reconnaissances vont augmenter leur capacité d'action ou d'intervention.

De façon plus explicite, l'idée selon laquelle la langue constitue un droit fondamental n'est pas nouvelle. Celle-ci est déjà énoncée, en 1948, dans la *Déclaration universelle des droits de l'Homme*¹⁰ des Nations Unies. Les plus récents instruments dont s'est dotée la Communauté européenne dont la *Charte européenne des langues régionales ou minoritaires*¹¹ et la Convention-cadre pour la protection des minorités nationales reconnaissent également les droits linguistiques comme des droits de la personne. Toutefois, ces derniers fondent aussi le développement des politiques linguistiques sur une idée de diversité au lieu de la logique des droits.

Au Canada, la conception des droits linguistiques comme des droits de la personne est non seulement en conformité avec l'évolution des droits fondamentaux et des droits linguistiques au

plan international. Les droits à la liberté d'expression et le droit à l'égalité y ont pris une importance nouvelle que l'on a exploitée largement dans le cas de la mise en cause de certaines dispositions de la Loi 101 dont celles portant sur l'affichage commercial et les raisons sociales au Québec. Le discours d'Alliance Québec dans ce domaine est révélateur de cette orientation plus individualiste conférée aux droits linguistiques comme droits fondamentaux. Faut-il le rappeler, un groupe comme Alliance Québec revendique vigoureusement l'égalité absolue des langues. Celui-ci exige le bilinguisme au Québec, notamment une offre active de services en anglais à la fois de la part du gouvernement du Québec et du Canada et non uniquement une sorte d'obligation d'accommodement de la langue de la minorité. Les minorités francophones hors Québec réclament aussi une offre active de services en français dans leur province respective mais leurs succès sont plus mitigés. Ainsi, au Canada, la référence aux droits fondamentaux a contribué à transformer le discours sur les droits linguistiques en une sorte de principe a-historique, transcendant fondée sur une référence à la langue comme un principe absolu.

Ces quelques éléments de réflexion rejoignent bien l'idée de Peter Russell selon laquelle la *Charte* a rendu possible une telle conscience civique des droits dont l'effet est de concevoir toute référence aux droits comme un droit absolu¹². Dans un texte sur le populisme et la politique des droits, Knopff s'en est aussi pris à la façon dont la judiciarisation a encouragé les extrémismes au plan politique au lieu de favoriser la modération¹³. Tant Russell que Knopff citent le débat sur l'affichage au Québec comme un cas de figure d'extrémisme. Toutefois, cela ne fait pas de ces derniers des défenseurs de la Loi 101 que Knopff qualifie plutôt de « *foolish law* »¹⁴.

Au plan historique, l'idée selon laquelle la fédération canadienne reposait sur un compromis historique devait permettre de refléter l'esprit du fédéralisme, notamment dans le domaine des

⁸ *R. c. Beaulac*, [1999] 1 R.C.S. 768, en ligne: IIJCan <<http://www.canlii.org/ca/jug/csc/1999/1999csc26.html>>.

⁹ *Arsenault-Cameron c. Île-du-Prince Édouard*, [2000] 1 R.C.S. 3 , 2000 CSC 1, en ligne: IIJCan <<http://www.canlii.org/ca/jug/csc/2000/2000csc1.html>>.

¹⁰ Rés. AG 217 (III), Doc. Off. AG NU, 3^e sess., supp. n° 13, Doc. NU A/180 (1948).

¹¹ 5 novembre 1992, Eur. T.S. 1992 n° 148 (entrée en vigueur : 1^{er} mars 1998).

¹² «Canadian Constraints on Judicialisation From Without» (1994) 15:2 International Journal of Political Science 165.

¹³ Rainer Knopff, «Populism and the Political Right: The Dual Attack on Representative Democracy» (1998) 31:4 Revue canadienne de science politique 683, à la p. 702.

¹⁴ *Ibid.*

droits des minorités. Le thème du compromis servait aussi à reconnaître le principe de l'autonomie des provinces. Il visait à permettre aux provinces d'évoluer à leur propre rythme. Or, est-ce que les minorités linguistiques s'en portent mieux depuis qu'Alliance Québec fait la guerre au Québec et que les minorités francophones hors Québec ont également opté pour la voie judiciaire? Le jugement de la Cour supérieure de justice de l'Ontario annulant la décision de la Commission de restructuration des services de santé en Ontario concernant la fermeture de l'hôpital Montfort a affirmé que la minorité franco-ontarienne demeure une communauté menacée.¹⁵ Le Sénateur Jean Maurice Simard a indiqué, dans son rapport sur la situation des minorités francophones hors Québec, que leur développement n'était toujours pas assuré et que l'État canadien devait faire mieux¹⁶. Quant à la minorité anglo-québécoise, elle a fort bien réussi à compliquer davantage son rapport avec la majorité francophone du Québec depuis les années 1970 et la situation est loin d'être radieuse. Voilà, il me semble, quelques effets pervers découlant du recours au judiciaire qui ne sont malheureusement pas pris en compte dans le débat sur l'avancement ou le développement des minorités francophones hors Québec. L'absolutisation des droits linguistiques ne fait pas écho à un plus grand dynamisme en milieu minoritaire.

DROITS ET NATIONALISME

Une des conséquences de la judiciarisation de la politique a également été de permettre le renouveau du nationalisme canadien. Comme nous l'avons vu plus haut, alors que la question des droits linguistiques est de plus en plus associée à une question de droits fondamentaux dorénavant compris comme des droits individuels absous, force est de constater que ce discours n'est pas sans lien avec le développement d'un nationalisme pancanadien fondée sur l'idée que l'anglais doit être prédominant partout au Canada. Will Kymlicka a bien identifié le phénomène dans un

texte qu'il a publié dans le cadre du projet *Sortir de l'impasse*¹⁷. Ce nationalisme a une dimension ethnique alors qu'il se présente comme le représentant de l'universel.

Que l'on pense à la lutte acharnée d'Alliance Québec contre la Loi 101 ou au discours de l'ancien *Reform Party* contre les droits des peuples des Premières Nations ou encore contre la reconnaissance du Québec comme société distincte, la référence à des droits individuels a été transformée en une sorte de credo servant à lutter contre toute revendication de droits collectifs, cette dernière étant associée à du particularisme ou encore à de l'ethnicisme. Or, pendant ce temps, le nationalisme juridique réussi essentiellement à réduire l'espace de la communauté à l'identité d'un groupe en particulier, celle des Canadiens anglais de souche et ceux qui s'identifient à eux. À une autre époque, nous aurions parlé d'un mouvement visant l'anglo-conformité. Claude Couture a proposé la notion de « libéralisme ethnique » pour traduire essentiellement la même idée¹⁸. De façon plus générale, le discours des droits individuels vient conforter les Canadiens anglais dans leur position de groupe dominant, un groupe qui incarnerait spontanément l'universel comme si ce dernier pouvait être le propre d'une culture donnée. Dans le nationalisme canadien-anglais, l'universalisme ne vient pas de la distance critique que l'on peut exercer à l'égard de son milieu. L'universel, étrangement, vient du refus de la différence à moins qu'elle ne soit pas menaçante, une différence de façade comme dans un certain folklore canadien-français ou dans un certain multiculturalisme qui sert à renforcer le nationalisme canadien plutôt qu'à revendiquer une meilleure prise en compte des préoccupations des immigrants. Ce nationalisme rend aussi impossible dans le fédéralisme de penser la question de la différence de façon significative. Il contribue au pourrissement du débat Québec-Canada tout comme il n'aide pas la reconnaissance plus grande des peuples des Premières Nations ou des minorités culturelles et linguistiques.

¹⁵ Lalonde c. Ontario (*Commission de restructuration des services de santé*) (2001), 56 O.R. (3^e) 505 (CA), en ligne: IIJCan <www.canlii.org/on/cas/onca/2001/2001onca10003.html#sum>.

¹⁶ Jean-Maurice Simard, *De la coupe aux lèvres : un coup de cœur se fait attendre*, Ottawa, Le sénat de Canada, 1999.

¹⁷ «Le fédéralisme multinational au Canada : un partenariat à repenser» dans Guy Laforest et Roger Gibbins, dir., *Sortir de l'impasse. Les voies de la réconciliation*, Montréal, IRPP, 1998, 15.

¹⁸ *Paddling with the current : Pierre Elliott Trudeau, Étienne Parent, liberalism, and nationalism in Canada*, Edmonton, The University of Alberta Press, 1998, à la p. 9.

Pour terminer, force est malheureusement de constater qu'il n'existe pas de volonté politique au Canada qui pourrait donner lieu à une réforme constitutionnelle favorable à une plus grande ouverture à l'identité ou aux droits collectifs. L'époque de la politique de l'identité est probablement révolue et l'on ne doit pas s'attendre à une trop grande ouverture de la part des gouvernements fédéral et provinciaux à l'égard du Québec ou des groupes minoritaires. Dans le contexte de la cause Montfort l'attitude du gouvernement ontarien à l'égard des francophones de la province a montré que la politique de l'identité est belle et bien chose du passé.

Certes, il y a lieu de réformer le fédéralisme en vue d'une plus grande transparence du processus de formulation des politiques, d'une plus grande imputabilité de la part du gouvernement à l'égard de la population, d'un meilleur équilibre entre l'idée de normes nationales et les préoccupations des provinces. Toutefois, les récentes avancées de la thèse du fédéralisme asymétrique montrent bien les difficultés que pose au Canada anglophone, surtout en Ontario comme dans l'ouest du pays, d'accompoder différentes conceptions de la nation.

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LA NATION, C'EST MOI: THE ENOUNTER OF QUÉBEC AND ABORIGINAL NATIONALISMS

Julián Castro-Rea

INTRODUCTION

Proponents of Québec's independence justify their goal with the claim that their province is the cradle of one of Canada's "Founding Nations." In so doing, they bypass the self-perception of the dominant, politicized Aboriginal peoples, who perceive themselves as forming the "First Nations" of what is now Canada. These contending views, neither of which is yet constitutionally fully recognized, are bound to clash whenever issues of self-government are raised within Québec's boundaries. Such a situation arose at the time of the 1995 Québec referendum on sovereignty, which was met with adamant opposition from Aboriginal groups, especially the Cree, the Inuit and the Mohawk. In reaction, Québec's pro-independence government at the time accused Aboriginal peoples of being Ottawa's instrument, and repeated the debatable argument that Québec has maintained the most respectful policy towards Aboriginal peoples among all Canadian provinces.

The aim of this article — written under the assumption that the reader is acquainted with the basic facts of the political and legal situation of Aboriginal peoples and the province of Québec within Canada — is to track the origins and assess the current status of this clash of nationalisms. Later on, I suggest that beyond the myths and political bickering entertained by both sides in the debate, there is a common ground that may bridge both nationalist projects: the joint search for recognition within the Canadian constitutional order. Mutual recognition seems to be the first step towards a complementary, common endeavour for the recasting of Canada as a

multinational state. I will conclude by assessing how likely that kind of reform is under current political circumstances.

THE CLASH OF NATIONALISMS IN CANADA

Among the various concepts historically used to refer to a culturally defined human community — culture, civilization, race, community, ethnic group, people, minority, etc. — the term "nation" is no doubt the most prestigious, politically speaking. While definitions of this concept abound, and have changed a great deal over time,¹ I adopt here Benedict Anderson's, for whom a nation is an "imagined community."²

Anderson's definition, besides its brevity, has the advantage of avoiding the pitfalls into which other attempts to determine the essential elements of a nation generally fall. Among those elements frequently mentioned are territory (thus excluding nations with a distinct identity but without a land base), common ethnic origins (thus stepping into the complex and politically controversial issue of racial differentiation), and common language (thus questioning multilingual states that present themselves as nations). The definition I adopt here stresses only one of the often cited components of nations: the sense individuals in a human group have of sharing a common past, a common history that binds them together; "the possession in

¹ Eric J. Hobsbawm, *Nations and Nationalism since 1870: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1990).

² Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, 2d ed. (London: Verso, 1991).

common of a rich legacy of remembrances,” to borrow Ernest Renan’s words.³ Certainly, this history is constructed through a careful selection of facts in an often teleological interpretation of them, but it serves nonetheless as a powerful cement to tie individuals together into something they call their nation. This feeling of belonging, rooted in an individual decision to consider oneself a part of the nation, is enough for the individual to become a member of it. As the shared identity is constructed and based not on material facts but on beliefs, it is an imagined community.

Building on this cultural definition of nationhood, some social movements, aware of the momentum this self-identification may give them for political battles, have called themselves “nations.” Groups as diverse as the Black populations in the United States, the Chicanos and Islamic fundamentalists have at some point appealed to nationalist discourse. Perhaps the most conspicuous example of this syndrome is the idea of a “Queer Nation,” born in 1990.⁴ We must therefore qualify exactly what kind of imagined communities may aspire to nationhood, to support the principle that not just any social group may be a nation. I would argue that national imagined communities must also:

a) Be based upon “totalizing identities” that define every aspect of everyday life. This identity must be the most important, spontaneous way by which people in that group choose to define themselves. Single-focused identities based on ideological convictions, religious beliefs, or sexual preference, are in principle only “partial identities” unless they define the whole life and social reality of people involved.

b) Sustain a totalizing identity so unique it cannot be assimilated or equated with another one,

usually manifested in a specific language. This is especially important when several nations belong to a single state. Whenever they are in minority situation, national communities refuse assimilation to the majority. They do not seek equality with the majorities; they rather wish to preserve the differences as a condition for the expression of their uniqueness. No policy of equal treatment, of non-discrimination and respect of minorities, of affirmative action, or multiculturalism would suffice to accommodate true nations: they would always claim recognition of an inassimilable identity.

c) Have some historical attachment to a territory, whether they govern over it or not. This attachment must be manifested in place names, everyday life habits, generational presence validated by historical and even archaeological records. Simple residence or regional concentration, which some social groups have, is not enough to define historical attachment to a territory.

d) Claim some kind of self-government in order to be in charge of the nation’s affairs. A true national culture is so complete (totalizing) that it is able to take its own affairs in hand; it is not only able to assert its uniqueness but may handle the tools to preserve it, mainly because it has already done so at some point in time.⁵

The semantic evolution of the concept of nation is the result of a political process: the building of nation-states first in Europe, and later in peripheral regions. War played a significant role in that process. The idea of nation became the ideological core of the nascent territorial political entities called states. Later, both concepts became almost synonymous.⁶ The appeal to nationhood became necessary to claim political, and state sovereignty over a territory. That is why nation became the utmost form of recognition, the highest status to which any human group may

³ Ernest Renan, “Qu’est-ce qu’une nation?” in John Hutchison & Anthony D. Smith, eds., *Nationalism* (Oxford: Oxford University Press, 1994) 17. This essay was originally published in 1882.

⁴ See Brian Walker, “Une critique du nationalisme culturaliste: l’idée d’une nation gai” in François Blais *et al.*, eds., *Libéralismes et nationalismes : Philosophie et politique* (Ste.-Foy, Que.: Presses de l’Université Laval, 1995) 211 and Brian Walker, “Social Movements as Nationalisms or On the Very Idea of a Queer Nation” in Jocelyne Couture, Kai Nielsen & Michel Seymour, eds., *Rethinking Nationalism* (Calgary: University of Calgary Press, 1998) 505.

⁵ Ferrán Requejo Coll, “Pluralismo, democracia y federalismo: Una revisión de la ciudadanía democrática en Estados plurinacionales” (1996) 7 Revista internacional de filosofía política 93.

⁶ See for instance Ernest Gellner, *Nations and Nationalism* (Oxford: Blackwell, 1983). He considers that a single language, a shared sense of belonging, and a similar appreciation of institutions – in sum, a single national identity – are necessary pre-requisites for the viability of a state.

aspire in its claim for universal acceptance of its ability to govern itself within a territorial base.⁷

With that perspective in mind, it is hardly surprising that in the Canadian context both Québécois and Aboriginal peoples eventually claimed their right to be considered as nations. Their respective processes of assertion of nationhood are very different from each other, but similar in their ultimate goal: to claim recognition as groups with defined identities and with the ability to govern themselves within a defined territory they consider being theirs. Whether these claims are framed inside or outside the Canadian federation, it is clear both human groups are contesting on historical grounds the homogeneity of the single nation supposedly contained within the Canadian state.

Québec's nationalism has a long history. Political groups in the province adopted the nationalist discourse quite early, inspired by the example of the strongly nationalistic and state-centred France and as a way to underline the specific nature of Québec's society and culture relative to the rest of Canada. References to Québec as a nation were already used by the turn of the nineteenth century, and were largely accepted during the constitutional conferences that would lead to the Canadian confederation in 1867. In 1885, a National Party was created under the leadership of Honoré Mercier, and was able to form a bi-partisan unity government two years later. By the turn of the twentieth century, journalist and intellectual Henri Bourassa referred to the "French-Canadian nation" as a specific cultural entity.

This national aspiration would soon reach into the formal political institutions in that province. In 1935, the provincial party Union Nationale was created. It came to power the year after and ruled the province, on and off, for over twenty years until it gradually disintegrated after 1970. Likewise, the Legislative Assembly of Québec changed its name in 1968 to become the National Assembly.

⁷ This being said, international law grants the right to self-determination to "peoples" not "nations." Despite the obvious legal strength this fact gives to the term people, our analysis will centre on the concept of nation because of its political uses.

In contrast, widespread adoption of nationalist discourse by Aboriginal peoples is a more recent development. Legally speaking, the term Aboriginal encompasses three different peoples: Indians, Inuit and Métis.⁸ The Métis — typically descendants of French Canadians and Cree, Ojibway or Saulteaux Indians — were the first Aboriginal group to claim a national status, at least since 1816, calling themselves "the New Nation."⁹ They are presently gathered in an organization they call the Métis National Council (MNC), created in 1983.¹⁰

During the last thirty-five years, however, the Indians have been at the forefront of the struggle for recognition of a national status. Many of them continuously claimed that status, supporting their claim through the early sovereign nation-to-nation relations they established with the British Crown. However, Victorian colonial policy¹¹ and the *Indian Act, 1876*¹² relegated Indian communities to the status of "bands." By the early 1970s, Indians increasingly adopted the term "First Nations" as a political strategy in federal politics, in reaction to the policies aimed at assimilation proposed in the White Paper of 1969¹³ and to the rise of Québec nationalism. The National Indian Brotherhood thus became the Assembly of First Nations in 1982, in the midst of the constitutional reform review process. The Inuit followed their example with their pan-Canadian association, the Inuit Tapiriyat of Canada, which presents itself as the standard-bearer of the Inuit nation.

⁸ These three distinct categories were recognized in s. 35 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

⁹ On June 19, 1816 the Métis asserted their rights to freely hunt and trade in furs, independently from the Hudson Bay Company, in the incident known as the Battle of Seven Oaks. That day, a Métis brigade seized the company post at Brandon House, in present-day Manitoba. As a result, Governor Semple and 21 of his men were killed, as well as one Métis. See "Métis Land Title," online: Métis National Council <http://www.metisnation.ca/MNC/land_title.html>.

¹⁰ Online: Métis National Council <http://www.metisnation.ca/MNC/about_MNC.html>.

¹¹ Thomas O. Hueglin, "Federalismo constitucional vs. federalismo por tratado en Canadá: pensamiento político indígena 'más allá del Estado'" in Paz Consuelo Márquez-Padilla & Julián Castro-Rea, eds., *El nuevo federalismo en América del Norte* (Mexico City: CISAN-UNAM, 2000) at 184-190.

¹² S.C. 1876, c. 18.

¹³ Department of Indian Affairs and Northern Development, *Statement of the Government of Canada on Indian Policy, 1969* (Ottawa: Queen's Printer, 1969).

The Indians called themselves First Nations in a direct challenge to Québec's claim of being one of Canada's Founding Nations.¹⁴ The political elite in Québec who participated in the creation of the Canadian federation in 1867 presented that new political regime as the result of a pact between two nations to create a single state. Although this bi-national nature of the Canadian state is not made explicit in the Constitution and as yet has not been formally accepted by either the federal government or the rest of the Canadian provinces, it has been the source of inspiration for Québec's claim of nationhood. Aboriginal peoples have been reluctant to recognize this claim, arguing that long before the supposedly Founding Nations existed, they were already thriving as nations in what is now Canada. The term First Nations is thus strongly political, underlining the historical legitimacy of the first inhabitants on the Canadian land. They claim to be endowed with rights at least equal to those of the "newer nations," namely English-Canada and Québec.

The competing visions of First Nations or Founding Nations may coexist as the ideological cement of the respective human communities that gave birth to them. They may also serve as political tools to be used by these communities in their dealings with the Canadian state. However, they are bound to clash when the issue of territory is addressed.

As of December 2004, there were 77,626 Aboriginal persons in Québec, living in 58 communities scattered all over the provincial territory.¹⁵ They belong to eleven ethnic groups: Inuit, Cree, Mikm'aq, Malecite, Algonquin, Huron (Wendat), Innu (Montagnais), Abenaki, Atikamekw, Naskapi and Mohawk.¹⁶ Besides the land they share with people of European lineage,

they occupy 14,786.5 km².¹⁷ In that province, both Aboriginal peoples and Québécois of French origin claim historical legitimacy to govern themselves and determine their own future under the internationally accepted right to self-determination. As they consider themselves nations, they also claim their right to practice self-determination within a certain territory. To the extent that large areas of the same territory are claimed by both groups, Aboriginal claims in Québec overlap with the ones of Québec nationalists.

This confrontation reached a peak in 1995, when the government of Québec attempted to obtain a popular mandate to create an independent country out of this province. Aboriginal peoples in the province rejected the project, considering it unilateral and undemocratic.¹⁸ They defended their right to decide their future, and they organised parallel consultations in which they rejected the sovereignty project and asserted the right of Aboriginal peoples to stay in Canada if they so wished.¹⁹ From then on, Aboriginal peoples in Québec have affirmed that if the Québec government is able to lead the province to quit Canada based on the international right to self-determination, then under the same right they may also decide to quit Québec. In other words, if Canada is divisible on self-determination grounds, so is Québec.²⁰

This sour confrontation of nationalisms has given birth to a series of myths, which are often used either by Québec or Aboriginal leaders as arguments in the political debates engendered by this confrontation. Similar to many myths, they are partially based on facts. However, these facts are either incomplete and thus present a one-sided

¹⁴ Alan Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000) at 166.

¹⁵ Government of Canada, "Indian and Inuit Populations in Québec as of December 31, 2004," online: Department of Indian Affairs <http://www.ainc-inac.gc.ca/qc/aqc/pop_e.html>.

¹⁶ Michel Noël, *Le Québec amérindien et inuit* (Quebec City: Sylvain Harvey, 1997) at 21.

¹⁷ Government of Québec, "Eleven Contemporary Nations," online: Secrétariat aux Affaires autochtones <http://www.autochtones.gouv.qc.ca/publications_documentation/publications/onde_nations_en.pdf>.

¹⁸ The Cree were the most vocal group in that rejection; see their comprehensive position in Grand Council of the Crees (of Québec), *Sovereign Injustice: Forceable Inclusion of the James Bay Crees and Cree Territory into a Sovereign Quebec* (Nemaska: Grand Council of Crees (of Québec), 1995).

¹⁹ The Cree voted 96.3 percent to stay in Canada, with a turnout of 77 percent. The Inuit voted 96 percent rejecting Québec sovereignty, with a 75 percent turnout. See Jill Wherrett, *Aboriginal Peoples and the 1995 Referendum: A Survey of the Issues* (Ottawa: Library of Parliament-Research Branch, 1996) at 6.

²⁰ Claude G. Charron, *La partition du Québec: de Lord Durham à Stéphane Dion* (Montreal: VLB, 1996).

picture of reality, or are interpreted in distorting ways. Since this article seeks to understand the origins of this clash of nationalisms, it is important to analyze these myths and sort fiction from reality.

FIRST MYTH: NATIVE PEOPLES ARE AN INSTRUMENT OTTAWA USES TO UNDERMINE QUÉBEC'S NATIONALISM

This myth acquired credence in the aftermath of the Oka crisis during the summer of 1990 and became widely supported by nationalist circles. It was articulated in a book written by Robin Philpot.²¹ According to Philpot, Aboriginal peoples in Québec are a puppet manipulated by Ottawa to undermine Québec's national aspirations from within. Aboriginal peoples' allegiance to Ottawa is demonstrated by the fact most of them speak English, and they insist in dealing directly with the federal government instead of addressing their claims to Québec.

The realities concealed by this myth are manifold. Above all, if Aboriginal peoples are hostile to Québec's independence, it is not because they are manipulated by Ottawa but because Québec nationalists refuse to fully recognize that Aboriginal claims to self-determination have the same validity and scope as Québec's. In fact, international law supports self-determination mostly for peoples living under colonial situations, deprived of sovereignty, and suffering from oppression, racial and cultural discrimination.²² This is exactly the situation under which most Aboriginal peoples in Canada have lived for decades, whereas Québec shares sovereignty with the government of Canada. So, under international law, the Aboriginal peoples have a stronger case for self-determination than does Québec.²³

Aboriginal groups rightfully fear the consequences that the eventual independence of Québec might have on their future, because indications that their rights would be recognized in

²¹ Robin Philpot, *Oka: Dernier alibi du Canada anglais* (Montréal: VLB, 1991).

²² *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.

²³ Mary-Ellen Turpel-Lafond, "Oui the People? Conflicting Visions of Self-Determination in Quebec" in Bruce Hodgins & Kerry Cannon, eds., *On the Land: Confronting the Challenges to Aboriginal Self-Determination in Northern Quebec and Labrador* (Toronto: Betelgeuse, 1995) 43 at 53.

an independent Québec, at least to the extent that they currently are in Canadian law, are ambiguous at best. During the 1995 referendum campaign, art. 8 of Bill 1, *An Act respecting the future of Québec*, recognized the status of Aboriginal peoples as nations, their right to self-government and their existing constitutional rights, but also clearly stated that these rights were conditioned on the integrity of Québec's territory.²⁴ As a result, there was a restriction imposed upon the right of Aboriginal peoples to govern themselves and their ancestral territories from the outset, both important components of self-determination as defined by international law.²⁵ It is a sad paradox that proponents of Québec independence appealed to an internationally enshrined right to decide their own future, while at the same time denying it to Aboriginal peoples.

Moreover, Québec's pro-independence government acknowledged it was willing to recognize Aboriginal rights only because it was a necessary condition for the acceptance of an independent Québec by the international community.²⁶ That is, art. 8 of Bill 1 expressed a political strategy rather than a sincere belief in the legitimacy of Aboriginal rights.

This approach explains why Aboriginal peoples were never consulted in the drafting of the Bill or for any other matter regarding the set-up of the sovereignty project. The commission established in the months prior to the referendum to gather public opinion in Québec regarding the sovereignty project, held meetings in every region of the province, and established special sub-commissions for youth and the elderly. However, there were no such efforts to hear and discuss the concerns of Aboriginal peoples. Their concerns were simply merged into the regional

²⁴ 1st. Sess., 35th. Leg., Québec, 1995. A former version of this law did not explicitly recognize the existing constitutional rights of Aboriginal peoples. See, Draft Bill, *An Act respecting the sovereignty of Québec*, 1st. Sess., 35th. Leg., Québec, 1994, art. 3.

²⁵ International Labour Organisation, *Convention 169 on Indigenous and Tribal Peoples in Independent Countries* (Geneva: ILO, 1989), especially arts. 7 and 13-15.

²⁶ David Cliche et al., "Commentaires" in Pierre Trudel, ed., *Autochtones et Québécois: la Rencontre des nationalismes; actes du colloque tenu les 28 et 29 avril 1995, au Cégep du Vieux-Montréal* (Montréal: La Société Recherches Amérindiennes au Québec, 1995) 141 at 145-146. David Cliche was parliamentary assistant to the Premier of Québec on Aboriginal issues at the time.

commissions, and were thus treated as those of any other Québec minority, with no recognition whatsoever of their special rights.

In other words, while Québec nationalists were elaborating a project to build a new country, arguing the internationally enshrined right to self-determination of peoples, they acted in a unilateral, imperialistic, neo-colonial way towards Aboriginal groups. The hypothetical Québec republic would seemingly be a unitary state, which would consider all of its inhabitants as plain citizens without regard to special rights to self-determination for Aboriginal peoples. The Québec state would treat them as minorities; that is, exactly the way Québécois presently refuse to be treated by the Canadian state. In the tradition of the French absolutist state, Québécois supporting independence seem to assert: “La nation c'est moi.”

During the Oka crisis, progressive Canadians stood in defence of Aboriginal peoples in Québec, a situation that was offered as further evidence of Ottawa’s conspiracy to discredit Québec over its treatment of Aboriginal peoples. This alignment of interests, however, was not unusual. Left-wing groups and intellectuals throughout Canada tend to be against the violation of civil and Aboriginal rights by any government in any province within Canada, be it in British Columbia, Nova Scotia or Québec. Ottawa could not possibly have manipulated these critical political actors who, in fact, also targeted the federal government over the way it managed the crisis. To pretend otherwise is to ignore the important political debate that was occurring in the rest of Canada. To be sure, some rhetorical excesses against Québec were also committed, but they do not negate the basic political dynamics just outlined.

If most Aboriginal peoples in Québec or elsewhere speak English rather than French, it is because of specific historical realities. For centuries, their main everyday interlocutors were either Protestant missionaries, Hudson Bay Company (HBC) traders, representatives of the British Crown, or, more recently, representatives of the federal government, all of whom spoke English. Besides, until the 1960s, the government of Québec refused to provide education to Aboriginal communities within the province,

under the excuse that Aboriginal issues fall within federal jurisdiction.²⁷ The federal government thus provided educational services mostly in English.²⁸

This being said, many Aboriginal individuals in Québec do speak French. Most of them descend from the peoples who became allies of the French in the early times of colonization, like the Wendat, Mikm’aq, Algonquin, or Abenaki, who developed military and commercial relations with these European settlers with the help of Jesuit missions.²⁹ Old alliances last; they have left their imprint on the languages used by the Indians to relate to modern society and the extent to which they mixed with descendants of either the French or British settlers.

Finally, if Aboriginal peoples, during the Oka crisis or at any other moment, insist on dealing with the federal government rather than the Québec government, it is because Ottawa is their main interlocutor in the Canadian legal system. Indians and Inuit are a matter of federal jurisdiction under the *Constitutional Act, 1867*,³⁰ and the federal government has fiduciary obligations towards them. Their rights and obligations lie in a contract with the federal government, not with the provinces. Even if provinces may be involved in land-related negotiations with First Nations or Inuit, any agreement must also be negotiated with or, at the very least, ratified by the federal government in order to acquire legal validity.

²⁷ See *infra* note 30.

²⁸ Brian Callaghan, *Inuit Educational and Language Programs in Nouveau Québec, 1912-1991* (M.Ed. Thesis, University of Alberta, 1992) [unpublished] at 110.

²⁹ Alain Beaulieu & Roland Viau, *La Grande Paix: chronique d'une saga diplomatique* (Montréal: Libre Expression, 2001) at 15. See also Olive P. Dickason, *The Myth of the Savage and the Beginnings of French Colonialism in the Americas* (Edmonton: University of Alberta Press, 1997) at 235-270.

³⁰ 30 & 31 Victoria, c 3 (U.K.), s. 91 (24). The Inuit are included under this federal jurisdiction (*Re Eskimos*, [1939] S.C.R. 104), but whether the Métis are a federal responsibility is a matter of ongoing dispute; see Mark Stevenson, “Section 35 and Métis Aboriginal Rights: Promises Must Be Kept” in Ardit Walkem & Halie Bruce, eds., *Box of Treasures or Empty Box? Twenty Years of Section 35* (Penticton: Theytus Books, 2003) 62 at 65.

SECOND MYTH: NATIVE PEOPLES ARE TREATED BETTER IN QUÉBEC THAN IN THE REST OF THE CANADIAN PROVINCES

The James Bay Agreement (JBA) — concluded between the Cree, the Inuit and the government of Québec in 1975 and later ratified by the federal government³¹ — is portrayed by nationalist Québécois as proof of the will of the government of Québec to come to terms with Aboriginal claims in a consensual manner.

Again, this myth plays on half-truths and fictions. True, socioeconomic indicators regarding Aboriginal peoples may show they are better off in Québec than in other Canadian provinces, but Aboriginal persons in the French-speaking province are worse off in terms of employment, suicide rates, health, education, housing, etc., than the average Québécois. Besides, unlike in other Canadian provinces, no Aboriginal individuals hold senior positions within the Québec government's institutions — the National Assembly, the cabinet, senior bureaucracy, political parties, etc. — who could speak on behalf of their peoples and have some influence on public decisions affecting them.³²

In 1983, the Council of Ministers of the government of Québec issued a document known as the “Fifteen principles” with the purpose of guiding its policies towards Aboriginal peoples.³³ The first principle states Aboriginal groups are distinct nations, endowed with the right to develop their own identity.³⁴ But the third principle explicitly states that “les droits des autochtones doivent être exercés par eux au sein de la société québécoise et ne sauraient par conséquent

impliquer des droits de souveraineté.”³⁵ Principle eleven maintains the same tone: Québec is open to consider that existing rights protected by the *Royal Proclamation of 1763*³⁶ might be recognized; however, actual recognition is not guaranteed.³⁷

In 1985, the Québec National Assembly ratified the principles in a declaration which allowed Aboriginal peoples in Québec “to develop as distinct nations with their own identity, exercising their rights within Québec” and recommended that the provincial government conclude agreements with them.³⁸ The idea is thus the same: Aboriginal peoples may be recognized as nations provided they accept that the ultimate sovereignty belongs to the government of Québec.

The JBA was reached after comprehensive negotiations whereby the provincial government gave Aboriginal peoples important financial compensation in exchange for their acquiescence to the construction of large hydro-electric projects in their traditional territories. However, Aboriginal peoples were also compelled to give up something far more important: their rights over those lands. Extinguishment of rights was the ultimate goal of non-Aboriginal negotiators, the Québec government among them. The agreement was concluded by a government that did not favour independence, yet it was nonetheless expanded and ratified by a pro-independence government. The paradoxical behaviour goes on: a government that claims for itself the right of self-determination as an absolute, eternal right, seeks the extinguishment of that right for other peoples.³⁹

The huge hydro-electrical projects carried out in Northern Québec have had important environmental impacts, affecting the caribou and

³¹ The Naskapi living in Québec joined the agreement in 1978. From then on, the JBA was formally called the “James Bay and North-Eastern Québec Agreement.” It was implemented federally by the *James Bay and Northern Québec Native Claims Settlement Act*, S.C. 1976-1977, c. 32, and provincially by the *Act Approving the Agreement Concerning James Bay and Northern Québec*, S.Q. 1976, c. 46.

³² Renée Dupuis, *Justice for Canada’s Aboriginal Peoples* (Toronto: James Lorimer, 2002) at 20-21

³³ Included as Annex IV in Trudel, *supra* note 26 at 192-193.

³⁴ *Ibid.* at 192.

³⁵ *Ibid.*

³⁶ *Royal Proclamation, 1763*, R.S.C. 1985, App. II, No. 1.

³⁷ Trudel, *supra* note 26 at 193.

³⁸ Quoted in Renée Dupuis, “Les politiques canadiennes et québécoises relatives aux Autochtones” in Trudel, *ibid.*, 56 at 65-66 [author’s translation].

³⁹ Paul Rynard, “‘Welcome in, but Check you Rights at the Door’: The James Bay and Nisga’a Agreements in Canada” (2000) 23 : 2 Canadian Journal of Political Science 211 at 217-218.

fishing supplies in that land.⁴⁰ Regardless of whether this situation was intended or even foreseen by the Québec government, the reality is that it has disturbed the ability of Aboriginal peoples to pursue their traditional lifestyle, their everyday lives and their ability to escape from marginality in many ways. As in any other province, financial compensation is not accompanied by social programs, which makes this second myth untenable.

THIRD MYTH: QUÉBÉCOIS ARE MORE RACIST TOWARDS ABORIGINAL PEOPLES THAN THE REST OF CANADIANS

This myth has been spread by opponents of Québec's independence, convinced that independence is a project dictated by primitive ethnic nationalism, comparable to the ones that gave birth to fascism and nazism. They nourish this vision with interpretations of Québec nationalism elaborated notably by Pierre Elliott Trudeau and, more recently, writer Mordecai Richler. The latter author recalls how racist—and more specifically, anti-Semitic—nationalist Québécois were around the time of World War II; a fact validated by recent historical research.⁴¹

This myth builds on an important ambiguity entrenched in Québec's nationalist discourse and practice. Québec's nationalism has gone through a series of significant conceptual transformations. Originally, descendants of French immigrants called themselves “*les Canadiens*,” not only because Canada was originally limited to what is now the St. Lawrence valley, but also because descendants of British settlers considered themselves British only. The creation of the Canadian federation and its gradual coming of age as an independent state stripped “*les Canadiens*” of their distinct identity, which thus needed to be qualified. That was the origin of the term “French

Canadian,” whose purpose is to draw a line between “*les Canadiens*” and the newly converted Canadians. Associated sometimes with a “people,” usually with a “nation,” often with a “race,” this new term would become the main identifier for people of French descent living anywhere in Canada.

The Quiet Revolution and the rise of radical nationalism produced a new identity shift. Rejecting their belonging to the already well-established Canadian state, French Canadians started to call themselves Québécois, a process that was consolidated with the creation of the Parti Québécois in 1968. This seemingly innocuous twist of words had important political consequences. The French Canadian identity became circumscribed to a provincial territory. From then on, the Québécois would be both French Canadians and residents of Québec: nationality within the French Canadian nation became synonymous with citizenship within the province of Québec. Non-French Canadians living in Québec, including English Canadians, immigrants and Aboriginal peoples, were included by default under the new label. Conversely, French Canadians living outside Québec were excluded from, and indeed abandoned by, the nationalist project promoted from Québec.⁴²

The ambiguities promoted by this identity shift are at the centre of many controversies and political misunderstandings. The reality is that the French Canadian nation and the province of Québec overlap, but they are simply not the same thing. To put it another way, belonging to the French Canadian nation is not synonymous with being a citizen of Québec. Proponents of Québec independence have tried to bridge the gap using the French language as an equivalent of the nationality bond (the “imagined community”) to include non-French Canadians living in Québec into the nationalist project. They also defend the principle of a “civic nationalism” that would allow any non-French Canadian to be included into the nationalist project.

However, these bridges are clearly not enough; the core of Québec neo-nationalism is

⁴⁰ Alan Penn, “Uneasy Coexistence: La Grande and the James Bay Cree” in Hodgins & Cannon, *supra* note 23, 129.

⁴¹ Pierre E. Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan, 1968) at 169 and *The Essential Trudeau* (Toronto: McClelland & Stewart, 1998) at 108-116; Mordecai Richler, *Oh Canada! Oh Québec!: Requiem for a Divided Country* (Toronto: Penguin Books, 1992). On racism in Québec's past, see Esther Delisle, *The Traitor and the Jew: Anti-Semitism and Extremist Right-Wing Nationalism in Québec from 1929 to 1939* (Montreal: R. Davies Publishing, 1993) and, from the same author, *Myths, Memory and Lies: Québec's Intelligentsia and the Fascist Temptation, 1939-1960* (Westmount: R. Davies Multimedia, 1998).

⁴² Marcel Martel, *Le Canada français: récit de sa formulation et de son éclatement, 1850-1967* (Ottawa: La société historique du Canada, 1998) at 20-27.

still defined in terms of French Canadian nationalism. This reality was made clear in a clumsy way by Premier Jacques Parizeau's catastrophic declaration the evening of the 1995 referendum, blaming "money and the ethnic vote" for the defeat of the independence option.⁴³ Rephrasing that declaration within my framework of analysis, Parizeau made the point that the economic elites (of which English Canadians represent an important part) and other non-French Canadians living in Québec failed to embrace the French Canadian nationalist project of transforming the French Canadian defined nation into a sovereign state.

The myth nonetheless magnifies this ambiguity of Québécois nationalism and makes a bogeyman out of it. Earlier this century, racism was common currency all over Canada.⁴⁴ Moreover, the term "race" was used as an equivalent of "nation." Fortunately, these attitudes have faded, having come under attack since the adoption of the *Canadian Charter of Rights and Freedoms* in 1982.⁴⁵ The net result is that racist discourse is now less prominent in Canada, be it in Québec or elsewhere, especially if we compare Canadians to their neighbours to the south.

Specifically regarding Aboriginal peoples, three out of every four Canadians believe Aboriginal cultures are beneficial to Canada and therefore should remain strong.⁴⁶ Significantly less (53 percent) think their land claims should be settled and Aboriginal peoples given self-

government.⁴⁷ However, even fewer Canadians consider that improving the living conditions of Aboriginal peoples should be a high priority for the federal government.⁴⁸ Québec is no exception to those trends. In 2003, 47 percent of Québec respondents thought Aboriginal claims are mostly valid.⁴⁹ However, the following year, only 22 percent of respondents in that province considered that improving the quality of life of Aboriginal peoples should be a high priority for the federal government.⁵⁰

THE SEARCH FOR RECOGNITION

I believe it is possible to go beyond the current clash of nationalisms in Québec through an honest review of the assumptions at the basis of apparently irreconcilable approaches.

First, a nation is not the only possible form of recognition of the right of human communities to be different and take their own affairs in hand. If this applies to nations, it especially does to nation-states. As James Tully points out, the nation-state form of recognition has been dominant and prestigious since the creation of modern states, but it would be impractical, and politically non-viable, to extend this form of recognition to the over fifteen thousand cultural communities existing in the world today that may claim nationhood.⁵¹

Furthermore, the prevailing vision of nation-state was elaborated within the Western political tradition of the eighteenth and nineteenth centuries. This vision emphasizes the need for a homogenizing principle as the core of the state, a common single identity that would act as articulator of that political entity. That was the role assigned to nationhood. Homogeneity usually involves some degree of centralism as well, to the extent that a central government is supposed to represent the "national soul." This kind of vision is portrayed in J. G. Fichte's *Addresses to the German nation*, in J. Seeley's *The Expansion of*

⁴³ Michel Venne, "Rethinking the Nation, or How to Live Together" in Michel Venne, ed., *Vive Québec! New Thinking and New Approaches to the Québec Nation* (Toronto: James Lorimer, 2001) 5.

⁴⁴ For example, restrictions to immigration of non-European people, the existence of a Canadian Ku Klux Klan, the internment of Japanese and German Canadians during World War II, the forced relocation of Inuit communities in the early 1950s, and residential schools for Aboriginal children, among other disturbing occurrences. See Normand Lester, *The Black Book of English Canada* (Toronto: McClelland & Stewart, 2002) and Stanley A. Barrett, *Is God a Racist? The Right Wing in Canada* (Toronto: University of Toronto Press, 1987).

⁴⁵ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

⁴⁶ "The CRIC Papers (#14). Facing the Future: Relations Between Aboriginal and Non-Aboriginal Canadians" (June 2004) at 12, online: Centre for Research and Information on Canada <http://www.cric.ca/pdf/cahiers/cricpapers_june2004.pdf>.

⁴⁷ *Ibid.*

⁴⁸ 29 percent ("The CRIC Papers (#16). Portraits of Canada 2004" (January 2005) at 2 and 11, online: Centre for Research and Information on Canada <http://www.cric.ca/pdf/cahiers/cricpapers_jan2005.pdf>).

⁴⁹ *Supra* note 46 at 20.

⁵⁰ *Supra* note 48 at 11.

⁵¹ James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995) at 8.

England and, paradoxically, in *The Federalist Papers*.⁵² It is especially strong in the French tradition where, under King Louis XIV, Cardinal Richelieu built the nation-state with an iron fist against regional powers and at the expense of the different cultures (nations) the kingdom encompassed.⁵³ In France, the French (Parisian) language was a powerful political tool for assimilation and annihilation of the rich variety of local cultures comprised within the borders of the state—Catalan, Provençal (langue d'oc), Basque, Breton, Corsican, Flemish, German, Italian. The Republic simply carried on this tradition, pushing regional harmonization even further in the name of national unity.

Clearly, this vision of the nation does not allow for the coexistence of different identities within a single state; rather, it leads to competition between nations to be the one to prevail, often by violent means, in a zero-sum situation. Coexistence asks for institutional forms of accommodation, in which the different nations may express themselves and exercise self-determination without putting in jeopardy state unity. These features fit with the principle of authentic federalism: autonomy for the constituent units; some powers devolved to the central government; the units working mainly for their self-interest in local matters, the central government mainly for state unity.

There is no reason why this could not be put into practice in Québec. Paradoxically, even if nationalist Québécois despise the federal status quo in Canada, true federalism may be the key to reconcile Québec and Aboriginal nationalisms, both with one another and with Canadian nationalism. As Carol Hilling points out,

[J]e ne vois pas pourquoi l'intégrité des territoires autochtones serait nécessairement incompatible avec l'intégrité du Québec au sens du droit international. La division du Canada en

⁵² *Ibid.* at 7. Johann Gottlieb Fichte, *Addresses to the German Nation*, trans. by R. F. Jones & G. H. Turnbull (Chicago: The Open Court Publishing Company, 1922); Sir John Robert Seeley, *The Expansion of England: Two Courses of Lectures* (London: Macmillan, 1911); and, Alexander Hamilton *et al.*, *The Federalist Papers* (New York: New American Library, 1961).

⁵³ Aldous Huxley, *The Devils of Loudun* (New York: Barnes & Noble Books, 1996).

provinces, par exemple, n'a jamais eu pour conséquence de remettre en question l'intégrité territoriale du Canada.... L'intégrité des territoires autochtones peut fort bien être respectée à l'intérieur des frontières de l'État.⁵⁴

Furthermore, if they so wished, Québécois and Aboriginal peoples might even become powerful constitutional allies for reshaping the Canadian federation along multinational lines.

Hilling's starting point for mutual recognition seems promising because some kind of recognition of Québec and Aboriginal peoples is built into existing Canadian law and institutions. The first such basis is *The Royal Proclamation of 1763*, in which the British crown simultaneously granted Québec the status of a British colony and protected Aboriginal peoples from deprivation of their lands and resources. With this legal instrument, Québec and Aboriginal peoples acquired legal personality within the British legal apparatus at the same time. This proclamation, still upheld today, laid down the bases for subsequent recognition of Aboriginal rights. Québec obtained its equivalent legal instrument eleven years later, with the *Québec Act, 1774*,⁵⁵ which recognized the right of Québec to be different in terms of religion, law and language.

Second, the *Constitution Act, 1982*, including the *Charter*, also implies a basis for mutual recognition. The amending formula (s. 38), although never formally accepted by the government of Québec, gives the French-speaking province a potential veto power, since any constitutional amendment must be approved by at least two-thirds of the legislative assemblies of the provinces in which at least 50 percent of Canada's population lives. Effectively, this formula means that no amendment can be approved without either Québec's or Ontario's consent. As for Aboriginal peoples, this constitutional text recognizes the rights enshrined in the *Royal Proclamation* and the ones resulting from land claims and treaties (ss. 25 and 35).

There is, then, a legal basis for mutual recognition

⁵⁴ "L'avant-projet de loi sur la souveraineté du Québec et les peuples autochtones" in Trudel, ed., *supra* note 26, 134 at 137.

⁵⁵ (U.K.), 14 George III, c. 83.

within the framework of existing institutions. The main obstacles to this recognition are thus not legal, but political. However, there is room and, indeed, there is a necessity to go beyond the current state of confrontation, because

Québécois et autochtones souhaitent l'autonomie et ont un projet nationaliste. Ils cherchent la reconnaissance d'un droit à l'auto-détermination et de leur existence comme peuples. Ni le Québec ni les peuples autochtones ne peuvent logiquement nier à d'autres le droit qu'ils réclament pour eux-mêmes. Les uns et les autres veulent lever ce que d'aucuns appellent le joug du colonialisme et du paternalisme; les uns et les autres ont intérêt à trouver leur niche constitutionnelle particulière. *Et il y a là une convergence politique.*⁵⁶

I am convinced that many political problems in Canada originate in a lack of understanding of history and of what made this country possible the way it is. Many answers to Canadian dilemmas lie in alternatives that were abandoned in the past. We need to recall some historical facts which show that convergence between Québec and Aboriginal peoples is not only possible, but had also been a reality during the nineteenth century.

In the nineteenth century, there was indeed a close relationship between French Canadians and Aboriginal peoples. This closeness explains the birth and development of the Métis culture west of Québec's heartland, which constituted a continuity between the Québec *habitant* and Native populations on the land and along trade routes. The Métis culture is proof of the possibility of co-operation and understanding between French Canadians and Aboriginal peoples. Most Métis descend from French and Scottish ancestors who intermarried with Aboriginal peoples. During the nineteenth century, Métis of Scottish heritage were often known as "Half-breeds" rather than Métis. These groups became mediators between European traders and settlers and Indians living on

⁵⁶ René Boudreault, "Par-delà nos différends juridiques: à la recherche d'une réciprocité" in Michel Seymour, ed., *Nationalité, citoyenneté et solidarité* (Montréal: Liber, 1999) 341 at 348 [emphasis added].

the land. Over time, they developed a distinct cultural identity, neither European nor Indian, with several original attributes: a way of life, attachment to a specific territory, specialized economic activities, a language — the Michif, a mix of French, English, Cree and Ojibway⁵⁷ — clothing and food habits, etc. The Cree called them "Otehpayimsuak," literally "their own boss," meaning "the independent and self-reliant ones." No wonder they soon acquired a sense of autonomy and sought self-determination. They were able to assert this autonomy when they defeated the Sioux (Lakota) Indians over the buffalo hunt, and again in 1849, when they broke the monopoly of the powerful HBC over fur trade with the United States.⁵⁸

The centre of the Métis culture was the Red River settlement; they constituted over 80 percent of this settlement's population.⁵⁹ They became concerned about the takeover of their settlement and hunting lands by the Canadian government in 1869, when Ottawa purchased these lands from the HBC. The Métis seized the administrative centre of the region and established an autonomous provisional government to negotiate with Ottawa the terms of their inclusion into the newborn Canadian federation. Under the leadership of Louis Riel, the provisional government was able to unite the Métis and the Halfbreed around a common political project. They would eventually obtain what they wanted: an elected legislature; their own members of parliament in Ottawa; official status for both French and English languages; local control of education; protection for the Catholic faith; and, 1.4 million acres of land promised to the Métis. Recognition of Métis rights was accompanied by the creation of the province of Manitoba in May

⁵⁷ Interestingly, these four languages are still the most used in Canada. The first two are the official languages, the other two are the Indian languages most widely spoken and with best possibilities of survival. Cree is spoken by about 50 percent of the 120,000 Cree, while Ojibway is used by 40 percent of the 75,000 people belonging to this group living in Canada. See Renée Dupuis, *La question indienne au Canada* (Montréal: Boréal, 1991) at 32. A study carried out by Statistics Canada comes to a similar conclusion, with data updated to 1996: 87,555 people speak Cree, and 25,885 speak Ojibway; see Mary Jane Norris, "Canada's Aboriginal Languages" (1998) 51 *Canadian Social Trends* 8 at 13.

⁵⁸ Emma LaRocque, "Native Identity and the Métis: Otehpayimsuak Peoples" in David Taras & Beverly Rasporich, eds., *A Passion for Identity. Canadian Studies for the 21st Century* (Scarborough: Nelson Thomson, 2001) 381-399.

⁵⁹ *Ibid.* at 385.

1870, the first new province to join the federation created three years earlier.

Métis settlers west of Manitoba attempted to repeat the exploit fifteen years later, now allied to Blackfoot and Cree Indian groups. Even more than in the past, they were wary of the federal government, because it had only partially honoured the promises made in Manitoba regarding land. The Métis had been dispossessed from their land grants through a mixture of manipulation, maladministration, coercion and speculation.⁶⁰ The settlers asked Riel, in exile in the United States since 1874, to lead their movement, and he agreed. After sealing alliance with Indian leaders, they issued a “Bill of Rights” that compounded Indian grievances with Métis land claims, and control of natural resources. If these demands were not met, they were ready to create an autonomous British colony, separate from Canada.⁶¹

This time, however, the movement faced adamant resistance from Ontarians, supported by Ottawa. The Métis organised armed resistance, under the leadership of Riel and Gabriel Dumont, a charismatic buffalo hunter and negotiator. They were defeated in May 1885. Riel was tried and charged with high treason, and hanged on November 16, 1885.

Québec supported the Métis movement politically and ideologically. There was a measure of solidarity towards francophone Métis in the province. The solidarity of Québécois came from the fact that they saw the Métis as an outgrowth of the French Canadian nation, a feeling shared by Riel himself.⁶² His execution provoked outrage in Québec. Newspaper articles expressed the popular mood: “The cause of the Métis is dear to us”; “We are too closely related to be indifferent to their fate”; “Riel is only a symbol: it’s the French-

Canadian and Catholic element that they’d like to see dancing at the end of a rope.”⁶³

Thus, the Métis were seen in Québec as the standard-bearers of the French Canadian nation in the newly colonized western Canadian lands. In Montréal, a crowd of 50,000 people — the biggest popular demonstration thus far in that city — gathered to listen to thirty-seven speakers condemn the decision to execute Riel. Honoré Mercier, leader of the provincial Liberal Party, capitalized on that show of popular outcry. Mercier declared in his speech to the masses that Riel’s execution was “a blow struck at the heart of our race” because Riel was a “brother of the Northwest” to French Canadians.⁶⁴ He built on that mobilisation to create a National Party, uniting the Liberals and radical Catholic Conservatives for the defence of the French Canadian nation. He was able to form a national unity government in 1887.

TOWARDS A COMMON QUEST FOR RECOGNITION?

As we saw, in the past, Québécois and Aboriginal peoples were drawn towards each other because they were both populations marginalized by British colonialism. The dawn and fall of Métis nationalism was a rallying cause for their nationalisms. Today, both groups are struggling to obtain recognition and protection of their collective rights from the Canadian state. Thus, their interests are similar. Instead of trying to exclude each other, Québécois and Aboriginal peoples might be interested in finding a common ground not only for mutual recognition but also for a common struggle to reshape the Canadian federation, taking their national interests into account.

Acknowledgement of this history may be the basis for reconciliation and mutual recognition of competing nationalisms. Maybe the revival of the “Riel spirit,” the feeling of belonging to the same

⁶⁰ Paul Chartrand, “Aboriginal Rights: The Dispossession of the Métis” (1991) 29 Osgoode Hall Law Journal 457.

⁶¹ John F. Conway, *Debts to Pay. A Fresh Approach to the Québec Question* (Toronto: James Lorimer, 1997) at 37-38

⁶² In 1869, the Red River provisional government adopted as its symbol a flag with the *fleur-de-lys* (white lily) symbol, to underline its allegiance to its French roots. The *fleur-de-lys* would later become the official crest of Québec, as seen in its contemporary flag, adopted in 1948. See “Un drapeau pour le Québec,” online: Radio-Canada <http://archives.radio-canada.ca/IDC-0-17-527-2591-10/politique_economie/drapeau_fleurdelise_quebec/>.

⁶³ Quoted in The Institute for Research on Public Policy, ed., *As I recall/Si je me souviens bien Historical Perspectives* (Montréal: IRPP, 1999) at 70-72.

⁶⁴ Paul Romney, *Getting it Wrong. How Canadians Forgot Their Past and Imperilled Confederation* (Toronto: University of Toronto Press, 1999) at 135.

cultural community, is the starting point for mutual recognition through a shared identity composed by equal parts of the two nations. Certainly, this fusion around the Métis nationalism is now mostly symbolic. Over the course of over one century, the Métis, Québec and Indian nationalisms have developed along different lines. The integration of this past into the respective nationalistic narratives, however, may become a powerful political tool for reconciliation.

Whether this reconciliation is a step towards the reform of federalism or a previous stage towards independence of Québec is a matter that must be decided afterwards by the concerned actors. But it is clear that Québec cannot afford to bypass the participation of Aboriginal peoples in this decision. In fact, the government of Québec has the opportunity to show to the rest of Canada and to the world, through the concrete example of its treatment to Aboriginal peoples, just what “respecting the differences,” “honouring the right to self-determination,” and “a pact between nations” mean. It just cannot afford to behave in an imperialistic, neo-colonial way while accusing Ottawa of doing so, thus giving credence to those who contend that Québec nationalism is exclusionary and ethnocentric. Québec nationalists could also reconcile themselves with French Canadian nationalism, thus embracing and supporting French Canadian communities outside Québec.

Mutual recognition is important not only to solve disputes within Québec, but also to seek a recasting of the Canadian federation. Together, Aboriginal peoples and Québécois can push Ottawa and the other provinces to correct the shortcomings of Canadian federalism that affect their ability to fully exercise their right to self-determination. Authors such as Guy Laforest and Roger Gibbins, Bernard Cleary, René Boudreault and Michel Seymour have suggested this joint effort.⁶⁵ Boudreault identifies a series of convergences between Aboriginal peoples and Québécois, beyond the constitutional debates:

⁶⁵ Roger Gibbins & Guy Laforest, eds., *Beyond the Impasse: Toward Reconciliation* (Montréal: IRPP, 1998); Bernard Cleary, “Les trois peuples fondateurs: l’assise du Canada de demain” in Seymour, ed., *supra* note 56 , 336; Boudreault, *supra* note 56; and, Michel Seymour, *La Nation en question* (Montréal: L’Hexagone, 1999) at 177-189.

a) Political: both populations seek the recognition of collective rights, associated with autonomy and a nationalist project. Aboriginal sovereignty may be harmonised with and be complementary to sovereignty of the National Assembly through recognition of specific spheres of government.

b) Economic: through the participation of Aboriginal peoples in commonly defined programmes of regional development.

c) Social: through the opening up of social organizations of both nations to participation of each other's members, and co-operation in the management of natural resources and the environment.

d) Cultural: by supporting each other in the defence of their uniqueness in North America, both being minorities and thus threatened by homogenizing forces.⁶⁶

The authors mentioned above have in common a deep comprehension of the respective nationalisms and rights involved and lucidity about the stakes involved. Unfortunately, these features are scarce in the minds and behaviour of most respective nationalist leaders. A first opening seemed possible in 1983, when Premier René Lévesque participated in the first conference for the review of constitutional reforms related to Aboriginal issues, largely because he was asked to do so by Aboriginal groups. At that time, there was a common interest to fight simultaneously for Québec and Aboriginal rights, both overlooked by the constitutional patriation.⁶⁷ This co-operation died with the replacement of Lévesque at the head of the provincial government in 1984.

Since then, subsequent nationalist leaders spent their time accusing each other of misunderstanding one another's causes, and trying to make their rights prevail over the ones of the opposite side. Québec nationalists try to subordinate Aboriginal rights to Québec's rights to self-determination — acting as if to say: independence first, then negotiation with

⁶⁶ Boudreault, *ibid.* at 347-353.

⁶⁷ Sylvie Vincent, “Le Québec et les Autochtones: trois décennies de rapports politiques” in Trudel, ed., *supra* note 26, 116 at 123.

Aboriginal peoples. Aboriginal leaders oppose Québec nationalists by underlining their attachment to Canada, thus implicitly endorsing the status quo. However, in their dealings with Ottawa, both groups constantly express their dissatisfaction with the place they occupy in the current federal system. Instead of waging two separate constitutional battles — one against each other and one against the federal government — there is room, I believe, to present a common front before Ottawa with a coherent joint strategy and a single objective in mind: reform of federalism to recognize national rights.

Back in 1990, in the aftermath of the failure of the Meech Lake Accord, then-Assembly of First Nations chief Ovide Mercredi paid a visit to Premier Robert Bourassa to propose a strategic alliance for the coming constitutional negotiations. Nobody in Québec, starting with the Premier himself, seemed to give the proposal the historical importance it deserved. Rather, a back-and-forth calumny campaign followed, with Aboriginal and Québec nationalist leaders accusing each other of representing “tribes” instead of nations. The confrontational approach chosen by subsequent pro-independence provincial governments led by Jacques Parizeau and Lucien Bouchard seemed to indicate that the doors were still closed for the reconciliation of nationalisms and mutual recognition.⁶⁸

As for Aboriginal leadership, quite often their strategy consisted of backing Ottawa against Québec in constitutional matters. This was clear in the way the Cree opposed the 1995 referendum on sovereignty. Often at that time, the defence of Aboriginal rights was followed by support of the positions of the federal government in the referendum debate.⁶⁹ This strategy may seemingly give more political clout to Aboriginal claims *vis-à-vis* Québec, but it is certainly incoherent to side with the supporters of the constitutional status quo which in other political arenas often overlook the rights of Aboriginal peoples.

⁶⁸ Pierre Trudel documents this acrimonious clash of nationalisms in “De la négation de l’autre dans les discours nationalistes des Québécois et des Autochtones” in Michel Sarra-Bournet, ed., *Les nationalismes au Québec du XIX^e au XXI^e siècle* (Ste.-Foy: Les presses de l’Université Laval, 2001) 203-230.

⁶⁹ See the “Conclusions and Recommendations” issued by the Grand Council of the Crees, *supra* note 18 at 429-460. Several of the 125 recommendations support the views of the federal government in the Canadian unity debate.

More recent developments, however, indicate there is perhaps an effort of mutual recognition and co-operation developing. Quebec’s nationalist government led by Premier Bernard Landry made important strides toward the establishment of a new relationship with Aboriginal peoples. First, in February 2002, this government reached an agreement with the Cree known as “The Peace of the Braves.” This agreement, valid for fifty years, was explicitly negotiated on a “nation to nation” basis, aiming at the creation of a new “partnership” between them. Legitimated by 70 percent support in a referendum held in all Cree communities within the province, and praised by the leadership of the Cree nation, the agreement provides for Cree involvement in community and economic development of the region and substantial compensation of 3.5 billion dollars, to be delivered to them over the duration of the agreement with an initial payment of 139 million over the first three years. In exchange, the Cree agree to allow major hydro-electric projects to be developed within their traditional territories and to withdraw the multi-billion lawsuits against the Québec government.⁷⁰

Secondly, the same government concluded a preliminary agreement with the Innu, under similar principles of partnership and mutual recognition as nations. This preliminary agreement, called the “Common Approach,” was made public in July 2000. Although it simply sets the basis for negotiation of a final agreement in the short term, it nonetheless provides for the creation of an autonomous Aboriginal government in a limited region named Innu Assi, and grants harvesting rights and participation in resource development in a considerably larger area called Nitassinan. Again, there would be a financial

⁷⁰ “La ‘Paix des Braves’ ouvre la voie à une nouvelle ère de coopération et de prospérité pour la région de la Baie-James,” online: Premier of Québec <http://www.premier.gouv.qc.ca/general/comuniques/archives_communiques/2002/fevrier/com20020207a.htm>.

compensation in exchange for the Innu dropping their legal suits against the province.⁷¹

However, both processes are explicitly based on the “Fifteen Principles” adopted in 1983 and ratified in 1985, which assert Québec’s ultimate sovereignty over the whole territory, stipulate that Aboriginal rights must be exercised within Québec’s legal framework, and, most importantly, persevere with the requirement of extinguishment of Aboriginal title as a condition for reaching any agreement.⁷²

In conclusion, present prospects for reconciliation of Québec and Aboriginal nationalisms seem promising but still incomplete. There is room, and indeed a real need to move beyond those partial achievements. There is still a good deal of misconception, resentment and misunderstanding *vis-à-vis* Aboriginal peoples in Québec, emanating from vocal nationalist sectors within the province.⁷³ These attitudes need to be changed if more meaningful progress is to be achieved.

There is even a potential symbol to this reconciliation. The Métis identify a coloured sash as one of the symbols of their nationhood – originally called “L’Assomption sash” after the Québec town where it was produced. A similar sash is also an element of Quebec’s self-imagery, where it is called *la ceinture fléchée* and is associated with *les habitants*, the early French rural settlers and colonizers of the Canadian west. Will we one day witness a full reconciliation, symbolized by the Métis sash/Québécois *ceinture fléchée*, as some sort of a wampum belt for the new millennium?

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⁷¹ Government of Québec, “Message du ministre [des Affaires autochtones] Rémy Trudel concernant le projet d’entente de principe d’ordre général avec les Innus de Mamitun et de Nutashkuan,” online: Vigile <<http://www.vigile.net/ds-societe/docs2/02-8-28-trudel-cris.html>>.

⁷² See the “second myth” discussed above.

⁷³ For instance, see the critique to those agreements issued by Mouvement estrien pour le français, “La Paix des braves,” online: Mouvement estrien pour le français <<http://www.mef.qc.ca/paix-des-braves.htm>>.

FROM “INDIANS” TO “FIRST NATIONS”: CHANGING ANGLO-CANADIAN PERCEPTIONS OF THE NORTH AMERICAN INDIAN IN THE TWENTIETH CENTURY*

Donald B. Smith

A look at three university-organized conferences, the first in 1939, the second in 1966, and the most recent in 1997, reveals an increasing awareness of Aboriginal issues — particularly in the 1990s. From the mid- to the late twentieth century, Indians, now generally known as the First Nations, moved from the periphery into the centre of academic interest. The entrance of Aboriginal people, “the third solitude,” has altered completely the nature of Canada’s unity debate. Section 35 of the *Constitution Act, 1982*¹ affirms the existence of Aboriginal and treaty rights. The definition of “Aboriginal peoples of Canada” in the new constitution of 1982 now includes the Métis, as well as the First Nations and Inuit. Today, no academic conference in Canada on federalism, identities, and nationalism, can avoid discussion of Aboriginal Canada.

THE YALE-UNIVERSITY OF TORONTO SEMINAR-CONFERENCE ON THE NORTH AMERICAN INDIAN TODAY UNIVERSITY OF TORONTO SEPTEMBER 4-16, 1939

Sixty years or so ago Native issues rarely entered into the consciousness of English-speaking Canadians. The federally-recognized Indians (those under the federal *Indian Act*²) then

numbered only 118,000,³ or approximately 1 percent of Canada’s total population of roughly eleven million. Many Canadians, including Diamond Jenness, one of Canada’s best known social scientists, believed them to be a vanishing people. In his classic work, *The Indians of Canada*, published in 1932, the distinguished anthropologist wrote that “[i]t is not possible now to determine what will be the final influence of the aborigines on the generations of Canadian people still to come. Doubtless all the tribes will disappear. Some will endure only a few years longer, others, like the Eskimo, may last several centuries.”⁴ Intermarriage and cultural assimilation would make them extinct.

Among many English-speaking Canadians around 1939, all things British enjoyed pre-eminence. In that year, for instance, the young Canadian diplomat, Lester Pearson, a future Prime Minister of Canada, wrote of Britain in a published article as “the Mother Country.”⁵ Peter Newman, the well-known Canadian writer who reached Canada in 1940 as a refugee from Czechoslovakia, remembers Canada at the time as “dominated by White Anglo Saxon Protestants.”⁶ The veteran journalist John David Hamilton, born and raised on the prairies in the 1930s, recalls that “[w]e learned in Sunday School that Anglo-Saxons were the pinnacle of human beings and

* A paper based on a slide talk, delivered at the “Federalism, Identities and Nationalism” Conference, Hotel Macdonald, Edmonton, December 12, 1999, by Donald B. Smith, Department of History, University of Calgary.

¹ being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

² R.S.C. 1985, c. I-6, online: CanLII <<http://www.canlii.org/ca/sta/i-5/>>.

³ T.R.L. MacInnes, “The History and Policies of Indian Administration in Canada” in C.T. Loram & T.F. McIlwraith, eds., *The North American Indian Today* (Toronto: University of Toronto Press, 1943) 152 at 160.

⁴ Diamond Jenness, *Indians of Canada*, 7th ed. (Toronto: University of Toronto Press, 1977) at 264.

⁵ L. B. Pearson, “Love of Sport” in *Canada: Reprinted from the Canada Number of the Times, Published on May 15, 1939* (London: The Times, 1939) 265 at 265.

⁶ Peter C. Newman, “A country of many cultures and flavors” *Maclean’s* 108:30 (1995) 34.

civilization and no argument was permitted.”⁷ In 1939, the Union Jack flew over all federal government buildings. Canada did not have its own national flag.

Native people were rare in Toronto in the 1930s. Unlike Montréal with the large neighbouring Iroquois community at Kahnawake (Caughnawaga), or Vancouver with the adjacent Squamish and Musqueum reserves, or Calgary with the Sarcee (Tsuu T’ina) on the southwest of the city, Toronto had no nearby First Nation reserve. The Mississauga once held land along the Credit River, just to the west, but the pressure of British settlement forced them to leave. In 1847, the Mississauga of the Credit relocated further west to the Grand River, next to the Six Nations (Iroquois) near Brantford.

From 1936 to 1938, Grey Owl, the son of an Apache woman and a Scot who had been a guide with Buffalo Bill, was the best-known North American Indian in Toronto and throughout all of English-speaking Canada.⁸ The famous writer and lecturer, who lived and worked at his cabin in Saskatchewan’s Prince Albert National Park, visited Toronto in 1936. At the Toronto Book Fair, 2000 people crowded into the King Edward Hotel’s Crystal Ballroom to hear him, with 500 more left outside the doors as no space remained in the hall. On his last visit, in late March 1938, the tall, dark, hawk-faced man clad in mocassins and buckskins addressed an audience of about 3000 in Massey Hall. After his Toronto address, part of exhausting seven-month lecture tour in Britain, the United States, and Canada on the importance of conservation, Grey Owl returned totally exhausted to his cabin in Saskatchewan. He died in Prince Albert on April 13, 1938. Within a week came the exposé. The “Modern Hiawatha” was really one Archie Belaney, born and raised in Hasting, England, who had left home at the age of seventeen to live in northern Canada.

In the late 1930s, Tom McIlwraith, an anthropologist at the University of Toronto and curator of the Ethnological Collections at the

Royal Ontario Museum, wanted to educate others about Canada’s Native peoples. In the spring and summer of 1939, he organized, with the assistance of Professor Charles Loram of Yale University, a highly ambitious two-week conference on the welfare of the North American Indian at the University of Toronto. By invitation, over seventy invited Canadian and American government officials, missionaries, and academics participated, as did twelve Native people. For the first time in Canadian history, Aboriginal people attended a Canadian scholarly meeting.⁹ Professors McIlwraith and Loram wanted to “reveal the actual condition today of the white man’s Indian wards, and in a scientific, objective, and sympathetic spirit, plan with them for their future.”¹⁰

From September 4 to 16, 1939, the conference delegates heard from various non-Native speakers about the cultures, reserve economics, health, and education of North American Indians in Canada and the United States. T.R.L. MacInnes, in his paper on Canadian Indian policy, made a startling declaration. The federal official with the Indian Affairs Branch pointed out that contrary to popular belief, the Indian population in Canada had reversed its previous decline and that in fact, “for the decade between 1929 and the present year, 1939, the average yearly increase is about 1 percent.”¹¹

The press paid little attention to the meetings because, unfortunately, the timing of the conference could not have been worse. Three days before the sessions began, Hitler invaded Poland. Two days later Britain declared war on Germany. Throughout the first two weeks of September the press focussed on the rapid German advance

⁷ John D. Hamilton, “McClung’s Racism,” Letter to the Editor, *The Literary Review of Canada* (October 1995) 27.

⁸ Donald B. Smith, *From the Land of the Shadows: The Making of Grey Owl* (Saskatoon: Western Producer Prairie Books, 1990).

⁹ For a list of the Native delegates, see Donald Smith, “Now We Talk – You Listen: Indian delegates at a conference in 1939 joined together to speak for themselves” *Rotunda: the Magazine of the Royal Ontario Museum* 23:2 (Fall 1990) 48.

¹⁰ Charles T. Loram, “The Fundamentals of Indian-White Contact in the United States and Canada” in C.T. Loram & T.F. McIlwraith, eds., *The North American Indian Today* (Toronto: University of Toronto Press, 1943) 3 at 4. For two small manuscript collections regarding the conference, see Correspondence re: Seminar Conference at University of Toronto/Yale (1939/1943), Ottawa, National Archives of Canada (RG 10, vol. 3186, file 464, 314, microfilm reel: C-II, 336); and, Office File of Commissioner John Collier, 1933-45, C. Conferences and Congresses: Toronto University Seminar (4-16 September 1938) Washington, D.C., U.S. National Archives (RG 75, Records of the Bureau of Indian Affairs).
¹¹ *Supra* note 3 at 160.

through western Poland. Midway through the meetings, on September 10th, Canada declared war on Germany, and the day after the Conference ended the Soviet Union invaded eastern Poland. The general public and press were too preoccupied to learn about the poor health conditions, unemployment, and the workings of the Indian residential school system.

On the last day of the conference delegates met to pass resolutions urging greater attention to “the psychological, social, and economic maladjustments of the Indian populations of the United States and Canada.”¹² A committee was formed to prepare the conference papers for publication, and to exchange information on the North American Indian. At this point a dramatic defection occurred. The Native delegates broke away from the main group and met separately to pass their own resolutions.

While appreciative of their invitation to the conference, the Native delegates resolved to have their own meetings. They did not need government officials, missionaries, white sympathizers, or Grey Owls, to speak for them. One of their resolutions stated: “We hereby go on record as hoping that the need for an All-Indian Conference on Indian Welfare will be felt by Indian tribes, the delegates to such a conference to be limited to *bona fide* Indian leaders actually living among the Indian people of the reservations and reserves, and further, that such conference remain free of political, anthropological, missionary, administrative, or other domination.”¹³

Canadians did not hear the Native voice in September 1939, drowned out as it was by the outbreak of the Second World War. Nor did Canadian historians, only one of whom—George F.G. Stanley, from Mount Allison in New Brunswick — attended the conference.¹⁴ A number of Canadian historians during the war, and immediately after it, continued to reveal their ignorance of Native history. In the spring of 1944 for instance, Donald G. Creighton published his *Dominion of the North*, a well-written study,

which went through numerous editions and re-printings in the decades to follow. *Dominion of the North* begins with the Europeans’ arrival. It contains no separate description of North American Indian society, the first chapter being devoted to “The Founding of New France, 1500-1663.”¹⁵

In the mid-1940s, another professional Canadian historian, Edgar McInnis, diligently worked away on his one-volume study of Canada. Published in 1947, McInnis’ *Canada: A Political and Social History*¹⁶ had a longer life than Creighton’s *Dominion of the North*. University instructors adopted it as a course text in Canadian history courses into the 1980s. From 1947 to 1969, it sold more than 200,000 copies.¹⁷ In his book McInnis referred to North American Indians at greater length than Creighton had. One sentence best summarizes McInnis’s interpretation: “The aborigines made no major contribution to the culture that developed in the settled communities of Canada.”¹⁸

THE TRINITY COLLEGE CONFERENCE ON THE CANADIAN INDIAN TRINITY COLLEGE, UNIVERSITY OF TORONTO JANUARY 21-22, 1966

After the Second World War, more positive attitudes toward Native peoples emerged. Social scientists in the 1940s discredited the pseudo-scientific race theory of the late nineteenth and early twentieth centuries, the belief that certain “races” enjoyed superiority over others. The general acknowledgement of the strong contribution to the war effort made by the Native peoples and the injustice of their second-class status contributed to a small, but growing, public interest in Aboriginal issues. The decolonization movement in Asia and Africa, and later the civil-rights movement in the United States in the 1950s and early 1960s, contributed to a new consciousness of injustices to minorities, including the Native peoples. Most important of all, as they had at the Yale-University of Toronto Conference in 1939, Native leaders increasingly made their

¹² Appendix A, “Conclusions and Resolutions” in C.T. Loram & T.F. McIlwraith, eds., *supra* note 3, 347 at 347.

¹³ Appendix A, “Resolutions Adopted by the Indian Members of the Toronto Conference” in *ibid.*, 349 at 349.

¹⁴ George F.G. Stanley, Book Review of *A Canadian Indian Bibliography, 1960-1970* by Thomas S. Abler, Douglas Sanders & Sally M. Weaver (1977) 3:1 *American Indian Quarterly* 54.

¹⁵ Donald G. Creighton, *Dominion of the North: A History of Canada* (Boston: Houghton Mifflin, 1944) at 1-50.

¹⁶ 4th ed. (Toronto: Holt, 1982).

¹⁷ Robert Fulford, “By the Book” *Saturday Night* 99:4 (April 1984) 7.

¹⁸ *Ibid.* at 11.

demands known. For the first time, Parliament listened. The Indian Association of Alberta and other provincial Indian organizations participated in the hearings of the Joint Committee of the House of Commons and the Senate on the *Indian Act*, held from 1946 to 1948.

In 1951, the federal government partially relaxed its control over the First Nations. The new revision of the *Indian Act* allowed the band councils more authority. Women also gained the vote in band council elections. The revised *Indian Act* lifted the bans on the Potlatch and Sun Dance. It dropped the provision that prevented Indian bands from raising money to launch claims against the government. But, in one respect the *Indian Act* of 1951 reflected prevailing attitudes. Its underlying goal remained the assimilation of the Indian, although in 1960, the federal government did extend the right to vote in federal elections to all status Indians without requiring them to give up their Indian status.

In order to learn more about the aspirations of the Native Peoples, the Encounter Club, an undergraduate club at Trinity College, University of Toronto, sponsored what was probably the first student-organized Canadian university conference on Aboriginal Canada in January 1966.¹⁹ On the University of Toronto campus, this was in itself a major contribution. For example, the History Department in the mid-1960s did not offer any Native History courses. As late as 1991, the University offered no courses in Aboriginal languages and had few, if any, Native faculty members.²⁰

The Encounter Club formed in 1962-63 at Trinity. In 1963, it sponsored an impressive two-day conference at the college on African affairs. Over the next two years the club continued more modestly with individual talks throughout the

term, with topics ranging from the Sino-Soviet split, to Canada-US trade, to new methods of teaching mathematics in public schools. A notable evening in mid-October 1965 featured Dr. Cheddi Jagan, ex-Premier of British Guyana, who was in Toronto for the University of Toronto International Teach-In.

The idea of an Encounter Club conference on the First Nations had been first raised in March 1965 after a short presentation on the Native peoples. That summer, Chris Tupker, the newly elected president for 1965/66, together with a small organizing committee, set to work. The bulk of the ideas for the conference came from a consulting committee which included Walter Currie, an Ojibwa/Potawatomi from south-western Ontario and then an elementary school principal in Toronto, Basil Johnston, an Ojibwa who taught history at a Toronto high school, Howard Staats, a Mohawk graduate of Trinity (1962) who was then completing his law degree at Osgoode Hall, and Father John Mackenzie of Trinity's Faculty of Arts.

Aboriginal issues in 1965 still ranked well behind international and Canadian news stories. Contemporary media coverage of Native issues remained minimal. The common perception remained that only status Indians were Indians, which kept the public perception of the number of Aboriginal people in Canada, including the Inuit, at about 1 percent of the total Canadian population. This excluded the Métis. True, the First Nations numbers had increased, as the 1964 Indian Affairs Branch booklet *The Indian in Transition* stated: “[T]hey were once said to be a dying race ... Today Indians are the fastest-growing ethnic group in Canada — 200,000 strong.”²¹ But the dominant Canadian society, now approximately twenty million, had grown greatly in numbers itself thanks to the baby boom after the war, as well as very high levels of European immigration.

¹⁹ The review of the Trinity Conference here is largely taken from Donald Smith, “Don Smith ‘68 recalls the 1966 Trinity Conference on the Canadian Indian” *Trinity Alumni Magazine* (Spring 1999) 4. For archival records regarding the conference, see 1966 Trinity Conference on the Canadian Indian, Ottawa, National Archives of Canada (RG 10, vol. 8569, file 1/1-2-2-1, pt. 5). For the most complete records on the Encounter Club and the conference, see The Encounter Club Fonds, University of Toronto, Trinity College Archives (Encounter Club Papers (F2012), files in accession: 985-0075/001(01) to 985-0075/001(08)) [Trinity College Archives].

²⁰ Tora Korenblum, “The Native Reality on Campus. The power politics of education” *University of Toronto Magazine* (Spring 1991) 20.

International affairs commanded greater attention than First Nations issues in Canada. In 1965, the Vietnam war heated up with the Johnson administration sending more and more troops to Asia. Domestically, in the United States, civil rights issues became ever more pressing. In March, 25,000 civil rights demonstrators marched

²¹ Canada, Indian Affairs Branch, *The Indian in Transition: The Indian Today* (Ottawa: n.p., 1964) at 1.

from Selma to Montgomery, the Alabama state capital, on a fifty-mile freedom march. That August, race riots broke out in Watts, a suburb of Los Angeles, leaving over thirty people dead.

In Canada, French-English relations remained the predominant issue. Canada did obtain its own flag, at last, in 1965. Yet, despite this new symbol of nationhood, French-speaking Québécois and English-speaking Canadians appeared as divided as ever. The so-called "Quiet Revolution" in Québec in the early 1960s had led to a provincial demand for more power from the federal government. The Royal Commission on Bilingualism and Biculturalism, established two years earlier to "recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races,"²² indicated the rapidly deteriorating situation in French-English relations. In its preliminary report in 1965, the Commissioners asserted that "Canada, without being fully conscious of the fact, is passing through the greatest crisis in its history."²³ That November, Pearson won the federal election and formed a second minority government. One of his new Québec Liberal MPs was Pierre Elliott Trudeau. In 1966, the newly elected Québec administration of Union Nationale premier Daniel Johnson summarized its demands in a phrase: "Equality or Independence."²⁴

In this atmosphere of concern about the escalating Vietnam War and deteriorating French-English relations in Canada, the Encounter Club and its helpers worked hard to bring Native leaders and university students to Trinity for the conference. Seminars with Aboriginal leaders were the most important aspect of the meetings. Thanks to federal financial support and to other donors, Indian university students attended from across the country, from as far away as British Columbia and Nova Scotia. Unlike today when nearly 30,000 First Nations students are enrolled in post-secondary institutions, in 1965/66 there were only about a 100 Indian full-time university

students in all of Canada.²⁵ Ironically for a conference organized so carefully to allow Native people to express their concerns, delegates registered under the watchful eye of Cecil Rhodes, the arch-British imperialist. His portrait dominated the Rhodes Room, which contains the photos of all the College's Rhodes scholars.

All three Toronto newspapers carried stories on the conference. *The Globe and Mail* estimated the numbers of those attending at about 200 people.²⁶ Conference records do not contain exact numbers, but perhaps one-quarter to one-third of the delegates were Aboriginal, which was the conference organizers' goal.

The list of Aboriginal panel members and university student delegates included an impressive number of contemporary and future Native leaders. From British Columbia, Bill Mussell attended; from Manitoba, Verna Kirkness, Isaac Beaulieu and Stan Mackay, the latter then a student at Winnipeg's United College. Later in the mid-1990s, Mackay became the Moderator of the United Church of Canada. From Northwestern Ontario came Fred Kelly, who had been involved in the Aboriginal protest that fall against racial injustice in Kenora, Ontario. Both Kelly and Omer Peters, President of the Union of Ontario Indians, participated as panel members and seminar leaders. Several First Nations students came from St. Francis Xavier in Nova Scotia, including Fred's brother Peter Kelly. A young man, Harold Cardinal, a Cree student from Alberta at St. Patrick's College in Ottawa, attended. Just three years later he would write *The Unjust Society*,²⁷ a Canadian bestseller and an indictment of Canada's assimilationist Indian policy.

In panel discussions and seminars, both Native and non-Native participants exchanged views. The panel led by Basil Johnston (who, through his books on Ojibwa life and culture, became one of Canada's best known writers in the 1970s and 1980s) contributed to at least one fellow panel member's growing awareness of Aboriginal issues. Dr. Daniel Hill of the Ontario Human

²² Canada, *A Preliminary Report of the Royal Commission on Bilingualism and Biculturalism* (Ottawa: Queen's Printer, 1965) at 151.

²³ *Ibid.* at 13.

²⁴ Daniel Johnson, *Égalité ou Indépendance* (Montréal: Éditions Renaissance, 1965).

²⁵ For 1965/66 see the typed list, Indian Students Attending University 1965-66, *Trinity College Archives*, *supra* note 19 (file 985-0075 / 001 (04)).

²⁶ "5-point plan promised to help Indians raise standards of living" *The Globe and Mail* (24 January 1966) A5.

²⁷ (Edmonton: Hurtig, 1969; 2d ed., Vancouver: Douglas & McIntyre, 1999)

Rights Commission wrote less than two years later that “[i]f [he] were to point to our most serious human rights problem in Canada, it would be in relation to our treatment of native Indians. They are numerically significant and have encountered all forms of discrimination.”²⁸

THE MCGILL CONFERENCE ON THE REPORT OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

MCGILL UNIVERSITY, MONTRÉAL
JANUARY 31 - FEBRUARY 2, 1997

In October 1966, a little less than a year after the Trinity Conference on the Canadian Indian, the federally appointed Hawthorn Commission produced the first of two volumes of *A Survey of the Contemporary Indians of Canada. Economic, Political, Educational Needs and Policies*.²⁹ It reported that the Aboriginal population occupied the lowest economic rung on Canada's economic ladder, and recommended that they be treated as “Citizens Plus.” In short, on account of their treaty rights they deserved better treatment from Ottawa than other Canadian citizens. After the report’s publication, Prime Minister Pearson committed his government to revising the *Indian Act* after consultation with the Indian people.

Although great progress had been made since the end of the Second World War, First Nations groups remained relatively weak politically in the mid-1960s. *A Survey of Contemporary Indians of Canada* in fact commented that, “as a group Indians are a special segment of the disadvantaged poor who are usually unskilled in the arts of applying pressure, [and] possess few organizational means of effectively doing so.”³⁰

In the 1970s, however, First Nations political organization improved dramatically. Core funding of Aboriginal groups by the federal Secretary of State, which began in 1971, helped. The increasing use of modern technology also enabled the resurgent Aboriginal leadership to communicate easily in a new common language, English, and in parts of southern Québec, in French. Increased awareness of American Indian struggles for

sovereignty and self-reliance in the United States also had an impact. But, the federal government’s own White Paper on Indian Policy,³¹ approved by Parliament in 1969, did more than anything else to provide the momentum for the next round of the fight for Aboriginal rights.

In 1969, the newly-elected government of Pierre Trudeau ignored completely the Hawthorn’s “Citizens Plus” approach, and instead, without the consultation with First Nations leaders promised by Lester Pearson, Trudeau’s predecessor, introduced the White Paper. This government discussion paper, in essence, called for the assimilation of Indian peoples into Canadian society, the goal of Canadian Indian policy for over a century. Without delay, young educated, articulate First Nations leaders like Harold Cardinal joined ranks with Elders to oppose the government’s position paper. Instead of accepting assimilation into mainstream culture, Indigenous people across Canada organized and fought back. First Nations leaders adopted the Hawthorne Report’s phrase of “Citizens Plus,” arguing that they should have all the rights of Canadian citizens plus the special status confirmed by their treaties with the Crown.

In March 1971 the Liberal government withdrew its White Paper. The provincial and territorial First Nations political organizations representing status Indians in Canada and the National Indian Brotherhood (founded in 1968, and reorganized in 1981 as the Assembly of First Nations) worked next to secure the constitutional entrenchment of Aboriginal and treaty rights. Skillfully, the First Nations leadership learned to use the media in their struggle for legal recognition of their Aboriginal rights. Supreme Court of Canada decisions also helped. Their landmark decision in the Nisga'a case in 1973³² was followed by other decisions which upheld the view that Aboriginal rights exist under Canadian law, and are entitled to judicial recognition throughout Canada.

²⁸ as quoted in Charles E. Hendry, *Beyond Traplines*, 2d ed. (Toronto: Miracle Press, 1973) at 9.

²⁹ vol. 1 (Ottawa: Indian Affairs Branch, 1966). The second volume was published in October 1967.

³⁰ *Ibid.* at 384.

³¹ Canada, Department of Indian Affairs and Northern Development, *Statement of the Government of Canada on Indian Policy*, 1969 (Ottawa: Queen’s Printer, 1969) (Presented to the first session of the 28th Parliament by the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development).

³² *Calder v. British Columbia (A.G.)*, [1973] S.C.R. 313.

The ethnic composition of Canada changed greatly after 1967. Subsequently, support for assimilation lost much of its appeal. In our Centennial year sweeping changes in the Canadian *Immigration Regulations*³³ removed barriers which had prevented most non-Whites from entering the country. The new set of non-racist regulations led to a massive increase in the non-White population in Canada. By 1999, veteran journalist Lawrence Martin wrote of Canada as the “rainbow nation”: “[f]rom the all-white, Anglo-French culture of the 1960s, Canada has become the rainbow nation, the most multi-ethnic nation on the planet, one whose population reflects the world’s mix as much as any other.”³⁴ The declaration in 1971 that Canada was a multicultural country officially scrapped the old assimilationist policy. This strengthened the First Nations’ aspirations to remain distinct.

The First Nations’ well-organized political campaign helped achieve their goal of constitutional recognition of Aboriginal rights in the new constitution of 1982. It constitutionally entrenched a range of special rights held by Aboriginal peoples. From that date forward, parliament could no longer amend or override First Nations treaties without the agreement of the Aboriginal parties.

On account of their increased numbers, Aboriginal people today enjoy more political power. Now they are acknowledged to constitute 3 percent of the total population of Canada, not 1 percent as formerly, in 1939 and 1966, when the Métis were excluded from the designation of “Indian.” The definition in s. 35 of the *Constitution Act, 1982* of “Aboriginal peoples of Canada” as Indian, Inuit and Métis, led the 1996 census to report the Aboriginal population as approximately 800,000: 210,000 Métis, as well as 40,000 Inuit and 554,000 North American Indians.³⁵ The First Nations population itself has been increased by the addition of approximately 100,000 people due to Bill C-31, passed by

parliament in 1985.³⁶ Bill C-31 restored Indian status to all those women who had married non-Indians and subsequently lost their status under the *Indian Act*. It also gave status to the immediate descendants of these women. In addition, the First Nations population continues to grow faster than other segments of Canada’s population. Since the 1960s, the First Nations have continued to have the highest birth rate of any group in Canada.

Aboriginal issues became much better known to the general public in the 1980s, and particularly after the confrontation at Oka, outside of Montréal in 1990. Following Oka, Prime Minister Brian Mulroney appointed a Royal Commission on Aboriginal Peoples in April 1991 to investigate the “evolution of the relationship among aboriginal peoples (Indian, Inuit and Métis), the Canadian government, and Canadian society as a whole.”³⁷ In late 1996, the commissioners tabled their five volume final report. Their 440 recommendations covered a wide range of Aboriginal issues, but essentially all focussed on four major concerns: the need for a new relationship in Canada between Aboriginal and non-Aboriginal peoples; Aboriginal self-determination through self-government; economic self-sufficiency; and, healing for Aboriginal peoples and communities.

Two months after the Report’s official presentation, the McGill Institute for the Study of Canada held a highly successful conference, entitled *Forging a New Relationship*, a full review of the Commission’s five volumes.³⁸ Over 900 people attended from every corner of Canada. The registrants included Anglophones and Francophones, Aboriginals and non-Aboriginals, and a roughly equal number of men and women.

Ironically, the conference registration booth was located in the Stephen Leacock Building. Over half-a-century earlier the famous humorist

³³ S.O.R./ 67-434.

³⁴ “1967 marked turning point in immigration policy: A genuine global village has settled in Canada” *Calgary Herald* (27 April 1999) A16.

³⁵ “1996 Census: Aboriginal Data” *The Daily: Statistics Canada* (13 January 1998), online: Statistics Canada <<http://dissemination.statcan.ca/cgi-bin/DAILY/daily.cgi?m=01&y=1998&s=monthly>> at 4.

³⁶ *An Act to Amend the Indian Act*, 1st. Sess., 33rd Parl., 1985 (as passed by the House of Commons 28 June 1985).

³⁷ Canada, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa, The Commission, 1996), vol. 1 at Appendix A, online: Indian and Northern Affairs Canada <http://collection.nlc-bnc.ca/login.ezproxy.library.ualberta.ca/100/200/301/inac-ainc/royal_comm_aboriginal_peoples-e/biblio92.html> [the Report].

³⁸ See generally “Forging a New Relationship: Proceedings of the Conference on the Report of the Royal Commission on Aboriginal Peoples, January 31 – February 2, 1997” Donald B. Smith, ed. (Montréal: McGill Institute for the Study of Canada, n.d.), online: The McGill Institute for the Study of Canada <www.msc-icem.mcgill.ca/publications/rchap.pdf>.

and McGill professor of political science wrote a patriotic history, *Canada: The Foundations of its Future*.³⁹ In this book, Stephen Leacock disputed that the First Nations had any claim to the ownership of North America as they “were too few to count. Their use of the resources of the continent was scarcely more than that by crows and wolves, their development of it nothing.”⁴⁰ (How strange that he could write such an ill-informed statement, particularly as he lived each summer at Brewery Bay on Lake Couchiching, Ontario, only a few kilometres from Mnjikaning, one of the oldest human developments in North America. Here, for 5,000 years the First Nations used a complex system of underwater fences for harvesting fish.⁴¹)

During the conference’s plenary sessions the participants jammed McGill’s Fieldhouse Auditorium. They filled as many as six simultaneous breakout sessions on topics as diverse as the process for settling comprehensive land claims and the question of financing Aboriginal governments. In addition to the discussions in the plenaries and smaller sessions, information passed quickly among the registrants themselves in the wonderful, spontaneous, often completely-by-chance conversations that occurred between sessions. Truly the discussions that took place over the three days of meetings further proved the point, stated in the Report itself that “[w]ithin a span of 25 years, Aboriginal peoples and their rights have emerged from the shadows, to the sidelines, to occupy centre stage.”⁴²

None of these three conferences in themselves led to dramatic immediate changes. Like education itself, the impact comes much later and it is on an individual not necessarily a collective level. These meetings are perhaps most useful to review for the indicators they provide of changing attitudes of the non-Native population in Canada toward the

First Nations, and the Aboriginal population in general. It would be challenging, if near impossible in most cases, to trace the impact of these conferences on individuals. To what extent did these scholarly meetings alert non-Native participants to Aboriginal concerns? I can cite one example from the Trinity Conference of 1966 — my own. I attended, and within one year of graduating in 1968 I began a study, still on-going, of the 500 year old encounter between Natives and Newcomers in Canada.

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³⁹ Stephen Leacock, *Canada: The Foundations of its Future* (Montreal: The House of Seagram, 1941). Seagrams, the liquor company, paid for the book. It printed 160,000 copies and distributed them free of charge to schools and libraries (see Michael R. Marrus, *Mr. Sam. The Life and Times of Samuel Bronfman* (Toronto: Viking, 1991) at 303-305).

⁴⁰ Leacock, *ibid.* at 19.

⁴¹ Richard B. Johnson & Kenneth A. Cassavoy, “The Fishweirs at Atherley Narrows, Ontario” (1978) 43:4 American Antiquity 697.

⁴² Canada, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Canada Communication Group, 1996) 216, cited in Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000) at 3.