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SPECIAL ISSUE

**FEDERALISM, IDENTITIES
AND NATIONALISMS/FÉDÉRALISME,
IDENTITÉS ET NATIONALISMES**

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INTRODUCTION

Claude Couture
Nathalie Kermoal

In December 1999, at the MacDonald Hotel in Edmonton, the Faculté Saint-Jean of the University of Alberta and the Association canadien-française de l'Alberta, in collaboration with the Centre for Constitutional Studies, organized a symposium on Canadian federalism and national identities. Some forty specialists from several regions of Canada and from Québec were brought together. This double-sized special issue of the *Review of Constitutional Studies* is largely made up of texts from that symposium.*

Twenty years after the adoption of the *Constitution Act, 1982* and ten years after the rejection of the Charlottetown Accord, constitutional literature continues to reflect the essential concerns about Canadian distinctiveness. Thus, the fact that Canada has the *Charter of Rights and Freedoms*, entrenched in the Constitution of a constitutional monarchy, reflects both the American influence and the British influence on Canadian political institutions.

This double influence has led to some questioning of the ideological origins of Canada.¹ Over the course of the last decade, several Canadian intellectuals have tried to respond to this question through the American tradition of debates² between, on one hand, the supporters of Louis Hartz and the theory of "Lockean" fragment ideology (John Locke) and, on the other hand, the humanist civic paradigm developed by J.G.A. Pocock in a book, published in 1975, entitled *The Machiavellian Moment*. In the first case, John Locke, described as the symbol of American individualism, is the protector of American institutions. In the other case, Machiavelli is the symbol of the American political culture, symbolizing on the contrary the struggle against the corruption created by commerce and, unlike materialism, the ideal of civic participation by citizens in the political process.

* We would like to thank the Office of the Vice-President Research of the University of Alberta for its financial contribution.

¹ P.J. Smith, "The Ideological Origins of Canada" (1987) 20 Can. J. Poli. Sci. 3.

² B. Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Belknap Press, 1967); G.S. Wood, *The Creation of the American Republic 1776-1787* (Chapel Hill: University of North Carolina Press, 1969); J.G.A. Pocock, *The Machiavellian Moment* (Princeton: Princeton University Press, 1975).

Moreover, writers such as Micheal Ignatieff³ have made a fortune by writing about the dichotomy between civic nationalism and ethnic nationalism. In some ways, this dichotomy is not new. In fact, as Anthony D. Smith⁴ has recently shown (by revisiting a theory first developed by Hans Kohn⁵) that in the nineteenth century, people were already making a distinction between: 1) organic nationalism (resulting from biological, linguistic, territorial or other determinism) and 2) voluntary nationalism (based on the free agreement of individuals to belong to a whole called a nation and to respect the rules of life in a society while having a specific identity). Smith, however, and before him Isaiah Berlin⁶ also noted that these two poles were often found within the works of some authors, even when those authors represented of these two options. Rousseau would be one example.

In 1762, Rousseau defended the idea that the nation was a contractual and voluntary agreement dedicated to the preservation of liberty, justice and equality. Yet, in 1765, in response to the Corsicans, he praised the merits of a Spartan spirit and a life in harmony with nature. In a constitutional project for Corsica, he added: “The first rule that we must follow is that of national character. Any people has, or should have, its own character; if they lack this distinctive character, one must be obtained for them.”⁷

To the Poles, in 1772, he preached the need to preserve and to cultivate, through national education, traditional rites, culture, language, festivals; in short, the symbols necessary for preserving the distinctive character of the Polish nation. According to some commentators, this suggests that for Rousseau, the nation was not only a matter of will and of goals but also a question of identity based on the tradition of a specific culture. But, at the same time, in his *Correspondance générale*, Rousseau continued to defend the idea of the correction of the national character by legislative means or through education. “The country exists in relationship with the State.”⁸

This tension between the nation and civilization, between political will and culture can also be found in Herder’s philosophy, although he is generally associated with the organic concept of the nation.⁹ It is Isaiah Berlin who pointed out this tension in Herder. On the one hand, Herder defended the idea

³ M. Ignatieff, *Blood and Belonging: Journeys into the New Nationalism* (Toronto: Penguin Books, 1993).

⁴ A. D. Smith, *The Nation in History: Historiographical Debates about Ethnicity and Nationalism* (Hanover: University Press of New England, 2000).

⁵ H. Kohn, *Nationalism, Its Meaning and History* (Princeton: Van Nostrand, 1955).

⁶ I. Berlin, *Against the Current: Essays in the History of Ideas*, H. Hardy, ed. (London: Hogarth Press, 1979).

⁷ Smith, *supra* note 4 at 8.

⁸ Ibid.

⁹ Berlin, *supra* note 6.

of a moral equivalence between cultures and the importance for the individual to recognize himself as being truly free in a history and in a culture. Vernacular languages and cultures are the authentic expressions of collective identity. But, on the other hand, Herder also insisted on the importance of education, of individual improvement through reason. There is, therefore, also an element of progress — even of contract — in Herder.

This debate and these tensions, sometimes among the authors themselves, intensified after 1870, notably in France and Germany. Thus, in 1882, in “Qu'est-ce qu'une nation?” (“What is a Nation?”), Renan wrote: “The nation is thus solidarity on a large scale, constituted of a feeling of sacrifice toward the past and the future. It presupposes a past, but it is also marked, however, by a tangible fact, consent, the clearly expressed wish to live communally.”¹⁰ Once again, we find this tension between the organic (the past, history) and commitment.

The third tradition is British. First, Edmond Burke defended the idea of national memory and tradition against the nationalism of the French Revolution of 1789, which was based on reason and equality. Similarly, for Lord Acton, the nation is the bulwark of “self-government” against the excesses of the power of the State in a world that is naturally unequal. Burke and Acton criticized the French model, described as “continental,” as going against nature by pushing equality and reason, which can destabilize society. For Acton, the continental theory of the nation was a step backward because it creates a false unity.¹¹ Rather, the nation must allow the emergence of individual liberties. Thus, Lord Acton saw in nationalist France the aberration of equality, which Renan, from his perspective, saw in German linguistic determinism.

These three models (but with the same fundamental tensions since the same tension exists among the British, between nature which created inequality and the nation which must function as a counterweight to the State), gave way in the twentieth century to four other models that repeated the same fundamental contradiction. These models are: the modernist model, the primordialist model, the feminist model and the perennialist models.

The essential proposition is that nationalist ideologies and the whole United Nations system are modern — recent in chronological terms and as a phenomenon. They resulted from the German romanticism and rationalism of the Enlightenment in a quest for a mythical equality (Kedourie).¹² Nations and national identities are also recent (sixteenth century for some, eighteenth and

¹⁰ E. Renan, *Oeuvres Complètes*, vol. 1 (Paris: Calman-Levy, 1947) at 204.

¹¹ J. Acton, *The History of Freedom* (London: MacMillan, 1907).

¹² E. Kedourie, *Nationalism* (London: Hutchinson, 1960).

nineteenth century for others, according to Hobsbawm¹³). The elites of pre-modern societies were too isolated to be able to influence in any way the identities of peasants organized along vertical and folkloric cultures. Modernization also widened the chasm between the various categories of individuals, eroding traditions while simultaneously creating a nationalist movement for maintaining traditional identities. Thus, in some countries formed by different ethnic groups, modernization has created nationalism among groups who were unable to adapt to a modernity based on a culture of knowledge. Nationalism creates nations, not the other way around. Nations are cultural constructions and artifacts created by elites (for example, Pakistan, in Eric Hobsbawm's opinion).

In the modernist approach, nations are described as a recent phenomenon because they are linked to the appearance of modern means of communication (including the printing press in the fifteenth century) that made it possible to invent and imagine the nation (Benedict Anderson). The nation is an imagined community, according to Anderson¹⁴ because modern communication methods allow thousands/millions of individuals who do not know each other to share the same identity.

As far as the primordialists are concerned, the essential principle is that certain cultural attributes predate people's lives and transcend rational choices and political calculations. These attributes are family relations, language, religion, customs, territory, *etc.* These attributes provide a sense of community belonging to what is known as the ethnic community and these communities form the basis for what has become nations and nationalism. Nations thus are founded on a complex and vital, even primordial amalgam, one that is not strictly functional as the modernist concept would have it. Clifford Geertz¹⁵ also developed this approach, which consists of treating culturing phenomena according to "a thick description," that is, that an entire culture is a network of linked signs.

For their part, some feminist writers, such as Nira Yuval-Davis,¹⁶ consider that the articulation of the issue of sexual genders is at the heart of the transmission of national identities or ethnic symbols. Women play this fundamental role, all the while being the objects of complete repression or an absence of rights or of political recognition. Some writers, referring to Foucault

¹³ E.J. Hobsbawm, *Nations and Nationalism Since 1780: Programme, Myth, Reality* (Cambridge: Cambridge University Press, 1990).

¹⁴ B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, rev. ed. (London: Verso, 1991).

¹⁵ C. Geertz, *The Interpretation of Cultures: Selected Essays* (London: Fontana, 1973).

¹⁶ N.Yural-Davis & D. Stasiulis, *Unsettling Settler Societies: Articulations of Gender, Race, Ethnicity and Class* (London: Sage, 1995).

or Gertz, have demonstrated the importance of women in national symbolism or in repression (Anne McLintock¹⁷).

Finally, one last stream: perennialism. First of all, according to continuing perennialism,¹⁸ nations preceded modernity and the recent forms are in effect a continuity of ancient national forms. Ethnicity is at the basis of nations and, in particular, the oral traditions of ethnicity are the roots of a nation. Ethnic groups become nations when they produce vernacular languages, vernacular literature and they are affected by the pressures of the State. Under these conditions, the nation is a strictly Christian phenomenon as only Christianity has validated vernacular languages, according to Hastings. The Jewish people are shown in the Old Testament as the first nationalist people to have a vernacular language. The second national people were the English people and their neighbours (the British). Finally, all of the post-1789 peoples.

For the supports of recurrent perennialism, the ancient peoples are also nations (languages, states, specifics) but ones that have not necessarily known continuing nationalism.¹⁹ Once again, the Jewish people serve as an example of a very nationalist people, notably during the events such as the revolt of the Maccabees against the Seleucid king, Antiochus IV Epiphanes (167 B.C.E.) or the creation of Zionism at the end of the nineteenth century. Thus, the idea is that nationalism predates modernity and has had periods of affirmation or periods of silence, whence the recurrence of the phenomenon. It is therefore believed that these different schools of thought reflect enormous contradictions in the way of theorizing nationalism and nations and, consequently, political regimes — such as federalism — which reflect these tensions in the birth of nations.

So, the texts reproduced in this special edition perfectly reflect these tensions expressed in international literature as well as the complexity of the ethics of nationalism and its relation to federalism.²⁰ For example, Ian Angus and Jules Duchastel, each in their own way, explore the political aspects of the question of citizenship within Canadian Federalism. First, Ian Angus examines the idea of exclusion and the devolution of social integration, phenomena that have marked Canadian politics, and juxtaposes it with the idea of inclusion and social citizenship that he believes to be preferable to the former. He rejects the thesis that argues that new identities lead to the fragmentation of Canadian society. He argues that the failure of Federalism — partly due to its colonial heritage — is

¹⁷ A. McLintock, A. Mufti & E. Shohat, eds., *Dangerous Liaisons: Gender, Nation, and Postcolonial Perspectives* (Minneapolis: University of Minnesota Press, 1997).

¹⁸ A. Hastings, *The Construction of Nationhood: Ethnicity, Religion, and Nationalism* (Cambridge: Cambridge University Press, 1997).

¹⁹ See Smith, *supra* note 4.

²⁰ M. Moore, *The Ethics of Nationalism* (Oxford: Oxford University Press, 2001).

responsible for such devolution. In order to achieve a relatively just society and for Canada to finally enter the postcolonial era, Angus proposes an “umbrella State” model. He goes so far as to suggest the abolition of the symbol of the monarchy in Canadian federal institutions.

To the theme of the fragmentation of societies, Duchastel adds the phenomenon of globalization. Over the last few years we have been seeing a profound mutation of citizenship and political institutions. The Canadian concept of universalist citizenship has slowly given way to a particularist concept of the citizen. Moreover, we are also witness to the renewed questioning of the balance between political institutions and a reprivatization of public spaces. The model of a confederal union for Canada, able to take into account the complexities of national and cultural identities, is of particular interest to Duchastel. Canada could then serve as “a laboratory for the reinvention of political regulation in the context of an evermore inescapable complexification of societies and globalization.”

Underlying the question of citizenship is also that of the place of Aboriginal peoples in the Canadian federation. For about a decade now, governmental autonomy and territorial claims have been at the centre of the debate. In August 1998, after a century of struggle, the Nisga'a of Northwest British Columbia signed a treaty. The federal and provincial governments thus recognized the Nisga'a's inherent right to autonomous government. Through an analysis of the terms of the treaty and of the discussions surrounding this issue as developed by the Aboriginal leaders since the Charlottetown Accord in 1992, Claude Denis reveals that federal and provincial government pressures altered the very meaning of this notion. He questions how to determine if such a system of governmental autonomy really accomplishes the goals that the Aboriginals leaders have set. He ends by emphasizing that colonialism is still firmly anchored in Canadian mentality.

From his perspective, André Légaré examines the symbolic and spatial construction of Nunavut, as well as the impact of the birth of a territory on the collective identity of the Inuit. Légaré tries to understand how a region is constructed from specific cultural traits and how such a region is used to create a collective identity. Then again, the author emphasizes the fact that the redefinition of the Aboriginal collective identity of Nunavut is carried out through a non-Aboriginal process, that is, through that of the Canadian government, a viewpoint that is echoed in the analysis by Richard Devlin and Alexandra Dobrowolsky on the constitutional position of Alan Cairns on Aboriginals.

The question of the survival of Francophone communities outside Québec also leads to many debates, as much among Francophone specialists as Anglophone. Some, with numbers to support them, go so far as to preach the

disappearance of these minorities. However, for Edmund Aunger, the “funeral is premature.” While he does not question their fragility and their vulnerability, he demonstrates that the reality is much more complex than it seems. In addition, he refutes two other accepted ideas: that the social condition of Francophone minorities has become impoverished, and that the political role of Francophone minorities is insignificant.

However, according to Michel Seymour, the dynamism and the expansion of Francophone communities is not enough to bridge the gap that has been dug between Quebecers and the Francophone minorities. It is around the theme of the French-Canadian nation that the fissure began. For Quebecers, it no longer exists, while for the majority of Francophones living elsewhere in Canada, it does. These two visions of identities are, at first glance, irreconcilable. In order to put an end to this mutual incomprehension, Seymour advocates the establishment of the depoliticization of the relationships that national minorities maintain with their respective national majorities. In choosing this option, Canadian Francophones “would probably see a new feeling of profound empathy arise in Québec and would see the rapid growth of the desire by Québec to greatly increase partnerships with Francophones living elsewhere in Canada.”

For over thirty years, the welfare state and liberalism have marked the political geography of Canada. The welfare state was perceived at the time as a sign of maturity, a necessary precondition to political stability and to a certain degree of social cohesion, while putting an end to “ideology.” However, this postbellum consensus was brought back into question, starting in the 1980s, giving way to what Janine Brodie calls “the neo-liberal globalization” which includes notions such as privatization, deregulation, free markets and the erosion of the public sector. The author examines the elusive search for Canadian identity in an era of liberal globalization. She proposes that the State has always been a central actor in the creation of the perceptions of self and of the collective and tries to determine if the Canadian national identity can be preserved and how it can be done in such a framework.

In Canada, neither the defense of Canadian Federalism, nor the intransigent promotion of Québec sovereignty appears to be satisfactory. For Gilles Bourque, “any solution must necessarily satisfy this dual requirement of political recognition of the Québec nation and the fully democratic character of the desirable partnership between Québec and Canada.” However, the longevity of the Canada/Québec debate has had a tendency to overshadow two most important phenomena: the neo-liberal State and globalization. The author maintains that it is in reference to this new context that we must ponder the questions of Federalism, identity and national issues in Canada. He adds that the sharing of sovereignty within a confederal union or a multinational state could

eventually serve as the model for the formation of supranational democratic institutions.

Despite appearances, Canada remains a society with no political foundation. According to Daniel Jacques, this absence of a foundation is at the origin of the confusion of allegiances that affect this country. To escape the impasse, several projects have been proposed, including the politics of recognition. He believes that the language being used does not allow us to think of a nation and that there exists a considerable risk that the strictly political meaning of the idea of the nation will be obliterated. To achieve a real foundation for this country, it is imperative that Francophones and Amerindians be able to live their cultural belongingness with no restrictions whatsoever. To do this, the transformation of the Canadian political space must necessarily go through a restructuring of institutions on the basis of an explicit recognition of the multinational character of the country. This “presupposes that English Canada is able to accept, transcending its imperial heritage, the actual character of its historical reality.”

Samuel LaSelva examines the political visions of John A. Macdonald and Pierre Elliott Trudeau. In reality, for the majority of Canadians, these two men were the only ones to successfully define the very essence of the country. Yet, Canada transformed itself into a country that is, so to speak, impossible to govern. If nothing changes, Canada is destined to be fragmented and will be made up of antagonistic cultural solitudes. For LaSelva, Québec is also destined for that fate because it is made up of significant minorities, Aboriginal nations, multicultural groups and large Anglophone populations. So, how to reconcile the differences? By making way for a political vision as old as Confederation: that of Georges-Étienne Cartier.

The fate of Québec is of interest not only to political scientists and historians but also to philosophers. Charles Taylor examined this question, but he is not the only one, as the German philosopher, Jürgen Habermas also pronounced himself on the Québec “case.” Consequently, Donald Ipperciel tries in his article to cover all the subtleties of the Taylor/Habermas debate.

On the surface, the political and cultural division between Québec and the Canadian West seems very serious. However, for Barry Cooper, the seriousness of the situation has been greatly exaggerated. Through an analysis of *Lord Durham's Report*, Cooper demonstrates why Québec will not separate and in the event that, someday, it were to become independent, it would make no difference to Canada.

Diane Lamoureux exposes the importance of the dimension of identity in the Québec discourse. What particularly drew her attention was the “the transition of a project to justify Québec sovereignty in terms of national oppression to a justification in terms of national affirmation.” She then proceeds to an

“overview of the fluctuation of the Québec identity and its conjugation as a result of distinct and entangled temporal registers” and ends her analysis on a more theoretical note by raising the political problems that such a recourse to identity poses.

Finally, Gordon Laxer puts forward a scenario for the future. According to him, no one seems concerned about finding an intermediate solution between the *status quo* and secession. He proposes to consider the option of Québec asymmetry and explores the conditions that would render such an arrangement politically viable. In conclusion, he maintains that the formation of a tripartite national alliance (English Canada, Québec, First Nations) would make it possible to counter global corporatism and market forces.

INTRODUCTION

Claude Couture
Nathalie Kermaol

En décembre de 1999, à l'Hôtel McDonald à Edmonton, la Faculté Saint-Jean de l'Université de l'Alberta et l'Association canadienne-française de l'Alberta, avec la collaboration du Centre d'études constitutionnelles, organisèrent un colloque sur le thème du fédéralisme canadien et des identités nationales. Furent réunis une quarantaine de spécialistes provenant du Québec et des autres régions du Canada. Ce double numéro spécial de la *Revue d'études constitutionnelles* est constitué, en grande partie, de textes provenant de ce colloque.*

Vingt ans après l'adoption de la Loi constitutionnelle canadienne et dix ans après le rejet de l'Accord de Charlottetown, la littérature constitutionnelle continue à refléter des préoccupations essentielles sur la spécificité canadienne. Ainsi, le fait que le Canada ait une charte des droits et des libertés, enchassée dans la Constitution d'une monarchie constitutionnelle, reflète à la fois l'influence américaine et l'influence britannique dans les institutions politiques canadiennes.

Il a résulté de cette double influence un certain questionnement sur les origines idéologiques du Canada.¹ Au cours de la dernière décennie, plusieurs intellectuels canadiens ont tenté de répondre à cette question en s'inspirant de la tradition américaine des débats² entre, d'une part, les partisans de Louis Hartz et la théorie du fragment idéologique « lockean » (John Locke) et, d'autre part, le paradigme civique humaniste développé par J.G. Pocock dans un livre publié en 1975 et intitulé *The Machiavillian Moment*. Dans le premier cas, le protecteur des institutions américaines serait John Locke, décrit comme un symbole de l'individualisme américain. Dans l'autre cas, le symbole de la culture politique américaine serait Machiavel, qui symbolise au contraire la lutte contre la corruption créée par le commerce et, par opposition au matérialisme, l'idéal de la participation civique des citoyens dans le processus politique.

* Nous remercions le Bureau du vice-président à la recherche de l'Université de l'Alberta pour son appui financier.

¹ P. J. Smith, « The Ideological Origins of Canada », *CJPS/RCSP*, XX:I, 1987, p. 3-29.

² B. Bailyn, *The Ideological Origins of the American Revolution*, Cambridge, Mass., Belknap Press, 1969; G. S. Wood, *The Creation of the American Republic 1776-1787*, Chapel Hill, University of North Carolina Press, 1969; J.G.A. Pocock, *The Machiavellian Moment*, Princeton, Princeton University Press, 1975.

Par ailleurs, des auteurs comme Michael Ignatieff³ ont fait fortune en développant dans certains livres devenus des best-sellers la dichotomie nationalisme civique et nationalisme ethnique. D'une certaine façon, cette dichotomie n'est pas nouvelle. De fait, au 19^e siècle, comme l'a montré dans un livre récent, Anthony D. Smith⁴ (qui reprenait une typologie d'abord développée par Hans Kohn⁵) on distinguait déjà entre : 1) le nationalisme organique (résultant d'un déterminisme biologique, linguistique, territorial ou autre,) et 2) le nationalisme volontariste (fondé sur la libre acceptation des individus à faire partie d'un ensemble appelé nation et d'en respecter les règles de vie en société tout en ayant une identité spécifique). Cependant, Smith, et avant lui Isaiah Berlin,⁶ ont aussi fait remarquer que ces deux pôles se trouvent parfois aussi à l'intérieur même de l'œuvre de certains auteurs, même si ces auteurs représentent l'un ou l'autre des deux options. Rousseau serait un exemple.

En 1762, Rousseau a défendu l'idée que la nation était une entente contractuelle et volontaire dédiée à la préservation de la liberté, justice, égalité. Mais en 1765, en réponse aux Corses, il vanta les mérites de cultiver un esprit spartiate et une vie en harmonie avec la nature. Dans le projet de constitution pour la Corse il rajouta: "La première règle que nous devons suivre est celle du caractère national. Tout peuple a, ou devrait avoir, un caractère propre; s'il lui manque ce caractère distinct, on doit lui en procurer un".⁷

En 1772, aux Polonais, il prêcha le besoin de conserver et de cultiver, à travers l'éducation nationale, les rites traditionnels, la culture, la langue, les festivals, bref les symboles nécessaires à préserver le caractère distinct de la nation polonaise. Cela suggère, selon certains commentateurs, que pour Rousseau la nation n'est pas seulement une question de volonté et de but mais aussi une question d'identité fondée sur la tradition d'une culture spécifique. Mais en même temps, dans sa *Correspondance générale*, Rousseau a continué à défendre l'idée de la rectification du caractère national par voie législative ou par l'éducation. "La patrie existe en relation avec l'État".⁸

Cette tension entre la nation et la civilisation, entre la volonté politique et la culture se retrouve aussi chez le philosophe Herder pourtant généralement associé à la conception organique de la nation.⁹ C'est Isaiah Berlin qui a fait remarquer cette tension même chez Herder. D'une part, Herder a défendu l'idée

³ M. Ignatieff, *Blood and Belonging: Journeys into the New Nationalism*, Toronto, Penguin Books, 1993.

⁴ A.D. Smith, *The Nation in History, Historiographical Debates about Ethnicity and Nationalism*, Hanover, University Press of New England, 2000.

⁵ H. Kohn, *Nationalism. Its Meaning in History*, New York, Van Nostrand, 1955.

⁶ I. Berlin, *Against the Current*, Londres, Hogarth Press, 1979.

⁷ Smith, *supra* note 4, à la p. 8.

⁸ *Ibid.*

⁹ Berlin, *supra* note 6.

d'une égalité morale des cultures et l'importance pour l'individu de se reconnaître dans une histoire et dans une culture pour être vraiment libre. Les langues vernaculaires et les cultures sont les expressions authentiques d'identités collectives. Mais, d'autre part, Herder a aussi insisté sur l'importance de l'éducation, de l'amélioration individuelle par la raison. Il y a donc aussi un élément de progrès, voire de contrat, chez Herder.

Ce débat et ces tensions, parfois chez les auteurs eux-mêmes, ont été intensifiés après 1870, notamment en France et en Allemagne. Ainsi, en 1882 dans *Qu'est-ce qu'une nation?*, Renan écrivait : "La nation est ainsi une solidarité à grande échelle, constituée d'un sentiment de sacrifice vis-à-vis le passé et le futur. Elle presuppose un passé; mais elle est marquée, cependant, d'un fait tangible, le consentement, le désir clairement exprimé de vivre en commun".¹⁰ Encore une fois, on retrouve cette tension entre l'organique (le passé, l'histoire), et la volonté.

Enfin, la troisième tradition serait britannique. D'abord, Edmund Burke a défendu l'idée de la mémoire nationale et de la tradition contre le nationalisme de la Révolution de 1789 fondé sur la rationalité et l'égalité. De façon similaire, pour Lord Acton, la nation est le repaire du "self-government" contre les excès de pouvoir de l'État dans un monde naturellement inégal. Burke et Acton ont reproché au modèle français qualifié de continental d'aller contre la nature en forçant une égalité et une rationalité qui peuvent déséquilibrer la société. Pour Acton, la théorie continentale de la nation est rétrograde parce qu'elle crée une fausse unité.¹¹ La nation doit plutôt permettre l'éclosion des libertés individuelles. Donc, Lord Acton (conservateur catholique) voyait dans la France nationaliste l'aberration égalitaire, ce que Renan voyait pour sa part dans le déterminisme linguistique allemand.

Ces trois modèles (mais avec la même tension fondamentale puisqu'il y a une nette tension chez les Britanniques entre la nature qui crée l'inégalité et la nation qui doit servir de contrepoids à l'État), ont cédé la place au vingtième siècle à quatre autres modèles qui ont repris la même contradiction fondamentale. Ces modèles sont : le modèle moderniste; le modèle primordialiste; enfin, les modèles féministe et perennialiste.

La proposition essentielle du modèle moderniste est que les idéologies nationalistes et tout le système des États-Nations sont modernes, donc récentes en date et en tant que phénomènes. Elles résulteraient du romantisme allemand et du rationalisme des Lumières en quête d'égalité chimérique (Kédourie).¹² Les nations et les identités nationales sont aussi récentes (16e siècle pour certains,

¹⁰ E. Renan, *Oeuvres complètes*, t.1, Paris, Calman-Lévy, à la p. 904.

¹¹ Lord Acton, *The History of Freedom*, Londres, MacMillan, 1907.

¹² E. Kédourie, *Nationalism*, Londres, Hutchinson, 1960.

18e voir 19^e siècle pour d’autres, dont Hobsbaw¹³). Les élites des sociétés pré-modernes étaient trop isolées pour pouvoir influer d’une façon ou d’une autre sur les identités de paysans organisés à partir de cultures verticales et folkloriques. La modernisation a par ailleurs élargi le fossé entre différentes catégories d’individus, à la fois érodant les traditions et créant un mouvement nationaliste de maintien des identités traditionnelles. Ainsi, dans certains pays formés par différents groupes ethniques, la modernisation a créé le nationalisme des groupes qui n’ont pas su s’adapter à la modernité fondée sur la culture savante. Le nationalisme crée donc les nations et non l’inverse. Les nations sont des constructions et des artefacts culturels créés par les élites (par exemple, le Pakistan, selon Eric Hobsbaw).

Les nations sont récentes parce qu’elles sont liées à l’apparition de moyens modernes de communication (dont l’imprimerie au 15^e siècle) qui permettent d’inventer et d’imaginer la nation (Benedict Anderson). La nation est une communauté imaginée selon Benedict Anderson¹⁴ parce que les moyens de communication modernes permettent à des milliers/millions d’individus qui ne connaissent pas de partager la même identité.

En ce qui concerne les primordialistes, le principe essentiel est que certains attributs culturels sont antérieurs à la vie des gens et transcendent les choix rationnels et les calculs politiques. Ces attributs sont les relations familiales, la langue, la religion, les coutumes, le territoire, etc. Ces attributs procurent un sens d’appartenance communautaire de ce qu’il est convenu d’appeler la communauté ethnique et ces communautés forment la base de ce qui est devenu les nations et le nationalisme. Les nations reposent donc sur un amalgame complexe et vital, voire primordial, et non strictement fonctionnel comme dans la conception moderniste. Clifford Geertz¹⁵ a aussi développé cette approche qui consiste à traiter les phénomènes culturels selon « a thick description », c’est-à-dire que toute une culture est un réseau de signes reliés.

Pour leur part, certains auteurs féministes, dont Nira Yuval-Davis¹⁶, considèrent que l’articulation de la question des genres sexuels serait au cœur des relations politiques, au cœur du colonialisme, au cœur de la transmission des identités nationales ou des symboles ethniques. Les femmes jouent ce rôle fondamental tout en étant l’objet de la plus totale répression ou d’une absence de droits ou de reconnaissance politique. Certains auteurs ou auteures, se

¹³ E. Hobsbaw, *Nations and Nationalisms since 1789*, Cambridge, Cambridge University Press, 1990.

¹⁴ B. Anderson, *Imagined Communities: Reflections on the Origins and spread of Nationalism*, Londres, Verso, 1991.

¹⁵ C. Geertz, *The interpretation of Cultures*, Londres, Fontana, 1973.

¹⁶ N. Yuval-Davis et D. Stasiulis, dir., *Unsettling Settler Societies: Articulations of Gender, Race, Ethnicity and Class*, Londres, Sage, 1995.

réclamant de Foucault et de Geertz, ont montré l'importance des femmes dans le symbolisme national ou dans la répression (Anne MacClintock¹⁷).

Enfin, un dernier courant, le perennialisme. D'abord, selon le perennialisme continu¹⁸, les nations ont précédé la modernité et les formes récentes sont un effet de continuité des formes nationales anciennes. L'ethnicité est à la base des nations et en particulier les traditions orales de l'ethnicité sont les racines de la nation. Les ethnies deviennent des nations lorsqu'elles produisent des langues vernaculaires, des littératures vernaculaires et qu'elles sont affectées par les pressions de l'État.

Dans ces conditions, la nation est un phénomène strictement chrétien puisque seul le christianisme a valorisé les langues vernaculaires, selon Hastings. L'Ancien Testament est le livre clé, où le peuple juif est montré comme exemple de premier peuple nationaliste doté d'une langue vernaculaire. Le second peuple national aurait été le peuple anglais et ses voisins (les Britanniques). Enfin, tous les peuples post-1789.

Le perennialisme récurrent. Pour ces auteurs¹⁹, les peuples anciens sont aussi nationaux (langues, États, spécifiques) mais n'ont pas nécessairement connu de nationalisme continu. Encore une fois, le peuple juif sert d'exemple de peuple très nationaliste, notamment lors d'événements comme la révolte des Maccabées sous le roi séleucide Antioche Epiphanie (167 av. JC), ou la création du sionisme à la fin du 19^e siècle. L'idée est donc que le nationalisme est antérieur à la modernité avec des périodes d'affirmation ou des périodes de silence, d'où la récurrence du phénomène. On croit donc que ces différentes écoles de pensée reflètent d'énormes contradictions dans la façon de théoriser le nationalisme et les nations, et, conséquemment, les régimes politiques, dont le fédéralisme, qui reflètent ces tensions dans les conceptions des nations.

Or, les textes reproduits dans ce numéro spécial reflètent parfaitement ces tensions exprimées par la littérature internationale. Ainsi, par exemple, Ian Angus et Jules Duchastel approfondissent chacun de leur côté les aspects politiques de la question de la citoyenneté au sein du fédéralisme canadien. Le premier porte son attention sur l'idée d'exclusion et de dévolution de l'intégration sociale, phénomènes qui ont marqué jusqu'ici la politique canadienne, et l'oppose à l'idée d'inclusion et de citoyenneté sociale qu'il pense préférable à la première. Il rejette la thèse qui veut que les nouvelles identités engendrent la fragmentation de la société canadienne. Il soutient que l'échec du

¹⁷ A. McClintock, A. Mufti et E. Shohat, dir., *Dangerous Liaisons. Gender, Nation and Postcolonial Perspectives*, Minneapolis, University of Minnesota Press, 1995.

¹⁸ A. Hastings, *The Construction of Nationhood: Ethnicity, Religion and Nationalism*, Cambridge, Cambridge University Press, 1997.

¹⁹ Voir Smith, *supra* note ____.

fédéralisme, dû en partie à son héritage colonial, est responsable d'une telle dévolution. Afin d'en arriver à une société relativement juste et pour que le Canada entre enfin dans une ère postcoloniale, Angus propose un modèle « d'État parapluie ». Il va même jusqu'à suggérer l'abolition du symbole de la monarchie dans les institutions fédérales canadiennes.

Au thème de la fragmentation des sociétés, Duchastel ajoute le phénomène de la mondialisation. Depuis quelques années, nous assistons à une mutation profonde de la citoyenneté et des institutions politiques. La conception canadienne de la citoyenneté universaliste a peu à peu laissé place à une conception particulariste du citoyen. De plus, on assiste à la remise en cause de l'équilibre des institutions politiques et à une reprivatisation de l'espace public. Le modèle d'une Union confédérale pour le Canada, capable de tenir compte de la complexité des identités nationales et culturelles, intéresse particulièrement Duchastel. Le Canada pourrait alors servir de « laboratoire pour la réinvention de la régulation politique dans le contexte de plus en plus incontournable de la complexification des sociétés et de la mondialisation ».

Sous-jacente à la question de la citoyenneté, se pose aussi celle de la place des peuples autochtones dans la Confédération canadienne. Depuis une dizaine d'années maintenant, l'autonomie gouvernementale et les revendications territoriales sont au cœur des débats.

En août 1998, après un siècle de lutte, les Nisga'a du nord-ouest de la Colombie-Britannique signaient un traité. Les gouvernements fédéral et provincial reconnaissaient ainsi le droit inhérent à l'autonomie gouvernementale des Nisga'a. À travers une analyse des termes du traité et du discours autour de cette question tel que développé par les leaders autochtones depuis Charlottetown en 1992, Claude Denis révèle que les pressions gouvernementales fédérales et provinciales ont altéré le sens même de cette notion dans le cas des Nisga'a. Il s'interroge pour déterminer si un tel système d'autonomie gouvernementale accomplit réellement les buts que se sont fixés les leaders autochtones. Il termine en soulignant que le colonialisme est encore très ancré dans la mentalité canadienne.

Pour sa part, André Légaré se penche sur la construction symbolique et spatiale du Nunavut, ainsi que sur l'impact de la naissance du territoire sur l'identité collective des Inuit. Légaré tente de comprendre comment une région est construite à partir de traits culturels spécifiques et comment une telle région est utilisée pour créer une identité collective. Là encore, l'auteur souligne que la redéfinition de l'identité collective autochtone du Nunavut se fait à travers un processus non-autochtone, c'est-à-dire à travers celui du gouvernement canadien, un point de vue qui rejette tout à fait l'analyse de Richard Devlin et Alexandra Dobrowolsky sur la position constitutionnelle d'Alan Cairns sur les Autochtones.

La question de la survie des communautés francophones hors Québec soulève, elle aussi, bien des débats, autant auprès de spécialistes francophones qu’anglophones. Certains, chiffres à l’appui, vont jusqu’à prêcher la disparition de ces minorités. Cependant, pour Edmund Aunger, les « obsèques sont prématurées ». Quoiqu’il ne remette pas en question leur fragilité et leur vulnérabilité, il montre que la réalité est beaucoup plus complexe qu’elle en a l’air. En outre, il réfute deux autres idées reçues : que la condition sociale des minorités francophones est appauvrie et que le rôle politique des minorités francophones est insignifiant.

Toutefois, le dynamisme et l’épanouissement des communautés francophones ne suffisent pas, selon Michel Seymour, à combler le fossé qui s’est creusé entre les Québécois et les minorités francophones. C’est autour du thème de la nation canadienne-française que la fissure s’est amorcée. Pour les Québécois, elle n’existe plus, alors que pour la majorité des francophones vivant ailleurs au Canada, elle existe encore. Ces deux visions identitaires sont à première vue irréconciliables. Afin d’en finir avec les incompréhensions mutuelles, Michel Seymour préconise l’établissement de la dépolitisation des rapports que les minorités nationales entretiennent avec leurs majorités nationales respectives. En choisissant cette option, les francophones canadiens « verraien probablement naître au Québec un sentiment nouveau de sympathie profonde et verraien croître rapidement la volonté québécoise de multiplier les partenariats avec les francophones vivant ailleurs au Canada ».

Pendant plus de 30 ans, l’État providence et le libéralisme ont marqué la géographie politique du Canada. L’État providence était perçu à l’époque comme un signe de maturité, une précondition nécessaire à la stabilité politique et à une certaine cohésion sociale, mettant ainsi fin à « l’idéologie ». Toutefois, ce consensus de l’après-guerre a été remis en question, à partir des années 80, laissant place à ce que Janine Brodie appelle « la mondialisation néolibérale », qui inclut des notions telles que la privatisation, la déréglementation, le libre marché et l’erosion du secteur public. L’auteure examine l’insaisissable recherche de l’identité canadienne dans une ère de mondialisation libérale. Elle avance que l’État a toujours été un acteur central dans la création des perceptions de soi et de la collectivité et tente de déterminer si l’identité nationale canadienne peut être préservée et comment elle peut l’être dans un tel cadre.

Au Canada, ni la défense du fédéralisme canadien, ni la promotion intransigeante de la souveraineté québécoise ne paraissent satisfaisantes. Pour Gilles Bourque, « toute solution doit nécessairement satisfaire à cette double exigence de la reconnaissance politique de la nation québécoise et du caractère pleinement démocratique du partenariat souhaitable entre le Québec et le Canada ». Toutefois, la pérennité du débat Canada/Québec a eu tendance à occulter deux phénomènes des plus importants : l’État néolibéral et la mondialisation. L’auteur soutient que c’est en référence à ce nouveau contexte

qu'il faut réfléchir aux questions du fédéralisme, des identités et des questions nationales au Canada. Il ajoute que le partage de la souveraineté au sein d'une Union confédérale ou d'un État multinational pourrait éventuellement servir de modèle à la formation d'institutions démocratiques supranationales.

Malgré certaines apparences, le Canada demeure une société sans fondation politique. Selon Daniel Jacques, cette absence de fondation est à l'origine de la confusion des allégeances qui affectent ce pays. Pour sortir de l'impasse, plusieurs projets ont été avancés, dont la politique de la reconnaissance. Il estime que le langage utilisé ne permet pas de penser la nation et qu'il existe un risque considérable que le sens proprement politique de l'idée de nation soit oblitérée. Pour en arriver à une fondation véritable de ce pays, il est impératif que les francophones et les amérindiens puissent vivre leur appartenance culturelle, sans restriction aucune. Pour ce faire, la transformation de l'espace politique canadien doit nécessairement passer par un réaménagement des institutions sur la base d'une reconnaissance explicite du caractère multinational du pays. Ceci « présuppose que le Canada anglais soit capable d'accepter, par-delà ses héritages impériaux, le caractère propre de sa réalité historique ».

Quant à Samuel de La Selva, il se penche sur les visions politiques de John A. Macdonald et de Pierre Elliott Trudeau. En effet, pour la plupart des Canadiens, ces deux hommes ont été les seuls à définir avec succès l'essence même du pays. Pourtant, le Canada s'est transformé en un pays, pour ainsi dire, impossible à gouverner. Si rien ne change, le Canada est voué à la fragmentation et sera composé de solitudes culturelles antagonistes. Pour La Selva, le Québec aussi est voué à ce destin du fait qu'il est composé d'importantes minorités, de nations autochtones, de groupes multiculturels et d'une large population anglophone. Alors, comment réconcilier les différences ? En faisant place à une vision politique aussi vieille que la Confédération: celle de Georges-Étienne Cartier.

Le destin du Québec n'intéresse pas seulement les politologues ou les historiens, mais aussi les philosophes. Charles Taylor s'est penché sur la question, mais il n'est pas le seul puisque le philosophe allemand Jürgen Habermas s'est aussi prononcé sur le « cas » du Québec. Donald Ipperciel tente par conséquent dans son article de cerner toutes les subtilités du débat Taylor/Habermas.

En surface, la division politique et culturelle entre le Québec et l'Ouest canadien semble très grave. Toutefois, pour Barry Cooper, le sérieux de la situation a été grandement exagéré. À travers une analyse du rapport de Lord Durham, Cooper démontre pourquoi le Québec ne se séparera pas et que dans le cas où, un jour, il deviendrait indépendant, cela ne ferait aucune différence pour le Canada.

Diane Lamoureux, quant à elle, démontre l'importance de la dimension identitaire dans le discours québécois. Ce qui retient particulièrement son attention, c'est « le passage d'une justification du projet de souveraineté du Québec en termes d'oppression nationale à une justification en termes d'affirmation nationale ». Elle procède ensuite à « un tour d'horizon de la fluctuation de l'identité québécoise et de sa conjugaison suivant des registres temporels distincts et enchevêtrés » et termine son analyse sur une note plus théorique en soulignant les problèmes politiques que pose un tel recours à l'identité.

Enfin, Gordon Laxer met de l'avant un scénario pour le futur. Selon lui, personne ne semble se soucier de trouver une solution intermédiaire entre le statu quo et la sécession. Il propose de reconsidérer l'option de l'asymétrie du Québec et explore les conditions qui rendraient un tel arrangement politiquement viable. Finalement, il soutient que la formation d'une trialliance nationale (Canada anglais, Québec, Premières Nations) permettrait de contrer le corporatisme mondial et les lois du marché.

En somme, ce numéro spécial, on le voit, reflète bien la complexité du débat constitutionnel et identitaire canadien.

POST-COLONIAL FEDERALISM: SOCIAL CITIZENSHIP AND NEW IDENTITIES

Ian Angus*

The main argument of the paper will be to analyze two logics: a logic of exclusion and devolution of social integration and a logic of inclusion and social citizenship. While contemporary politics is dominated by the former, the author argues that the latter is both possible and politically preferable. The argument for inclusion bases itself on two important precedents: the important conception of Canadian Federalism as an inclusion of particularities (rather than a homogenizing state) and the welfare state as a new stage of social citizenship. Building on these precedents, it argues for another stage of social inclusion that might emerge out of new social identities once they are considered in the context of their interaction. The argument thus rejects the thesis that new identities lead to fragmentation and suggests instead that it is the failure of Federalism to be sufficiently inclusive that has led to such devolution.

L'auteur examine les aspects politiques de la question de la citoyenneté au sein du fédéralisme canadien. Il se penche particulièrement sur l'idée d'exclusion et de dévolution de l'intégration sociale, phénomènes qui ont marqué jusqu'ici la politique canadienne, et l'oppose à l'idée d'inclusion et de citoyenneté sociale qu'il pense préférable à la première. Il rejette la thèse selon laquelle les nouvelles identités engendrent la fragmentation de la société canadienne. Il soutient que l'échec du fédéralisme, dû en partie à son héritage colonial, est responsable d'une telle dévolution. Afin d'en arriver à une société relativement juste et pour que le Canada entre enfin dans une ère postcoloniale, l'auteur propose un modèle « d'État parapluie ». Il va même jusqu'à suggérer l'abolition du symbole de la monarchie dans les institutions fédérales canadiennes.

Thinking about the past and future of Canadian Federalism at the beginning of the twenty-first century tends to arouse large historical vistas and great expectations for the future and also, perhaps more likely these days, a resigned skepticism that such matters can be reasonably discussed, or indeed whether they matter at all to the daily activities of citizens. One might diagnose us as caught within a fateful devolution spurred by free trade and neo-liberalism in which to speak of any future at all for the Canadian nation-state would be thought impracticable. Or, one might compare the current state of Canada to the ideals of Plato or Marx, and find us greatly wanting. I want to avoid both these false alternatives. Canada is not *the* good society, but in the period since World War II it has been for many, probably a large majority of its citizens, the “pretty good society.” I can no longer believe the slogan of May ‘68 that we should “take our dreams for reality,” but I’m also reminded of a remark by Oscar Wilde that “a map that has no place for utopia is not worth reading.” So I will try to steer a middle course between resigned acceptance and unrestrained optimism by talking about political ideals in the realistic context of what we have seen and might hope to bring about within the foreseeable future. As Hannah Arendt insisted, the future can be predicted only if we continue to behave and do not

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summon ourselves to *act*.¹ Political action contains the possibility of bringing something new into the world. But achieving that newness requires action that takes into account what has been passed down to us as tradition. To the extent that political action can root itself in a shared tradition, its chances of success increase.

The main burden of my argument is to clarify two opposing logics: a logic of exclusion and devolution of social integration based on the subordination of society to the market promoted by free trade and neo-liberal politics, versus a logic of inclusion and social citizenship. While contemporary politics is dominated by the former, I will argue that the latter is both possible and preferable. The argument for inclusion bases itself on two important precedents: the conception of Canadian Federalism as the inclusion of particularities (rather than a homogenizing state) and the welfare state as having achieved a new stage of social citizenship. Building on these precedents, I will argue for another stage of social inclusion that might emerge out of new social identities once they are considered in the context of their interaction, rather than separately. My argument thus rejects the thesis that new identities lead to social fragmentation and suggests instead that it is the failure of Federalism due to its colonial legacy that has led to such devolution. A post-colonial Federalism proposes a decentralised political discourse and a plurality of interacting public spheres. Its philosophical core is a conception of universalization as emergent from the interaction of particularities that constitute a tradition rather than a concept of universality that subsumes particulars beneath context independent rules.

In recent years, we have seen a delegitimation of the welfare state in the post-War democratic capitalist nation-states within which most of us came to maturity. The welfare state incorporated an ideal of social and economic citizenship that brought the working class into mainstream social and political institutions and replaced their outsider status with a new citizen identity.² This notion that a polity has a responsibility for the well-being of all its citizens created the basis for new identities emerging from social movements and the renewed defence of traditional sub-national identities which would contest the concept of well-being inherent in consumer capitalism.³ Such political contest no longer occurred between established society and a radical outside but within the political institutions in which a dialogue concerning common well-being was

¹ H. Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958) at 38–46.

² See I. Angus, “Equality, Community and Sustainability” in E. Broadbent, ed., *Equality and the Democratic State* (Toronto: University of Toronto Press, 2000).

³ This formulation applies to the new social identities that have proliferated in North Atlantic consumer societies and leaves aside the difficult issue of whether the new social movements and identities that have emerged in what was Eastern Europe and that which is often called the “Third World” are of a different type or have different presuppositions.

articulated. The subsequent proliferation of new social identities rested on the ground-breaking social inclusion begun by the welfare state.

The recent delegitimation of the welfare state began with a re-naming. Margaret Thatcher called it the “nanny state” and tried to replace it with the “nightwatchman state”—a state that would interfere in the logic of the market only to police public order. We have seen that transition, though not in such extreme terms, in Canada also. The social and economic rights put into place by the welfare state are receding daily. Moreover, the constantly expanding growth-oriented economy upon which such rights were based is likely gone forever—due both to changes in the system of production and circulation of goods and the discovery of ecological limits to growth. This raises the spectre of a return to a society that refuses to recognize the well-being of some within its territory as a necessary concern for public policy. The homeless on our streets are now the most visible sign of the re-emergence of a radical outside—groups within society that are abandoned by society and who, therefore, have no interest in the institutions and ideals of that society.

In this context, I want to recall the pretty good society as some sort of success and suggest how it might become fairly good again in more difficult circumstances. This will require, it seems to me, a new kind of nations-state in Canada—which I will call the “umbrella state” because it would provide a certain degree of shelter but not determine what goes on underneath the umbrella. The shelter that universal social and economic programs—such as medicare, unemployment insurance, pensions and public education—can provide would allow a space for innovation in civil society where the new social identities might prosper.⁴ I will argue that this is the main task for a post-colonial Federalism. The welfare state inaugurated a new stage in the civilization of capitalism by incorporating the particularity of the working class—its susceptibility to unemployment and consequent lack of access to social goods—into the universalization of a citizen-identity.⁵ The new citizen-identity was thus suffused with an economic and social content previously absent from the concept of citizenship and relegated to the private sphere. Social citizenship can be seen as an important new stage of Federalism insofar as the accommodation of particularities into common concerns upon which Federalism rests extended to

⁴ It is already arguable that unemployment insurance has done more for the development of Canadian art than the Canada Council.

⁵ It should be noted that this inclusion did not extend to the entirety of the particularity of the working class, especially to the experience of heteronomy in work. The welfare state, like the unions of the period, focussed solely on the *returns from work*, i.e. wages, and not upon the experience of work itself. The critique of work-organization by the Left was thus marginalized in the politics of the welfare state. The later emergence of health and safety issues in relation to the work process, which have at times converged with the concerns of the environmental movement, thus re-opens a crucial repressed dimension of working class experience that must become central for future social citizenship.

the security of the entire population. Thus, the way forward must acknowledge, among all the contemporary critiques of state-oriented welfare, the accomplishment that social citizenship represented.

There are, of course, several strands of interpretation of Canadian Federalism. Indeed, I think that Canadian Federalism can be regarded as an “essentially contested concept” under the criteria set forth by W.B. Gallie.⁶ A concept that is contested essentially, rather than solely contested prior to an *in principle* definitive settlement, is a concept whose very meaning depends upon a continuous basic disagreement over its essential features. Such a concept depends upon a original exemplar which is definitive for all parties but whose description can never be neutral between parties. It thus necessarily has a historical dimension.

Hannah Arendt’s concept of judgment, which she adapted for politics from Kant’s aesthetic judgment, was also concerned to isolate features of the use of reason in cases where different views were inevitable and defensible, and could not be resolved by subsuming the particular case under a universal rule.⁷ Rather, it is a matter of deriving universal considerations from particular examples. Kant distinguished between rationalizing and rational judgment in this way: “We may describe as a rationalizing judgment ... one which proclaims itself as universal, for as such it can serve as the major premise of a syllogism. On the other hand, we can only speak of a judgment as rational ... which is thought as the conclusion of a syllogism, and consequently as grounded *a priori*.⁸ Judgments are then rationalizing, or as we may also say, universalizing when they pertain to the premises from which we begin arguments, rather than to the conclusions toward which we argue. Only conclusions could be rational and universal as such, in the sense that they may, in the optimal case, follow ineluctably from premises, relevant evidence and the arguments that weld them into coherence. But, when it is a case of describing a historical example in terms that form subsequent arguments and conclusions, a description that rationalizes and universalizes salient features of historical experience cannot be universal without restriction. While an individual exemplar is held to be such by all parties to the controversy, the description of the example is a universalization that can only appeal to others through the descriptions, arguments and evaluations that it makes possible. It can never, not accidentally but in principle, command universal assent and is thus universalizing, but not universal. It expresses and

⁶ W.B. Gallie, “Essentially Contested Concepts” in *Proceedings of the Aristotelian Society*, Vol. LVI (London: Harrison & Sons, 1956).

⁷ See my more extensive discussion in *Technique and Enlightenment: Limits of Instrumental Reason* (Washington: Center for Advanced Research in Phenomenology and University Press of America, 1984) c. 5.

⁸ I. Kant, *Critique of Judgement*, trans. J.H. Bernard (New York: Collier Macmillan, 1974) at 182.

contributes to the rationalizing task of bringing the particularity of our historical imbeddedness toward universalizing articulation. Such judgments are thus the crucial process whereby the historical experience of a people both becomes reflexive toward its own history and also proposes a universalization for human reason *tout court* even though its contribution to such human reason remains debatable.⁹

Canadian Federalism is an essentially contested concept of this type and consequently disagreements about Federalism are not only about what the concept means as such but most basically about the meaning of the historical experience of nation-building in Canada and how we want to live in the future. Nonetheless, an essentially contested concept does not bear an open infinity of interpretations. It is shaped and limited by the historical interpretations that have settled upon the exemplar.¹⁰ The original exemplar for Canadian Federalism is, of course, Confederation, but further exemplars have been added at crucial moments in its history — such as the inclusion of Newfoundland into Confederation in 1949,¹¹ the Royal Commission on Bilingualism and Biculturalism,¹² patriation of the constitution in 1982,¹³ the *Multiculturalism Act*,¹⁴ the recent creation of Nunavut,¹⁵ and the proposed Nisga'a treaty.¹⁶ These further exemplars, as well as the propriety of including them, are also matters of controversy and serve to highlight features of the original exemplar that may have been previously regarded as of negligible importance. It is an important part of my argument that the social citizenship brought into being by the welfare state is a fundamental recent exemplar of Federalism — which implies that social and economic programs such as medicare, unemployment insurance, pensions and public education are also components of Federalism. In other words, the social and economic right of citizens to full participation in the common well-being must be seen as a fundamental aspect of contemporary Federalism.

⁹ I use the term “reflection” here even though it is, strictly speaking, incorrect due to the basis of the term in the objectification of the world in modernity. The “step back” (Heidegger) as a continuation of the “transcendental reduction” (Husserl) is the correct lineage here of the concept of thought intended. See M. Heidegger, “Overcoming Metaphysics” in *The End of Philosophy*, trans. J. Stambaugh (New York: Harper & Row, 1973) at 97ff. The difference between reflection and the step back as descriptions of the consciousness attained by historical articulation refers to the question of the end of modernity through the impossibility of a historical completion reconciling consciousness and emplacement.

¹⁰ A drastically new interpretation could only be introduced by unsettling the common presuppositions of such settled historical interpretations. Such an unsettling is the meaning of the operation of deconstruction and indicates its relationship to historical hermeneutics.

¹¹ *Newfoundland Act, 1949* (U.K.), 12 & 13 Geo. VI, c. 22.

¹² Canada, *Report of the Royal Commission on Bilingualism and Biculturalism* (Ottawa: Queen's Printer, 1970).

¹³ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

¹⁴ *Canadian Multiculturalism Act*, R.S.C. 1985, c. 34 (4th Supp.).

¹⁵ *Constitution Act, 1999 (Nunavut)*, S.C. 1998, c. 15, Part 2.

¹⁶ D. Culhane, *The Pleasure of the Crown* (Burnaby, Talon Books, 1998) at 349–53.

We may distinguish three main historical interpretations of Canadian Federalism: The first, and probably the strongest, is that of Harold Innis and Donald Creighton, which sees Confederation as primarily the creation of a political and economic union by an elite for the purpose of expansion and extraction of resource wealth. Its hero is John A. Macdonald. The strong centralizing tendency of Confederation was seen as a solution to the dissolving tendencies of U.S. Federalism. Thus, lamenting the erosion of this concept of Federalism, Donald Creighton has claimed that “Canada has ceased to be the strongly centralized nation which the Fathers of Confederation intended.”¹⁷ The second, and probably weakest, interpretation of Canadian Federalism is that harking back to the Reformers who wanted a U.S.-style compound republic of independent states that delegated powers to a nation-state.¹⁸ This interpretation has not been influential in subsequent history.

It is significant that these two interpretations rest upon the identical presupposition that a nation requires a homogeneous identity for its citizens — whether it is to argue for the creation of a homogeneous national identity or to reject it in favour of regional identities. The lack of a national identity in Canada prior to Confederation meant that the establishment of a strong central and homogenizing state also required the additional power of identity creation, not merely recognition, and the Canadian nation-state has played this role from Confederation right up to Sheila Copps’ great flag give-away. Canadian politics have thus been about identity to a greater extent than other nation-states. This has provoked a complex politics involving the creation and sustaining of national identity; the granting of recognition, or its refusal, to national identities other than pan-Canadian ones, mainly in Québec and the First Nations; recognition, or its refusal, of sub-national identities by the Federal state in policies such as multiculturalism; and the politics of social citizenship and the new identities rooted in social movements that have marked recent years. If one is committed to a strong national, even nationalist, state, the implication is often taken to be that national identity must subsume and even suppress other social identifications. However, if it is possible to accept the legitimacy of a multiplicity of identifications, then the issue rather becomes how they might be harmonized and included beneath the national umbrella. Such a politics of inclusion is the core of the argument I will make for a post-colonial Federalism.

There is a third interpretation of Canadian Federalism that abandons the assumption that national association requires a homogeneous identity and seeks to wind together a form of unity through the inclusion of diversities. James Tully calls this “diverse Federalism,” which refers to “a means of conciliation ... [that]

¹⁷ D. Creighton, “The Myth of Biculturalism” in *Towards the Discovery of Canada* (Toronto: Macmillan, 1972) 256 at 267.

¹⁸ S.V. LaSelva, *The Moral Foundations of Canadian Federalism* (Montreal & Kingston: McGill-Queen’s University Press, 1996) at 34.

enables peoples mutually to recognise and reach agreement on how to assemble or federate the legal and political differences they wish to continue into the association.”¹⁹ Referring to the role of George-Étienne Cartier in Confederation, Samuel LaSelva points out that:²⁰

[i]n the debates of 1865, he noted that opponents of Canadian federation either lamented the existence of racial and local diversities, and thus called for their elimination through a legislative union, or appealed to such diversities and particularities in their attempt to discredit any scheme of union, other than a weak confederacy, a defence league, or a free trade area. The implicit issue was homogeneity, and the belief that a nation either presupposed homogeneity or was compelled to create it.

Leslie Armour and Elizabeth Trott have argued that the philosophical tradition in Canada can be characterized as a Federalism insofar as reason is only rarely used as an instrument of force and predominantly refers to exploring alternatives, suggesting new ways of combining ideas, and discovering new ways of passing from one idea to another, in short, as “a natural inclination to find out why one’s neighbour thinks differently rather than to find out how to show him up as an idiot.”²¹

For this third tradition of Canadian Federalism the task was not to pit local particularities against national identity, nor the reverse. To do this, an abstract and homogeneous language of constitutionalism that aims to be culture-blind must be replaced by a constitutional language that incorporates and protects cultural differences. Tully argues that “[i]f rights were applied without taking these cultural differences into account, the result would not be impartial. The dominant culture would in fact be imposed in each case.”²² If abstract and homogeneous rules in practice actually reinforce and extend the assumptions of the dominant culture, then diverse Federalism requires a different relationship between particular cultural practices and constitutional discourse. LaSelva says, “Federalists are not universalists precisely because they value the particular differences imbedded in local communities and local cultures. But they are not particularists either. The imaginative feat of Federalism is that it uses the complex concept of fraternity to accommodate both the universal and particular within the same state.”²³ Those who are federalists under this third interpretation refuse the choice between locality and nation and seek to affirm and construct dual, or even plural, overlapping identities pertinent to a plurality of distinct, but

¹⁹ J. Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995) at 140.

²⁰ LaSelva, *supra* note 18 at 39.

²¹ L. Armour & E. Trott, *The Faces of Reason: An Essay on Philosophy and Culture in English Canada 1850–1950* (Waterloo: Wilfrid Laurier University Press, 1981) at 4.

²² Tully, *supra* note 19 at 172.

²³ LaSelva, *supra* note 18 at 29.

not competing, allegiances.²⁴ For them, as J.M.S. Careless has argued, “the union of 1867 was in large degree a coming together of regions, and so has remained: regions articulated or integrated under a central régime, but surely not reduced or unified thereby.”²⁵ Ramsey Cook and Careless have described this as the construction of “limited identities” in Canada.²⁶ I have made a very similar argument that English-Canadian nationalism and nationality could be distinctive precisely because of its acceptance of internal differences such as are manifested in the plural identities of multiculturalism and social movements.²⁷

A Federalism that takes its departure from the legitimacy of varied accommodations of particularities necessarily abandons the notion of a standard set of rules covering all individuals and groups identically and thus poses a basic issue for the concept of equality. It suggests that equality is not to be sought through the imposition of homogeneity but through the recognition of salient differences embedded in particular histories. More accurately, a Federalism of limited identities suggest that contemporary politics requires a balance between standardized rules applying to each in the same way and the diverse recognition of particularities. Equality requires not only treating each in the same way, but also, when it is salient, treating each in the manner adequate to the history of their difference. Thus, the basis for judgment is not primarily recourse to rules, but the recognition that rules are results of historical inclusions and that the primary recourse is to the complex history of the accommodation of particularities. This must include, of course, not only the plurality of differences accommodated but also the plurality of forms of accommodation themselves. Such a Federalism rests on the ancient constitution by precedent and its extension through argument that new conditions require the application of precedent to new situations. The complex history of inclusion of differences thus legitimates arguments for the inclusion of new differences, and the exploration of new forms of inclusion. Recovering the history of diverse Federalism — which has been undertaken by Careless, Cook, Tully, LaSelva, Armour and Trott as well as others — is an important first step, but it is necessary to provide some account of how, when and why a plurality of particular identities can be accommodated through a nation-state because, clearly, sometimes they can’t. It seems to me that the future of Canadian Federalism now hangs on the question of whether, both within ourselves and with our neighbours, we can settle on what forms such inclusive plurality might take.

²⁴ But it is not sufficiently clear theoretically to describe federalists of this third stripe as, first, neither universalists nor particularists and, secondly, as “accommodating” both/and as does LaSelva in the quotation above. He also refers to it as a “middle ground.” See LaSelva, *ibid.* at 188.

²⁵ J.M.S. Careless, “‘Limited Identities’ in Canada” in *Careless at Work* (Toronto: Dunburn, 1990) at 284.

²⁶ *Ibid.*

²⁷ I. Angus, *A Border Within: National Identity, Cultural Plurality and Wilderness* (Montreal & Kingston: McGill-Queen’s University Press, 1997).

In recent years, there has been a virtual explosion of social identities and cultural differences. Within the nation-state, resurgent regional and ethnic identities have strengthened centrifugal identifications. New social movements with international scope — such as feminism, environmentalism and human rights — have weakened the nation-state as a locus of political action. Sovereignist movements have emerged from Québec and Aboriginal nations to propose the real possibility of a devolution or disintegration of Federal power. In this situation, it is common to regard such resurgent and new social identities as the source of fragmentation of the nation-state. If the problem is fragmentation, the solution will surely be unity. Recent politics has been caught within this either/or: Either one unified country, or a pure fragmentation that spells the end of Canada.²⁸ Let me say clearly that I do not share this diagnosis. Thus, I will point to a possible politics that does not fall into this false alternative through reworking the relationship between centrifugal and centripetal forces.

Every person is the home of a multitude of social identities which are called forth in different circumstances. One may be a woman, wife, mother, worker, Latina, Jewish, West Coast Canadian without being required to choose between these. The intersections between such identities often bring forth some of the most interesting contemporary politics and arts. One possibility is the centrifugal one. To state it crudely, in a form we have probably all seen, it is to insist that only other such women who are wives, mothers, workers, *etc.* have enough in common to bear mutual understanding, to suggest that *only* if one shares *all* relevant identifications does one have something in common with another. This insistence indeed necessarily produces fragmentation and such a centrifugal tendency is certainly strong in contemporary culture. Its apogee would be a general solipsism in which it is asserted that no one can ever understand anyone else — a statement which is truly not worth uttering. But there is another possibility, which is that this list of identities produces partial identifications with an indefinite plurality of others. Each identification cleaves one to a different group. Allowing and insisting on the validity of each and all of one's identifications — in a multicultural, plural and yet interconnected society — asserts one's connections to nearly all others and can constitute a plurality of centripetal forces. Such connections are not of the total person, but of an overlapping kind with indefinite borders. The individual person is thus individual by being the locus of such criss-crossing social identities, not outside them or beneath them.

This is the conception of citizenship that might emerge from a contemporary continuation of the tradition of Federalism of limited identities, of a self — as I suggested in *A Border Within* — that *needs* its other to manifest itself. Such a self is defined in *distinction* from another, but not *against* another. The pattern

²⁸ *Ibid.* at 135–46.

for such a relation is a gathering of particularities into a universalization that is not homogeneous but based on a concrete history of interrelationships that are exemplary for all. Such a nation-state gathers its unity from its appeal to particularities, not against them, and it must provide an internal space within which such particularities may prosper. Furthermore, it must encourage public debate on the salience of each form of inclusion — posing the question “out of what particular history does this accommodation arise?” — in order to avoid the simplistic “if it applies to you, then I want it too” response that has propelled the devolution of social integration, and thus Federalism, by assuming homogeneous rules as the basis for social and political life. The most obvious case of this is the demand by other provinces to be given the powers devolved to Québec. The most superficial glance at the history of Québec’s particularity shows that it is not “a province like the others” but “the home of North America’s only French-speaking population.”

If such a renewed Federalism is a possibility, then one must ask why the tendency toward fragmentation is so strong at the moment. Why is there the *insistence* on the centrifugal tendency? Why the insistence that only others who are like me in all relevant respects can be invited into understanding and commonality? Surely this is a kind of social narcissism, for if I can understand only those who are like me, then my understanding is not stretched at all. Indeed, it is hardly understanding at all if there is no reaching toward the otherness of the other. We should note that this tendency parallels the phenomenon of interpreting equality as treating each in the same way, rather than each in the way that they need to be treated to maintain their integrity. Social narcissism and a homogenizing rule-oriented conception of Federalism reinforce each other. For if justice and equality consist in applying the same rules to each in the same way, such that the particularity of any one history is erased, then the understanding of such a history is enclosed within those who share it. Social fragmentation does not come from the assertion of difference but from the non-inclusion of difference.

I want to suggest that it is the lack of an inclusive public context that drives particularities toward isolationism. The insistence on narcissism, on which the centrifugal tendency depends, derives from the sense within such particularities that they have not been invited within, which is paralleled, and indeed justified, by the acceptance of a homogenizing and centralizing conception of Federalism. In other words, it is a sign of the failure of Federalism to unite the particularities of Canadian society. It is the legacy of exclusion that makes the excluded devolve into ever-smaller fragmented groups. One of the most frightening aspects of contemporary politics in English Canada is to have watched the vindictive argument for the partition of Québec articulated by Bercuson and Cooper in 1991 migrate from the Right of the spectrum into the mainstream of thought about how we in English-speaking Canada should respond to Québec’s

nationalist aspirations.²⁹ Contemporary politics is torn between two rival logics — a centrifugal logic of exclusion tending toward the devolution of any concept of common well-being into antagonistic individuals and groups *versus* a centripetal logic of inclusion that has some precedent in the recognition of social and economic rights and group identities in Canadian history.³⁰ The renewed Federalism of which I am speaking can only be performed by the turning around of the logic of exclusion to design an inclusive common context that recognizes particularities. What could be the motive for such a turn-around?

First of all, social movements, when striving for their recognition, encounter similar claims by others. If I want my Ukrainian ethnic identity recognized, for example, I must recognize and validate the fact that not all other Canadians are Ukrainians. Also, Canadian Ukrainians are not just Ukrainians, but have other relevant identities, and thus share a mixed history with other Canadians. In this context, the claim to assert one's ethnic identity becomes a claim for the *right* to maintain ethnic identity, and such a right is a universalization that recognizes the legitimacy of other ethnic identities. Second, in seeking public reform, movements encounter their partiality with respect to other claims within the context of similar critiques of the social system made by other groups. While movements may remain oriented to a single issue, the individuals within such movements are usually drawn to the legitimacy of other claims. This perhaps prefigures an inclusive context in which the interrelations of both claims may be discussed and addressed. Third, the encounter with other identities can disclose an important plurality within one's own particularity. The environmental movement, for example, has encountered the claim of feminism that men and women have different relations to nature. This has spurred other splinter groups, of course, but it has also enriched the discourse of environmentalism by revealing the social complexity of its issue. Whether it be in discovering the right for the other to be other, in discovering a commonality previously unexpressed, or in discovering an internal plurality in one's claim, the plural context in which identifications occur contains the possibility of a universalization that does not require jettisoning particularities. The new identities that have emerged in recent years pose the question of how they can be included within Federalism in order to counter the logic of devolution.

²⁹ D.J. Bercuson & B. Cooper, *Deconfederation: Canada Without Québec* (Toronto: Key Porter Books, 1991).

³⁰ There was also a very important third logic at work in the stabilization of Canada that has recently receded to allow for the two opposing logics to claim the field. This was a logic of repetition in which Québec repeated its resentment for the Conquest in antagonism with English Canada and English Canada repeated its fear of incorporation into the United States by assimilating the Québec difference from English Canada into Canadian difference from the United States. These two repetitions were mutually stabilizing for a long period, but they have now both given over to the dominant opposition described in the main text. See, in this context, the very interesting text by C. Dufour, *A Canadian Challenge* (Lantzville & Halifax: Oolichan Books and The Institute for Research on Public Policy, 1990).

All three of these factors promoting universalizations through the recognition of particularities depend upon the existence of a *context of interaction*. It is the revitalization of this context of interaction that is most significant for a renewed Federalism designed to accommodate the particularities of the excluded. The failure of Canadian Federalism to extend its inclusion sufficiently is the basis for a contemporary renegotiation. But, also, Canadian Federalism has succeeded sufficiently in providing a public context of interaction through the nation-state to be extended to the larger interaction within the plural social identities of Canadian society for which I am arguing. The diverse Federalism of limited identities has been the historical interpretation that has most incorporated particularities. It is thanks to the precedent and effectiveness of this view of Federalism that a public context exists which serves to reduce the centrifugal tendency toward fragmentation. To speak comparatively: where a Federalism of delegated powers predominates (such as in the U.S.), or an elite economic management (such as Britain or France), the tendency toward fragmentation will be much stronger.

To the extent that particularities are genuinely included into a larger Federalism, the remaining institutions expressing cultural particularity become partial institutions within the Federal context rather than institutions competing for sovereignty.³¹ This applies to the Canadian nation-state as well. To the extent that Canadian particularity were taken up into a world federation, national sovereignty could be ceded.³² This is, in my view, a key advantage of the third interpretation of Canadian Federalism: it does not even take the institution of the Canadian nation-state as a basic assumption and can conceive of conditions under which it would be reasonable for a Canadian to abandon it.

There are thus three important aspects of such a politics: One, a defence of particularity; two, preservation and extension of the context of interaction (what is usually called, though in a more restricted sense, the public sphere); and, three, the forms of accommodation, especially but not exclusively the nation-state, which represents the institutional legacy of the historical context of interaction

³¹ Whether inclusion is “genuine” or merely “token” will of course remain a matter for debate. There could be no certainty in such a matter. Separations occur, and may be justified, but the point here is that greater inclusion promotes accepting the partiality of one’s particularity within the larger order.

³² It is possible that the logic of inclusion, which promotes the creation of ever larger unities through the recognition and incorporation of particularities, may have an inherent limit. While it can always aspire to a one-higher unity, as it were, it is possible that the “final” unity could not be totally inclusive. If it is true that a socio-cultural unity is necessarily constituted through reference to its outside, then a singular unity of all humanity is not possible. Or, it may be possible only on the condition that humanity as a whole opposes itself to its outside, *i.e.* nature, which then rebounds inside to repress the natural substratum of humanity. However, even if this is so, it does not constitute a reason to abandon the logic of inclusion as such.

between particularities. This three-way distinction, which is built up from the contemporary emergence of new identities, does not include the most important force in the creation of the Canadian nation-state — the legacy of Empire and colonialism — that is the basis for the view of Federalism as elite accommodation. This is by no means to deny the historical importance of this factor. It is rather to assert that what is definitive about Federalism as the inclusion of particularities is based on the moments when the colonial legacy was mitigated or diverted. It is from this history of the mitigation of colonialism that the essential component of the *context of interaction among particularities* has emerged. It is not likely that the legacy of colonialism can be eliminated completely, at least in the short or middle term, but perhaps it can be gradually turned into one “factor” among others by a politics that focusses on the moments of divergence and inclusion. A key symbolic affirmation of such a post-colonial Federalism would be to remove any reference to the monarchy from Canadian Federal institutions.

If a renewed Federalism presupposes a critique of colonialism, as I am suggesting, then clearly it must align itself with those who have called for understanding Canada as a nations-state (in the plural) composed of three main groups: English Canada, by which I mean the multicultural polity whose public language is English; French Canada, by which I mean the multicultural polity that is Québec and the French-speaking minority in English Canada; and the First Nations, which include the many nations existing prior to European contact as they have evolved up to this day.³³ These three involve distinct formations and issues because they are positioned differently with regard to the colonial legacy. Federalism can only be genuinely renewed to the extent that it rids itself of the legacy of conquest. The creation of Nunavut and the Nisga'a Treaty show that this is a difficult, but not impossible, task. It opens the possibility that Aboriginal people may be called “Canadians” without cruel irony. I hope that a similar opening is still possible with Québec, but it would require the Federal government to abandon its economic pragmatism and punitive stance and demonstrate the extent to which Federal institutions can be reformed to include the national aspirations of Québec.

The continuing weight of the legacy of conquest has determined the superficiality of government attempts at inclusion of Aboriginal nations and Québec. Without genuine inclusion, which means renouncing the colonial legacy, the national aspirations of these groups have become centrifugal forces fragmenting the Canadian nation-state. That the inclusion of Québec has not been genuine I take to be demonstrated from the breaking of the convention of

³³ See e.g. P. Resnick, *Thinking English Canada* (Toronto: Stoddart, 1994) c. 10; F. Cunningham, “Democracy and Three-Nation Asymmetry” [1992] Can. For. 18; and W. Kymlicka, *Finding Our Way* (Toronto: Oxford University Press, 1998) at 160–64.

unanimity among provinces in passing the *Constitution Act, 1982*.³⁴ This has affected English-speaking Canada as well, which has suffered the muting and frustration of its collective consciousness by its failure to conceive of itself as a distinct people. Thus, regional and local identities in English Canada have also become centrifugal forces. We seem to be stuck in the logic of devolution. Everyone seems to be bailing out of the Canadian nation-state. However, they are not bailing out because of the explosion of new identities, but because of the failure to incorporate these particularities in a universalizing context of interaction — and this is a failure of our governing forces and elites.

The distinction that I have utilized between the situation of French-speaking Québécois and of Ukrainian-speaking Albertans is not one of principle, but is historical. It depends upon the extent that one's particularity has been included. Once in, one becomes a member of a subcultural nation or group in a multicultural society. Left out, one is a member of a separate nation aspiring to sovereignty. The line between in and out is defined by the historical struggle for inclusion and the degree of its success — what we might also call the critique of colonialism. Thus, the three nations now predominant may be different, more or less, in the past or future. The key component for such an historical interpretation is the extent to which each party is, or has been, accepted as capable of determining its own future in the context of interaction.

Dominating the history of interaction between Euro-Canadians and Aboriginal people has been the deep-rooted assumption that native people are subject to, in Noel Dyck's phrase, "tutelage" by Euro-Canadians. Tutelage refers to³⁵

a form of restraint or care exercised by one party over another as well as the condition of being subjected to such protection or guardianship . . . [T]he tutelage that Canadian Indians have experienced has been based neither on a contractual agreement nor a negotiated understanding but upon the power of one side to regulate the behaviour of the other in accordance with a set of unilaterally selected purposes.

Only the abandonment of tutelage — that is to say, an assumption of adult capacity and authority by both parties — can render the process of inclusion a genuine one. Such an assumption of sovereignty by each party decentres the rules by which accommodation is made. The rules are open to negotiation as well. The legitimization of any agreement will be accepted by both sides, but in different terms depending on the internal cultural and political resources for interpreting it. Moreover, such resources become shared in the act of agreement, so that each side gains a cultural-political resource for future interpretations,

³⁴ See the excellent account in S. Chambers, "Contract or Conversation? Theoretical Lessons from the Canadian Constitutional Crisis" (1998) 26 Pol. & Soc. 43.

³⁵ N. Dyck, *What Is the Indian Problem?* (St. John's: Institute for Social & Economic Research, 1991) at 24.

even though it does not inhabit them in the same way as the other group. It is the colonial legacy that has deformed this potential of an inclusive and decentred Federalism. Tutelage is, at its most basic, the claim to monologically dominate the design of rules of interaction. This is an effect of power. A post-colonial Federalism thus attempts to decentre and diversify power by building on the historical events through which colonialism has been mitigated to propose a thorough democratization of society and politics. Such a politics can reverse the logic of devolution by a logic of inclusion. The only alternatives to this reversal are accepting the devolution or inclusion by naked force.

If we imagine the future form of a politics that has minimized the colonial legacy, it can be defined through a new form of speaking that can be called the post-colonial speech act. I have argued that being “let in” to an inclusive Federalism requires both retention of particularities of the way of life of sub-national groups and also a context of interaction between these particularities that allows for universalizing claims. Such claims are politically significant for the reform and foundation of institutions that solidify and extend the context of interaction. There is thus a key relationship between the universalizing context and the plurality of different particular contents. As long as Canadian Federalism remains hooked to the colonial legacy, the context of interaction remains fixed at the level of the nation-state and its traditional institutions. In fact, the context of interaction is, in this case, identical with the institutions of the nation-state, and the relations between the national elite and marginalized groups is stratified as a form of tutelage. However, if the critique of colonialism is pushed to its logical conclusion, the context of interaction becomes the basis for a critique and de-centring of traditional institutions — which sets up a new relationship between the context and its particular contents such that they can reverse their roles.

It is easy to see how and why the different particularities of a plurality of ways of life can be the content for their context of interaction. However, as the centring legacy of colonialism recedes, the context of interaction can increasingly be defined only in the terms of the particularities included into a renewed Federalism. The universalizing context of interaction is legitimated in a plurality of different ways by the particularities that have been included. In other words, each included particularity can become the context for assessment of universalizing claims. A post-colonial Federalism can thus be defined as one in which the relation between context and content is reversible between particularities and universalizing claims. Or, to say it somewhat differently, that each way of life included within Federalism becomes a context in which the claims of Federalism can be evaluated. Such a situation in which context and content are reversible emerges when a reflexive statement cannot be stabilized by a hierarchization of levels of discourse. Colonialism necessarily rests on tutelage insofar as tutelage is the attempt to hierarchize the relationship between content and context by monopolizing the design of rules of interaction.

Every ethico-political claim is made from within a cultural tradition and therefore includes two levels of meaning. Usually, the tradition provides the context for the content of the particular claim. Clearly, the Federalist context of interaction provides a context for particular traditions. However, in the context of a de-centred plurality of cultural traditions, every ethico-political claim can also be judged from within each particular tradition. Thus, particularities provide the context for evaluation of universalizing claims that span particularities. At this point, we witness the emergence of the post-colonial speech act in which the relation between particularities and universalizations is such that either can provide the context for the other. The meaning of an individual claim is thus constitutively paradoxical insofar as context and claim become mutually defining and reversible. Speech in such a de-centred situation requires a cultural tradition to define its meaning, but the cultural tradition can claim no independent legitimation than through the speech which inserts it into a plurality of traditions. Each speech act, insofar as it makes a universalizing claim, can thus become the context for evaluating traditions. Thus, the performance of a post-colonial speech act constitutes the speaking individual itself. Such an interaction between a plurality of mutually constituting groups is the contribution to democratic theory that can be made by a post-colonial Federalism.

The extent to which the process of inclusion can be successful depends on two factors: One is whether there occurs a genuine reforming of Federal institutions and practice in order to accommodate the ways and aspirations of the new group. The other is whether the group is accorded sufficient space, as it were, within the nations-state to defend and develop its particularity. Such an internal space for free and voluntary action within the nations-state is normally referred to as “civil society.”³⁶ My final comments will thus refer to the relation between the universalizing dimensions of a renewed Federalism and the possibilities for innovation within civil society.

The current state of social and economic citizenship represents the extent to which the particularities defended by Federalism have been pressed by the common context of interaction beyond themselves toward universalizing claims about common well-being. This current state is not only abysmal, but is especially worrisome because it seems caught in the logic of devolution through exclusion. Only when we understand that the best way to ensure a right important for oneself is to demand for others the right that they consider important can this logic be turned around. In my view, the first step in this task is to defend the universality of medicare, unemployment insurance, pensions and public education and to demand their expansion to the greatest extent allowed by the general wealth. The ultimate goal of such programs is to guarantee a basic

³⁶ I have some reservations about the adequacy of this term in this context but will not pursue them here.

guaranteed standard of living to all citizens.³⁷ In this sense, a renewed Federalism needs to build upon and develop the example provided by the welfare state. But this is only half of the story.

The umbrella state would aim at protecting citizens from the misfortunes that often stem from nature, society and economy but the source of innovation and creativity would reside in civil society — including the development of community controls on investment and environmental impacts. I mean this not only in a negative sense, but of actively promoting through loans and representative institutions the development of sustainable activities rooted in local communities. In this way, the new identities that have contributed to fragmentation due to the degeneration of their context of interaction can be turned around to create and sustain diverse ties of community. In my view, such new identities are the basis for substantive ideas of well-being and it is our task to bring their particular contributions into the universalizing discourse of post-colonial Federalism. We are lucky to be able to build on a tradition that examines a plurality of interwoven relations between particularity and universality. If we look closely at ourselves, we may be able find the resources to avoid the dichotomous choices that are currently tearing society apart and consigning many to the terrible solitude of exclusion.

³⁷ One aspect of this that I have not had space to discuss here is the replacement of a money-based index of well-being with one based in useful and sustainable activity. See on this point Angus, *supra* note 2.

CITOYENNETÉ INCORPORÉE ET NOUVEL ESPACE DES NATIONS¹

Jules Duchastel*

To the theme of fragmentation of societies, the author adds the phenomenon of globalization. Over the last few years, we have been seeing a profound mutation of citizenship and political institutions. The Canadian concept of universalistic citizenship has bit by bit given way to a particularistic concept of the citizen. Moreover, we are also witnesses to the renewed questioning of the balance between political institutions and a privatization of public spaces. The model of a confederate union for Canada, able to take into account the complexities of national and cultural identities, is of particular interest in this paper.

Ce texte s'intéresse à la transformation de la définition du citoyen dans le contexte global de la fragmentation et de la mondialisation des sociétés actuelles. Il fait l'hypothèse d'une incorporation croissante de la citoyenneté qui s'appuie dorénavant sur les particularismes, sur les droits collectifs et sur une conception morale de l'acteur social. Cette incorporation est coocurrente d'une transformation en profondeur des institutions politiques au profit d'une technobureaucratisation et d'une judiciarisation des pouvoirs. L'article insiste sur la nécessité de restaurer la primauté du sujet politique singulier et de réinventer un espace délibératif supranational.

Il est aujourd’hui largement question d’érision de l’État-Nation,² de déterritorialisation,³ de crise de l’État,⁴ voire de fin du politique.⁵ Ces diagnostics

¹ Les principes théoriques du présent texte s’inspirent d’un article en collaboration avec G. Bourque et É. Pineault, « L’incorporation de la citoyenneté » (1999) 31 *Sociologie et Sociétés* 41 [ci-après L’incorporation de la citoyenneté].

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² K. Ohmae, *The End of the Nation State*, New York, Free Press, 1995; J. Habermas, *Après l’État-nation. Une nouvelle constellation politique*, Paris, Fayard, 1998; G. Bourque et J. Duchastel, « Erosion of the Nation-State and the Transformation of National Identities in Canada » dans J. L. Abu-Lughod, dir., *Sociology for the Twenty-first Century, Continuities and Cutting Edges*, Chicago, The University of Chicago Press, 1999, 183.

³ J. A. Scholte, « Global Capitalism and the State » (1997) 73 *International Affairs* 427; S. Sassen, « Territory and Territoriality in the Global Economy » (2000) 15 *International Sociology* 372.

⁴ P. Rosanvallon, *La crise de l’État providence*, Paris, Seuil, 1981; S. Strange, *The Retreat of the State: The Diffusion of Power in the World Economy*, Cambridge, Cambridge University Press, 1996.

⁵ M. Freitag, « La métamorphose, genèse d’une société postmoderne en Amérique » (1994) 12 *Société* 1; A. Touraine, *Pourrons-nous vivre ensemble? Égaux et différents*, Paris, Fayard, 1997.

parfois nuancés, parfois radicaux, mettent en évidence les transformations du politique induites par le double phénomène de mondialisation et de fragmentation des sociétés. Parler de « nouvel espace des nations », c'est considérer la dynamique des transformations à la fois des États-Nations pris un à un et des rapports qui les unissent. D'un côté, les forces économiques et culturelles de la mondialisation s'unissent pour infléchir la régulation politique de l'ensemble des sociétés. De l'autre, la diversification croissante des sociétés conduit à une redéfinition même du principe d'unité de chacune d'entre elles. Le nouvel espace des nations représente donc le contexte de ma réflexion. J'ai choisi plus spécifiquement d'aborder les mutations actuelles des sociétés à travers le phénomène d'incorporation de la citoyenneté. Cela me permettra d'aborder de deux côtés à la fois la question des nouvelles formes de régulation politique. Du côté de la mondialisation, je montrerai comment les corporations transnationales sont en voie d'acquérir une citoyenneté qui leur donne accès à un ensemble de droits et de pouvoirs autrefois dévolus aux sujets politiques. Du côté de la fragmentation, je montrerai en quoi la création de groupes d'ayants droit entraîne un ensemble de situations conflictuelles qui trouvent leur résolution devant le tribunal plutôt que devant l'assemblée délibérante.

Le concept de la « citoyenneté incorporée » renvoie à une mutation en profondeur de la citoyenneté dans ce contexte de mondialisation et de fragmentation des sociétés actuelles. Nous verrons que l'incorporation de la citoyenneté se caractérise par un triple déplacement dans la définition du citoyen: du sujet singulier au sujet particulier, du sujet individuel au sujet collectif, du sujet politique au sujet moral. Cela entraîne trois défis qui ne connaîtront pas nécessairement de dénouement univoque. Le premier se matérialise dans l'épuisement d'un certain modèle de l'universalisme, constitutif de l'institutionnalisation politique des sociétés modernes. La question posée aujourd'hui est de savoir comment réconcilier l'universalisme abstrait avec la mise à jour de plus en plus exhaustive des particularismes propres à toute société concrète. Comment, par exemple, répondre au pluralisme identitaire sans atteindre au principe même de l'égalité du citoyen? Le second défi découle de l'existence de droits des citoyens collectifs ou corporatifs. Comment mesurer ces droits entre eux et avec ceux des sujets singuliers? La contradiction se manifeste ici de deux manières: d'une part, l'individu est opposé à lui-même en tant qu'il demeure un sujet singulier exerçant ses droits juridiques et politiques et qu'il appartient, en même temps, à un ensemble de groupes d'ayants droit (conflits de droits); d'autre part, les différents types de corporation, en tant que personnes morales, ont des capacités d'action incommensurables entre elles et vis-à-vis des personnes physiques. Le troisième défi vient d'une dépolitisation croissante de l'action du citoyen au profit d'une augmentation de sa capacité juridique. Le

sujet politique est un acteur alors que le sujet moral est un détenteur de droits. C'est ainsi que la redéfinition du sujet (le citoyen) renverse l'équilibre entre les institutions délibérantes et judiciaires.

L'essentiel de mon propos portera sur la transformation de la citoyenneté à travers la modernité et, plus particulièrement, sur son incorporation progressive. Après avoir examiné les conséquences de cette incorporation de la citoyenneté sur les formes d'institutionnalisation politique de la société, je proposerai quelques réflexions sur les moyens de créer un nouvel espace des nations qui ne soit pas entièrement contraint par les forces de la mondialisation et de la fragmentation.

UNIVERSALISATION ET EXTENSION DE LA CITOYENNETÉ DANS LA MODERNITÉ

Avant de décrire l'hypothèse de l'incorporation de la citoyenneté, je reviens brièvement au cadre de référence de cette réflexion théorique. Je m'appuie sur le travail de T.H. Marshall qui est devenu une référence obligée, sans qu'il ne soit toujours bien compris.⁶ Voyons tout d'abord la définition qu'il propose de la citoyenneté:⁷

La citoyenneté est un statut accordé à ceux qui sont des membres à part entière d'une communauté. Tous ceux qui jouissent de ce statut sont égaux au regard des droits et des devoirs dont un tel statut est doté [ma traduction].

⁶ T. H. Marshall, « Class, Citizenship and Social Class » dans T.H. Marshall, *Class, Citizenship and Social Development*, Garden City (N.Y.), Anchor Books, 1965, 71 [ci-après *Class, Citizenship and Social Class*]. En raison de la difficulté d'accès au texte original, l'article de Marshall semble avoir été le plus souvent l'objet d'une lecture de sources secondes. On mésestime fréquemment l'aspect dialectique de sa réflexion qui tente de mettre en lumière l'évolution contradictoire de deux tendances difficilement réconciliables: celle des inégalités sociales inhérentes au développement économique capitaliste et celle de l'égalité suscitée par le processus de démocratisation. On a également fait une lecture « évolutionniste » de sa pensée, lui prêtant une vision téléologique des mutations de la citoyenneté, ce qui n'est pas tout à fait le cas comme nous le verrons plus loin.

⁷ *Ibid.* à la p. 92: « Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed ».

Cette définition comporte tous les éléments essentiels à la compréhension de la dynamique qui lie les individus au corps social dans la modernité. La citoyenneté donne aux « membres à part entière d'une communauté » un « statut » comportant « des droits et des devoirs ». C'est dire que la citoyenneté est à la fois appartenance et participation. Elle est octroyée en vertu de l'appartenance à une communauté et, comme nous le montre Marshall, elle aura tendance à développer cette appartenance à une culture commune. Elle est également participation parce qu'elle commande l'exercice des devoirs du citoyen. En somme, la citoyenneté définit les conditions d'exercice de la démocratie.

La dynamique de la citoyenneté vise donc l'égalité du statut, des droits et des devoirs autant du point de vue de la participation à la chose politique que de l'accès aux bénéfices d'une culture et d'un mode de vie communs. Marshall démontre que la formation de la nation, en tant que lieu de fusion géographique (regroupement d'une communauté politique sur un territoire) et lieu de séparation (autonomisation des institutions sociales), constitue la condition première d'un processus d'universalisation de la citoyenneté. En d'autres mots, la condition d'émergence de la citoyenneté universelle est la formation d'un espace national formé d'institutions dont les processus sont différenciés.

La nation et le citoyen, en tant que sujets historiques et acteurs politiques, forment ainsi les deux pôles du dispositif de légitimation des institutions politiques modernes. Ce sont les droits universels (juridiques et politiques) et les libertés fondamentales qui fondent cette capacité politique des citoyens à produire l'unité de la société. Mais à côté de ce processus de fusion, il existe un processus de différenciation institutionnelle.⁸ C'est ce processus qui favorisera la mise à jour progressive des diverses formes d'inégalités et la reconnaissance de nouveaux droits. Le premier processus conduit à l'universalisation des droits à l'ensemble des membres de la communauté, alors que le second amène progressivement une extension de la nature même de ces droits. Le travail de Marshall a consisté à lire l'histoire de l'universalisation et de l'extension progressive de ces droits à partir du XVIII^e siècle jusqu'aux années quarante du XX^e siècle. C'est cette réflexion que je tenterai maintenant de prolonger.

Mon hypothèse est que nous assistons aujourd'hui à une mutation profonde de la citoyenneté et des institutions politiques. D'un côté, l'exigence d'universalité cède le pas aux particularismes. Nous avons montré dans

⁸ Ici se rencontrent naturellement toutes les grandes théories sociologiques classiques.

*L'identité fragmentés...*⁹ que dans les deux ou trois dernières décennies, la conception canadienne de la citoyenneté universalité s'est déplacée vers une conception particulariste. En effet, l'identité canadienne qui s'était construite dans les années quarante sur l'idée d'une citoyenneté sociale universelle (dans la mouvance du développement de l'État Providence), a eu tendance à se transformer en une représentation particulariste du citoyen. D'une image du citoyen jouissant de droits universels relativement unifiés et garantis par des institutions politiques partagées, on est passé à une représentation des citoyens possédant un ensemble différencié d'identités arbitrées par le tribunal, dans la foulée de l'enchâssement de la *Charte des droits et libertés* dans la constitution canadienne. D'un autre côté, l'équilibre des institutions politiques est remis en cause par l'accroissement du pouvoir exécutif, la substitution de la gouvernance au gouvernement et l'importance accrue du tribunal face au Parlement.

C'est à travers l'analyse des transformations des formes de l'État que j'envisagerai maintenant le phénomène d'universalisation et d'extension de la citoyenneté dans la modernité. Le concept de forme de l'État, renvoie aux modalités générales de la régulation politique durant une phase du développement de l'État moderne.¹⁰ Nous partons de l'hypothèse que la régulation d'ensemble de la société moderne est de nature politique, mais que les trois processus d'institutionnalisation (économique, politique et culturel) qui la caractérisent jouissent d'une autonomie qui explique les contradictions relatives prévalant à leur développement respectif. Le concept de forme de l'État renvoie donc aux différents types de relations qu'entretiennent entre eux ces trois procès d'institutionnalisation et aux diverses modalités d'articulation des sphères privée et publique.

Les annexes 1 à 3 illustrent de manière schématique ce double mouvement d'articulation des institutions et des sphères privée et publique qui caractérise les diverses formes de l'État: libéral, providentialiste et néolibéral. Les trois domaines institutionnels de la société moderne y sont représentés sous la forme d'un triangle et chacun des axes représente les relations qu'entretiennent entre eux les domaines institutionnels. Le politique se situe par définition dans l'espace public, alors que les institutions économiques et culturelles résident d'abord dans la sphère privée. Entre les deux, existe un espace interstitiel

⁹ G. Bourque et J. Duchastel (avec la collaboration de V. Armony), *L'identité fragmentée. Nation et citoyenneté dans les débats constitutionnels canadiens, 1941-1992*, Montréal, Fides, 1996 [ci-après *L'identité fragmentée*].

¹⁰ G. Bourque et J. Duchastel, « Le Discours politique néo-libéral et les transformations actuelles de l'État » (1992) 4 *Discours social/Social Discourse* 77.

réunissant la sphère privée et la sphère publique. Cet espace intermédiaire est essentiel au développement des trois procès d'institutionnalisation moderne. C'est dire qu'on ne peut imaginer la dynamique de développement des diverses institutions économiques, politiques ou culturelles sans une forme d'intervention étatique.¹¹ Les diverses formes de l'État seront ainsi caractérisées non pas tant par le degré d'intervention de l'État que par la nature de celle-ci.

L'espace interstitiel, résultat de la rencontre de la sphère publique et de la sphère privée, se subdivise en deux zones, civile et civique. C'est à l'intersection du politique et de l'économique que se matérialise un espace civil,¹² définissant les conditions statu-juridiques du développement économique (liberté). Les relations entre le politique et le culturel se traduisent, quant à elles, dans la production d'un espace civique, établissant les conditions politiques du développement de la démocratie (égalité). À terme, le croisement de la logique du droit et des droits propre à l'espace civil et de la logique de l'appartenance et de la participation propre à l'espace civique, entraînera l'invention du social,¹³ créant les conditions d'une plus grande socialisation (fraternité).

La forme de l'État libéral (annexe 1) réduit à sa plus simple expression l'intersection entre les sphères privée et publique. Les espaces civil et civique, bien que fondés sur l'existence de droits universels, ne sont que progressivement occupés par l'ensemble des citoyens. Ce sont d'abord les propriétaires de sexe masculin qui jouissent des droits et libertés de nature économique et politique. Progressivement, l'application de ces droits s'étend à l'ensemble des membres de la nation. Dans l'État libéral, il y a découplage entre deux logiques de développement institutionnel propres à l'économie et au politique. D'un côté, la logique est appuyée sur un régime de droit favorable aux propriétaires qui permettra le développement du capitalisme. Dans ce contexte, les droits civils dont disposent les travailleurs sont avant tout une abstraction. De l'autre, la logique va dans le sens de l'application extensive de la citoyenneté à toutes les

¹¹ K. Polanyi, *La grande transformation*, Paris, Gallimard, 1983. Pensons, par exemple, à ses enseignements sur les conditions politiques et juridiques du développement du marché.

¹² J'utilise ici la notion d'espace civil dans un sens plus restreint que celui qu'on accorde habituellement à la société civile. On conçoit, en général, la société civile comme l'envers de l'État, un lieu résiduel qui échapperait à l'emprise du pouvoir étatique. Je préfère concevoir l'espace civil comme un lieu de jonction entre la sphère privée et la sphère publique. L'espace civil est ainsi un lieu d'exercice de droits et de libertés garantis par la puissance publique.

¹³ J. Donzelot, *L'invention du social*, Paris, Fayard, 1984.

catégories de citoyens. L'extension progressive des droits civiques conduit ainsi à une réalisation de plus en plus effective des droits civils.

Dans le mouvement généralisé d'extension des droits civils et politiques et de politisation croissante de l'ensemble des rapports d'inégalité, l'État devenu Providence (annexe 2) sera amené à intervenir de plus en plus dans la régulation de l'ensemble des domaines institutionnels. L'espace commun entre le public et le privé aura tendance à s'accroître considérablement. Dans le cadre de la pleine nationalisation des interventions étatiques, ni le domaine économique, ni le domaine culturel n'échapperont à l'intervention publique. L'économie sera de plus en plus régulée par des politiques visant à soutenir la demande et à répartir les bienfaits de la croissance à l'ensemble des citoyens sur tout le territoire. Des domaines anciennement réservés à la famille ou aux institutions privées, le plus souvent de nature religieuse, seront dorénavant régulés par des politiques et des organismes publics. Dans l'espace civique, sous la pression des revendications populaires et de la politisation extensive d'un ensemble de situations conflictuelles, l'État accaparera un ensemble de domaines d'intervention. Le droit social résultera de ces transformations plus qu'il n'en sera la source. Le droit social sera, en effet, le résultat de l'élargissement du champ d'exercice de la citoyenneté politique aux pratiques économiques et culturelles. L'État Providence, en refermant le triangle des droits, réconciliera en quelque sorte les contradictions inhérentes à la coexistence des droits civils et des droits civiques.

Marshall a bien vu, au moment où l'État Providence se mettait en place, que la dynamique d'universalisation des droits se transformait progressivement en une dynamique d'extension de leur nature et de leur portée. Ainsi aux droits civils et politiques, s'ajoutent les droits sociaux. Un second phénomène a été observé par Marshall. Il ne s'agit pas seulement d'étendre les droits pour répondre à des objectifs plus exigeants d'appartenance et de participation des citoyens, mais l'assise même de ces droits est désormais transformée. Ce ne sont plus nécessairement les individus singuliers qui en sont dépositaires, mais des collectivités ont maintenant accès à ces droits. Marshall parlera de citoyenneté industrielle pour désigner la capacité reconnue, par exemple aux syndicats, de revendiquer des conditions de travail au nom d'une collectivité, en tant que sujet de droit. On peut ajouter que dès la fin du XIXe siècle, les corporations capitalistes s'étaient vues reconnaître le statut de personne morale, ce qui les habilitait à titre de sujet juridique de plein droit. C'est ce statut corporatif qui sera progressivement reconnu aux organisations syndicales qui acquièrent ainsi la capacité juridique de négocier des contrats collectifs pour leurs membres.

INCORPORATION DE LA CITOYENNETÉ DANS L'ÉTAT NÉOLIBÉRAL

La démarche de Marshall a souvent été qualifiée d'évolutionniste, parce qu'elle considérerait la citoyenneté sociale comme la dernière phase d'un progrès continu depuis les dernières deux cent cinquante années. Sa prudence de sociologue l'a pourtant conduit, au terme de sa démarche, à affirmer que la phase providentialiste n'était pas destinée à se poursuivre indéfiniment et que « les conflits caractérisant le système social risquent de devenir trop aigus pour que le compromis puisse continuer d'atteindre son but ».¹⁴ Qu'est-ce qui peut ainsi changer aujourd'hui pour que soit menacé l'équilibre relatif atteint entre les divers types de droits dans l'État Providence?

On peut répondre à cette question en évoquant les mutations profondes de l'État dans le contexte de mondialisation et de fragmentation dont il a été question plus haut. La forme de l'État néolibéral (annexe 3) est le résultat de transformations décisives qui traversent les trois procès d'institutionnalisation moderne. On peut les caractériser de façon très sommaire. Sur le plan économique, on observe une profonde mutation du capitalisme et du rapport salarial; lequel s'exprime d'un côté, par la dominance des corporations transnationales et du capitalisme financiarisé et de l'autre, par une redéfinition complète des rapports de classe. Quant à elles, les institutions culturelles s'élargissent dans la direction du pluralisme des cultures au détriment de l'unité d'une représentation universelle de la civilisation. Enfin, les institutions politiques s'affaiblissent au profit de la technobureaucratie et des tribunaux. En ce qui concerne l'équilibre entre sphères privée et publique, on peut dire que l'on assiste à une re-privatisation de l'espace public. On peut affirmer qu'un ensemble de mouvements amorcés dans l'État Providence ont contribué à cette évolution. Par exemple, l'attribution de droits de plus en plus nombreux aux corporations a introduit à terme une contradiction difficilement réconciliable entre les intérêts de l'individu citoyen et ceux de divers corps sociaux, dont les corporations transnationales. De même, la politisation extensive de l'ensemble des situations d'inégalité et les solutions de plus en plus ciblées pour y remédier, ont conduit à une fragmentation des intérêts corporatistes. L'incorporation de la citoyenneté se traduit ainsi par un ensemble de nouveaux droits accordés à des personnes morales; des droits qu'elles pourront désormais faire valoir aussi bien devant la cour que dans les instances de la gouvernance.

¹⁴ « The conflicts within our social system are becoming too sharp for the compromise to achieve its purpose much longer. » *Class, Citizenship and Social Class*, *supra* note 6 à la p. 134.

On peut résumer la progression de ces transformations en les décrivant selon deux mouvements. Un mouvement par le haut, aussi bien intrinsèque (par exemple, la techno-bureaucratisation), qu’extrinsèque (par exemple, la mondialisation) mettant en péril la capacité politique des sociétés d’agir sur elles-mêmes. Un mouvement par le bas tendant à dissoudre de plus en plus l’unité de la société et sa capacité de traiter des problèmes sur une base universelle. On est témoin en effet de la fragmentation du tissu social, soit à travers la transformation de la structure et des rapports de classes, soit à travers la multiplication des identités et des revendications catégorielles. Ces mouvements se traduisent par la substitution des institutions de gouvernance aux institutions de gouvernement et par la « juridicisation » et la « judiciarisation » des rapports sociaux.

C’est donc à travers les deux mouvements fondamentaux de dépolitisation et de particularisation qu’il nous faut penser une nouvelle forme de citoyenneté, que nous avons désignée sous le vocable de « citoyenneté incorporée ».¹⁵ L’idée de l’incorporation de la citoyenneté est avant tout une métaphore. Elle tente cependant de cerner une évolution de la citoyenneté qui l’éloigne de son fondement essentiellement universaliste, individuel et politique. Je reviens ici au triple déplacement dans la définition de la citoyenneté dont il a été question au point de départ. L’idée d’incorporation réside d’abord dans le passage d’un modèle de citoyenneté universelle à un modèle de citoyenneté particulariste. La citoyenneté universelle est fondée sur le couple théorique de l’universel et du singulier. L’universalité se réalise dans l’extension indifférenciée de la citoyenneté à tous les membres d’une communauté politique et dans l’égalité des droits qu’elle suppose. La singularité est la figure universelle de l’individu abstrait en tant que détenteur de libertés, de droits et de devoirs. C’est ce caractère abstrait, théorique à la rigueur, qui donne une portée universelle à la citoyenneté. C’est en vertu même de la double abstraction de l’universel et du singulier que l’ensemble des citoyens concrets peuvent aspirer, à terme, à une pleine citoyenneté. En vertu de ce modèle, les exclusions ne peuvent être que conjoncturelles, bien qu’historiquement et douloureusement réelles. La capacité critique de la société démocratique¹⁶ est fondée sur le potentiel d’universalisation de la citoyenneté. C’est parce qu’il existe un principe selon lequel la citoyenneté doit être attribuée de manière universelle à tous les membres d’une communauté politique qu’elle le devient dans les faits. Par opposition, la citoyenneté particulariste est fondée sur une tentative de réparation des inégalités réelles entre membres d’une même communauté politique. La citoyenneté particulariste

¹⁵ L’incorporation de la citoyenneté, *supra* note 1.

¹⁶ I. Angus, dans le présent ouvrage.

est fondée sur le couple concret du général et du particulier. Plutôt que d'un sujet universel (singulier), il s'agit ici d'individus particuliers en tant qu'ils partagent des caractéristiques catégorielles qui les distinguent des autres groupes d'individus. Le passage de l'universel au particulier implique donc la prise en compte de droits accordés aux individus en tant qu'ils appartiennent à des groupes ou des corps sociaux. Alors que la logique de l'universalité conduit à l'universalisation de la citoyenneté, la logique du particularisme implique une extension des droits à de nouveaux domaines.

Un deuxième déplacement entre le sujet individuel et le sujet collectif renforcera le phénomène de l'incorporation. Il convient de rappeler, à la suite de Marshall, que les sujets collectifs ont tendance à acquérir des droits citoyens dans le développement des institutions modernes. La corporation capitaliste, les syndicats, les groupes nationaux minoritaires et un ensemble de groupes d'ayants droit représentent autant d'exemples de sujets collectifs investis de droits. Ces corps sociaux ont évidemment toujours joué un rôle primordial dans les rapports de force. Ce qui est nouveau maintenant, c'est que ces corps héritent des propriétés des individus citoyens. Ils acquièrent une personnalité fondée en droit qui leur permet d'agir aussi bien dans les institutions politiques que judiciaires.

Enfin, l'incorporation de la citoyenneté se manifeste par un dernier déplacement entre le sujet politique et le sujet moral. Le citoyen, en tant qu'individu singulier, est à la base de la légitimité du système politique. Le citoyen universel (singulier) est avant tout un acteur politique, ce qui implique que les institutions politiques occupent une place centrale dans les sociétés modernes. L'incorporation de la citoyenneté implique une dépolitisation des institutions modernes au profit de leur techno-bureaucratification et de leur judiciarisation. Le citoyen incorporé est avant tout un dépositaire de droits qu'il peut faire valoir soit dans des réseaux d'influence, soit devant le tribunal.

Je ne développerai que schématiquement la nature des droits politiques et civils qui ont ainsi été transférés à ces corps sociaux et j'examinerai tour à tour les deux formes principales d'incorporation de la citoyenneté (annexe 3) : les corporations capitalistes et les groupes d'ayants droit.

Il faut remonter à la fin du XIX^e siècle pour voir la propriété corporative se différencier de la propriété bourgeoise; au moment où, par le biais de la personnalité morale, l'entreprise acquiert une existence juridique et économique distincte de celles de ses actionnaires. Au cours du XX^e siècle, la corporation a connu un double mouvement d'émancipation juridique et organisationnelle qui la conduit aujourd'hui à détenir des droits, tout comme les personnes physiques,

et à jouir d'une très forte autonomie d'action gestionnaire. La corporation est ainsi amenée à intervenir aux deux niveaux de la gouvernance et des tribunaux. Il n'est qu'à mentionner le rôle joué par les grandes corporations dans les négociations autour de *l'Accord multilatéral sur les investissements (AMI)* visant à soumettre le pouvoir des assemblées législatives à leur propre capacité juridique.¹⁷ Ces corporations ont beau jeu de réclamer l'abrogation de législations ou de réglementations qu'elles jugent nuisibles au libre déploiement de leurs propres activités, devant les tribunaux d'arbitrage liés aux accords commerciaux. De plus, la gouvernance technocratique implique la participation des corporations aux mécanismes de prise de décisions politiques en amont (gestation des lois ou des programmes) et en aval (application administrative des lois ou programmes) des assemblées législatives, en deçà ou au-delà de l'État. Enfin, la capacité d'intervention des corporations auprès des tribunaux ne se limite pas aux litiges concernant les législations nationales. Les corporations, en tant qu'elles sont dotées d'une personnalité morale, acquièrent dans l'espace économique et civil les mêmes capacités et droits formels que les autres personnes: droit de propriété, liberté de contracter, droit de recours devant les tribunaux civils en cas de bris de contrat ou d'atteinte à la propriété. Elles jouissent enfin de l'exercice de plusieurs droits civils fondamentaux qu'elles font valoir devant les tribunaux, au même titre qu'une personne physique: liberté d'opinion, d'expression et de religion, de déplacement, etc.

La deuxième forme d'incorporation de la citoyenneté se manifeste dans l'émergence d'une conception particulariste fondée sur un processus identitaire de nature culturelle. On peut identifier deux phénomènes majeurs de cette mutation. Le premier, dans le cadre de l'affirmation de l'État néolibéral, consiste en l'abandon progressif de l'universalisme au profit d'une conception particulariste des politiques sociales, ouvrant ainsi la voie à la reconnaissance d'une multitude de groupes d'ayants droit. Le second phénomène renvoie à la revendication et à la reconnaissance des droits particularistes de nature bioculturelle qui s'appuient sur un mouvement de judiciarisation des rapports sociaux. Ces deux phénomènes tendent à imposer une représentation fragmentée de la citoyenneté, qui pense désormais le sujet en termes de proximité sexuelle, linguistique, comportementale, situationnelle, catégorielle. Se forme ainsi une citoyenneté qui renvoie à l'existence imaginée d'un lien organique avec des corps sociaux.

¹⁷ M. Freitag et E. Pineault, dir., *Le monde enchaîné: Perspectives sur l'AMI et le capitalisme globalisé*, Montréal, Nota Bene, 1999.

C'est à la concertation de ces corps sociaux que les gouvernements feront appel dans le cadre des sommets ou des instances de gouvernance locales. Cette participation à des instances « démocratiques » peut être interprétée comme un élargissement de la démocratie. Elle peut également être perçue comme une menace aux principes fondamentaux de la représentation démocratique, telle qu'instituée dans les sociétés modernes. Au-delà de la subordination des corps sociaux aux instances technobureaucratiques, ne doit-on pas interroger la légitimité d'un processus consultatif ne concernant plus le citoyen comme monade politique, mais détenteur d'une identité bio-culturelle multiforme? Les dangers pour la démocratie se révèlent également du côté de la judiciarisation des droits devenus particularistes. Si leur reconnaissance peut encore une fois être vue comme un progrès social, leur constitutionnalisation dans la Charte ne contribue-t-elle pas au déséquilibre des institutions politiques? La *Charte des droits et des libertés* comporte un grand nombre de droits de nature différente, à priori sans ordre de préséance. Aux droits dits universels, tels les libertés et les garanties politiques et juridiques, a été ajoutée une série de droits particularistes fondés sur l'économie, la non-discrimination, la culture, la langue, l'autodétermination et le sexe. Le tribunal est appelé à décider de l'existence et de la préséance de ces droits. Ainsi, des questions relevant autrefois de la délibération démocratique deviennent plutôt sujettes à un arrêt du tribunal.

MONDIALISATION ET NOUVEL ESPACE DES NATIONS

Le citoyen moderne n'est pas pour autant déjà disparu; l'hypothèse veut simplement qu'il existe pour le moment une construction cumulative de l'ensemble des formes de la citoyenneté. Si on retourne à l'annexe 3, on peut y voir coexister l'ensemble de ces formes. Les citoyens corporatifs, économiques ou culturels, n'ont pas encore le droit de vote. La légitimité des institutions étatiques nationales se traduit toujours par l'existence du Parlement. Le seul déplacement institutionnel d'importance au Canada depuis 1982 est l'intronisation de la Cour suprême dans un rôle d'arbitre des législations. Mais, le dessaisissement par l'appareil technobureaucratique de la capacité d'action des assemblées législatives et la menace que fait peser le capital transnational sur les États-nations n'ont heureusement pas de fondement légitime, seulement un poids considérable dans la réalité. C'est donc dire que toutes les formes de la citoyenneté peuvent encore être mobilisées pour à la fois consolider et réinventer l'action politique.

L'accent a été mis jusqu'à présent sur les apories de l'incorporation de la citoyenneté. On peut faire l'hypothèse inverse consistant à dire que le double mouvement d'universalisation et d'extension des droits peut conduire à un

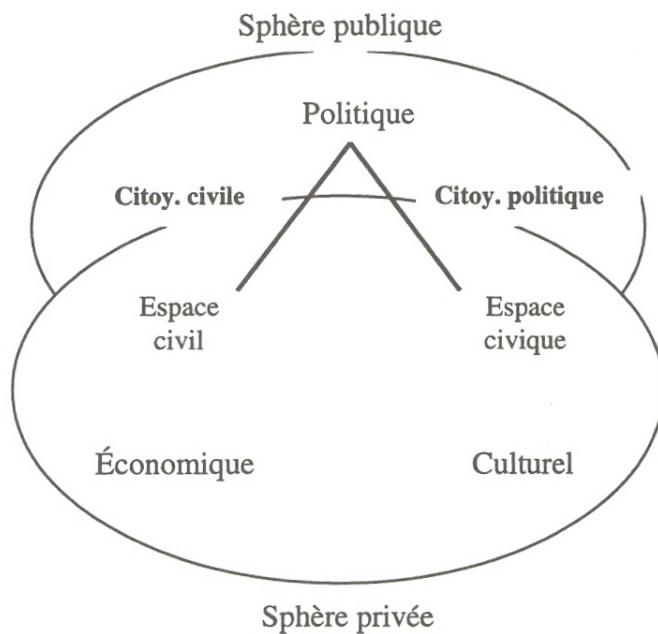
enrichissement de la démocratie. Certes, la citoyenneté et la démocratie peuvent profiter de la reconnaissance de nouveaux droits et de nouveaux espaces de délibération. Les mutations profondes des divers domaines institutionnels ne seront pas subitement inversées et il faut en tenir compte pour l'avenir. La pluralité des cultures et la diversité des conditions sociales sont désormais des variables incontournables de l'action politique. Dans ce contexte, on ne saurait se contenter de rappeler les fondements universalistes de la modernité politique. Il nous faut tenter de réinventer la démocratie sur de nouvelles bases en tenant compte des conditions concrètes de l'existence en société. C'est en cela qu'il paraît indispensable de réfléchir aux conditions de la restauration du sujet politique et du développement de nouvelles institutions, avec pour but de poursuivre le projet d'auto-institutionnalisation de la société, propre à la modernité.

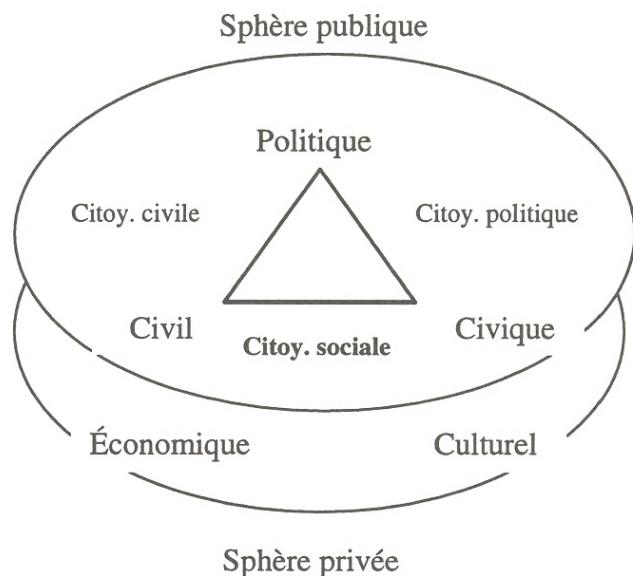
La première de ces conditions est de restaurer la primauté du sujet politique singulier sur les autres figures de la citoyenneté. Il ne s'agit de nier ni la complexité des identités et des appartenances, ni l'existence de droits particuliers. Il faut seulement être en mesure d'énoncer des principes de préséance entre des droits de diverses natures, accordant priorité aux droits universels civils et politiques. L'enchâssement de la *Charte des droits et des libertés* dans la constitution canadienne n'a malheureusement pas été accompagné de l'énoncé de tels principes.¹⁸ Ce sont les juges qui doivent maintenant, sur le tas, mettre en relation plus ou moins hiérarchique des droits de nature différente. Il existe peut-être une autre façon d'envisager la défense des droits. Alors que le dispositif de la Charte canadienne conduit à une judiciarisation des différends entre droits contradictoires, l'existence au Québec d'une charte des droits et libertés de la personne s'inscrit plutôt dans une perspective orientée vers la défense des droits de la personne. Restaurer la primauté du sujet politique consiste également à éviter la médiatisation des délibérations politiques par des corps sociaux. Si la concertation peut représenter un élargissement des débats sociaux, elle peut également conduire à une inféodation par les appareils bureaucratiques ou exécutifs. Il peut paraître naïf de réclamer aujourd'hui un rajeunissement de l'institution parlementaire, mais son affaiblissement n'est-il pas masqué par un ensemble de procédures consultatives qui dessaisissent toujours plus le citoyen politique de sa capacité de délibérer?

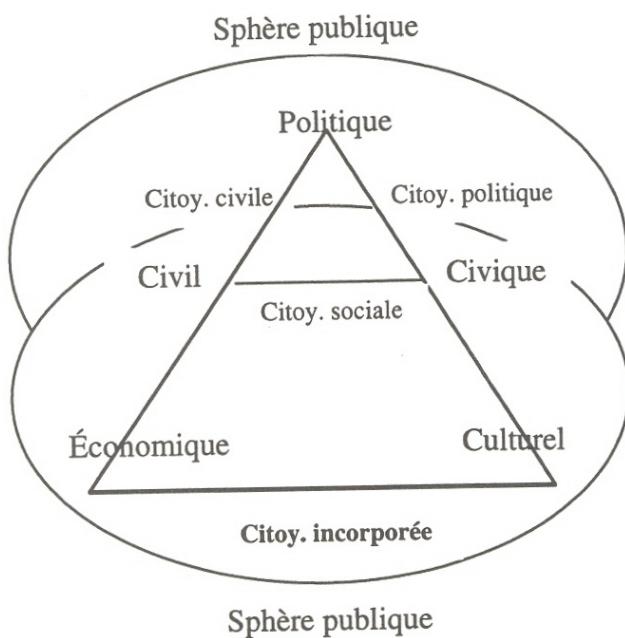
¹⁸ M. Mandel, *La charte des droits et libertés et la judiciarisation du politique au Canada*, Montréal, Boréal, 1996; *L'identité fragmentés*, supra note 9 à la p. 9.

La seconde condition consiste non seulement à réinventer l'institution parlementaire, mais à la penser dans le contexte de la territorialisation/re-territorialisation. La mondialisation induit, comme on l'a vu, une déterritorialisation par le haut et par le bas. C'est dans ce contexte que les corporations, aux deux sens du mot, ont tendance à se substituer au citoyen. Il faut donc penser la restauration d'une régulation proprement politique au-delà même des États nations et entre leurs parties constituantes. C'est dans ce sens que nous proposons pour le Canada l'idée d'une Union confédérale,¹⁹ capable de tenir compte de la complexité des identités nationales et culturelles. Le Canada pourrait ainsi servir de laboratoire pour la réinvention de la régulation politique dans le contexte de plus en plus incontournable de la complexification des sociétés et de la mondialisation.

¹⁹ *L'identité fragmentés*, supra note 9 à la p. 9.







THE NISGA'A TREATY: WHAT FUTURE FOR THE INHERENT RIGHT TO ABORIGINAL SELF-GOVERNMENT?

Claude Denis*

This paper presents an analysis of the treaty signed in August 1998 by the Nisga'a indigenous nation, the government of Canada and the government of British Columbia. Widely seen and hailed as the model for dozens of unresolved treaty and self-government negotiations, the Nisga'a Final Agreement is the outcome of a century-long quest for recognition and autonomy by the Nisga'a people, who live in the northwest of present-day British Columbia. The Nisga'a treaty ostensibly recognizes the inherent right to Aboriginal self-government which, in the last several years of constitutional debate in Canada, has appeared as a key item on First Nations' lists of claims. After outlining the treaty's contents regarding in particular the proposed Nisga'a legal capacity, justice system and relation to the Canadian Charter of Rights and Freedoms, the analysis compares the treaty's terms with the discourse of inherent right, as it has developed in particular in the context of the Charlottetown Accord of 1992. It finds that the constraints imposed on the Nisga'a negotiators by the Canadian and B.C. governments alter beyond recognition the meaning of "inherent right." As well, it questions the extent to which such a system of self-government is likely to accomplish the stated goals of the First Nations' leadership, of re-establishing indigenous ways of life in Canada.

En août 1998, après un siècle de lutte, les Nisga'a du nord-ouest de la Colombie-Britannique signaient un traité. Les gouvernements fédéral et provincial reconnaissaient ainsi le droit inhérent à l'autonomie gouvernementale des Nisga'a. À travers une analyse des termes du traité et du discours autour de cette question tel que développé par les leaders autochtones depuis Charlottetown en 1992, Claude Denis révèle que les pressions gouvernementales fédérales et provinciales ont altéré le sens même de cette notion dans le cas des Nisga'a. Il s'interroge pour déterminer si un tel système d'autonomie gouvernementale accomplit réellement les buts que se sont fixés les leaders autochtones. Il termine en soulignant que le colonialisme est encore très ancré dans la mentalité et les institutions canadiennes.

LIVING IN THE FOURTH WORLD

Finding out that “Indians” in Canada live in conditions of oppression and enormous poverty comes as a big surprise to many people who know Canada as one of the world’s richest, most democratic countries. The fact is that indigenous

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people in Canada suffer from unemployment about six times more than the population at large; their rates of suicide and infant mortality are double the Canadian figure, as is the percentage of indigenous people who do not finish high school; and their life expectancy is nine years lower.¹ It is this kind of poverty amidst plenty that has given birth to the expression “Fourth World” to describe the situation of indigenous peoples within “First World” countries such as Canada, the United States, Australia and New Zealand: the Fourth World is made up of “dependent peoples, internal colonies in a variety of modern states.”² Coined by indigenous leaders in the 1970s as an addition to the familiar language of First, Second and Third Worlds, the expression served to identify a problem: the Fourth World is the site where a land’s first inhabitants — its indigenous peoples — became marginalized and impoverished by a colonial oppression that made the bulk of newcomers comparatively wealthy.³

In the past fifteen years in Canada, there has emerged among indigenous peoples a language of solutions to supplement that language of problems, with at its heart the concept of “inherent right to Aboriginal self-government.” This paper analyzes that concept and its uses, especially in the context of a treaty⁴ signed in 1998, involving the Nisga'a people who live at the northwestern edge of the Canadian landmass. The other signatories to the treaty are the Government

¹ See J. Frideres, *Native People in Canada: Contemporary Conflicts*, 4th ed. (Scarborough: Prentice-Hall, 1993). In Canada, the word “indigenous” is generally taken to be more or less synonymous with “Aboriginal” and “native”; “First Nations” is generally limited to indigenous people with the legal status of “Indians” and who live on reserves established by the federal government’s *Indian Act*, R.S.C. 1985, c. I-5.

² J.R. Miller, *Skyscrapers Hide the Heavens. A History of Indian-White Relations in Canada* (Toronto: University of Toronto Press, 1989) at 233.

³ For the origin of the concept, see G. Manuel & M. Posluns, *The Fourth World: An Indian Reality* (Toronto: Collier Macmillan, 1974), cited by Miller, *ibid.* at 302, n. 4.

⁴ To the extent that a treaty is an *international* legally binding agreement, the accord between the Nisga'a and the B.C. and federal governments is not a “treaty.” But in Canada-Indigenous relations this is a contested concept: the federal and provincial governments consider that “historical” treaties signed by the British Crown with indigenous peoples and transferred to the Canadian state are *domestic* “treaties.” For an argument that the historical treaties are international agreements and that, consequently, there is no such thing as a “Nisga'a treaty”; see S. Venne, *Our Elders Understand Our Rights: Evolving International Law Regarding Indigenous Peoples* (Penticton: Theytus Books, 1998). Notwithstanding the potential merits of Venne’s claim, I will continue to use the phrase because that is how the agreement presents itself and how its signatories refer to it.

of British Columbia (B.C.) and the Government of Canada, which ratified the treaty in 2000.⁵

For reasons that will be explained below, the Nisga'a treaty is an important test of the theory that inherent right to self-government provides the key to a better future for Aboriginal peoples in Canada. After outlining the treaty's contents regarding in particular the proposed Nisga'a legal capacity, justice system and relation to the Canadian *Charter of Rights and Freedoms*,⁶ the analysis compares the treaty's terms with the discourse of inherent right, as it has developed in the context of the Charlottetown Accord of 1992. This context is where we begin.

"INHERENT RIGHT": THE CONCEPT FROM CHARLOTTETOWN TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES

Since the constitutional negotiations that led to the Charlottetown Accord in 1992, it is generally recognized by Canada's federal and provincial governments, and by many Canadians, that indigenous peoples have an "inherent right to self-government." This is so despite rejection of that Accord in a pan-Canadian referendum in October of that year.⁷ The agreement had been reached at Charlottetown in 1992 by Canada's first ministers and indigenous leaders.⁸ It aimed to end Québec's alienation from the Canadian constitutional order by way of a comprehensive package that addressed grievances from constituencies across Canada. It included, among other things, a limited recognition of Québec as a "distinct society," a reformed senate, and recognition of the inherent right to Aboriginal self-government. In an ironic subversion of the Accord's intent to provide something for most Canadians to like, it turned out that a majority of

⁵ Canada, British Columbia, Nisga'a Nation, *Nisga'a Final Agreement* (Ottawa: Queen's Printer, 1998). See *Nisga'a Final Agreement Act*, 2000 S.C., c. 7; and *Nisga'a Final Agreement Act*, S.B.C. 1999, c. 2 [hereinafter *Nisga'a Final Agreement*].

⁶ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [hereinafter *Charter*].

⁷ On the developments surrounding the Charlottetown accord, see L.A. Pal & F.L. Seidle, "Constitutional Politics 1990–1992: The Paradox of Participation" in S.D. Phillips, ed., *How Ottawa Spends, 1993–1994: A More Democratic Canada?* (Ottawa: Carleton University Press, 1993) 143.

⁸ The first ministers: Canada's Prime Minister, the ten provincial Premiers and the three leaders of the northern territories. The indigenous leaders represented the Assembly of First Nations, the Canadian Native Council, the Inuit Tapiriat of Canada, and the Métis National Council. Charlottetown is the capital of the province of Prince Edward Island, where the constitutional discussions were held.

Canadians, including indigenous voters,⁹ found something to dislike. The package was defeated in a referendum.

Despite this defeat, “inherent right” seems to have been accepted across Canada as the point at which negotiations between governments and indigenous peoples should start. It has, for instance, been re-affirmed as a given by the federal and British Columbia governments in their negotiating positions leading to the Nisga’a Agreement-in-Principle in 1996.¹⁰ Also, in late 1996, the Royal Commission on Aboriginal Peoples (RCAP) published its final report. This massive document, supported by thousands of pages of research, claims that the keystone to a new, just relationship is recognition by Canadians and their governments that indigenous peoples are nations and that they have an inherent right to self-government.¹¹

But what does the phrase “inherent right” mean? Before wide acceptance, it was associated with the position taken by the Assembly of First Nations (AFN),¹² then under the leadership of National Chief Ovide Mercredi. In his book, *In The Rapids*, Mercredi explains:¹³

[O]ur right to govern ourselves does not come from European proclamations or treaties; they just recognized what we were doing already. The Proclamation of 1763 did not create aboriginal land rights — it acknowledged them as pre-existing. We believe, as we are told by our Elders, that our peoples were placed on this land by the Creator, with a responsibility to care for and live in harmony with all her Creation. By living this way, we cared for the

⁹ Many indigenous communities across Canada boycotted the referendum. They claimed that the process was illegitimate, and that an inclusion of Aboriginal rights in the Canadian constitution was a denial of their very right to govern themselves. For an articulation of that claim, see S. Venne, “Treaty Indigenous Peoples and the Charlottetown Accord: The Message in the Breeze” (1993) 4:2 *Const. For.* 43.

¹⁰ On the federal negotiating position, post-Charlottetown, see Canada, *Aboriginal Self-Government: The Government of Canada’s Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government. Federal Policy Guide* (Ottawa: Minister of Public Works and Government Services, 1995).

¹¹ See Canada, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: The Commission, 1996). For a more accessible version, see the abridged report, Canada, *People to People, Nation to Nation: Highlights of the Report of the Royal Commission on Aboriginal Peoples* (Ottawa: The Commission, 1996), which deals with the concept of inherent right at the beginning of chapter 2 [hereinafter *People to People*].

¹² The Assembly of First Nations is the pan-Canadian organization representing the bands and indigenous nations living on reserves under the authority of the *Indian Act*.

¹³ O. Mercredi & M.E. Turpel, *In the Rapids: Navigating the Future of First Nations* (Toronto: Viking, 1993) at 31.

Earth, for our brothers and sisters in the animal world and for each other. Fulfilling these responsibilities meant we governed ourselves, and lived a certain way. This is the source of what we call our inherent right of self-government. It has a history that precedes the Charlottetown Accord by more than a millennium.

In Mercredi's explanation of the inherent right to self-government, two types of arguments are invoked: one historical, the other cultural. On the one hand, he writes of "what we were doing already" before European occupation of this continent, of "pre-existing" land rights, of inherent right pre-existing the Charlottetown Accord "by more than a millennium": the source of the inherent right to self-government is historical precedence. On the other hand, Mercredi outlines what his people did, how they governed themselves: they had the Creator-given responsibility to care for each other and for their animal brothers and sisters — "[f]ulfilling these responsibilities meant we governed ourselves, and lived a certain way." Here, he speaks of cultural difference.

At the beginning of the process that led to the Charlottetown Accord, the federal government, with provincial governments in tow, adopted the position that indigenous peoples had a "general right to self-government."¹⁴ This was a much weaker acknowledgement than that sought by the AFN. Over months of constitutional discussion, strong, if often ill-informed public support built for the demands of indigenous leaders, eventually pushing all governments to agree to recognize inherent right. This appeared to be an enormous victory for indigenous leaders. But the referendum defeat, especially among indigenous voters, not only left the concept of inherent right in limbo, but it also severely weakened the indigenous leadership's hand in future dealings with Canada's governments. This has had consequences for the negotiation of the Nisga'a treaty.

Despite this, however, governments have maintained their rhetoric of commitment to the concept of inherent right to self-government. The RCAP Final Report articulates the same logic. It argues that indigenous peoples and their systems of government have existed from time immemorial, and that they consider having received their right to governmental autonomy from the Creator. Further, the Commission writes that in the context of international law, indigenous peoples in Canada are indeed peoples, or nations, with the right to

¹⁴ See Canada, *Shaping Canada's Future Together: Proposals* (Ottawa: Minister of Public Works and Government Services, 1991). For a series of critiques of those proposals, see (1992) 3:3 *Const. For.*

self-determination within the borders of Canada.¹⁵ One significant factor grounding this latter right, according to this rhetoric, is that in Canada there never was a *conquest* of indigenous peoples by Europeans; indigenous peoples, then, never lost their autonomy relative to either the French or British Crowns, or the Canadian state.¹⁶

This is where Canada is at: while not constitutionally recognized, the inherent right to Aboriginal self-government has become common ground in the rhetoric of governments, indigenous groups, and the Royal Commission on Aboriginal Peoples, which included indigenous and non-indigenous commissioners. The question is: what happens when this concept is put to work in treaty negotiations?

THE NISGA'A CLAIM

Calder vs. Trudeau/Chrétien: Resistance to Colonialism

British Columbia's Nisga'a people have been trying to obtain recognition of their title to roughly 25,000 square kilometres of land since the late nineteenth century. But until 1991, the government of British Columbia refused to even open negotiations with them, or with any other First Nation. Through most of the twentieth century, the federal government had been little interested in seeking treaties with peoples that it expected to disappear from the Canadian landscape within years or decades.

The Nisga'a had achieved nothing in their quest for recognition of their title until a 1973 Supreme Court of Canada decision.¹⁷ The Nisga'a lost the *Calder* case, but the judgment was written in such a way as to provide a political victory. The resulting legal and political instability prompted the federal government to start negotiations, which were blocked by a B.C. government that still refused to negotiate treaties with any native people.¹⁸ The *Calder* decision came only a

¹⁵ This latter clause would seem to be in contradiction with the concept of self-determination as developed in international relations since the end of World War I, and especially since the decolonization movement that followed World War II: a people may exercise its right to self-determination by forming its own sovereign nation-state.

¹⁶ See *People to People*, *supra* note 11 at c. 2.

¹⁷ *Calder v. British Columbia (Attorney General)*, [1973] S.C.R. 313.

¹⁸ There are a few minor exceptions, but approximately one hundred native bands have been unable to obtain any kind of settlement with the B.C. government, for claims that cover a large majority of the province's territory. Settlement of the Nisga'a claim has been seen as

few years after the federal government's *White Paper*.¹⁹ This policy proposal, sponsored by Prime Minister Pierre Trudeau and his Indian Affairs minister, Jean Chrétien, sought to solve the problem of indigenous peoples' place in Canada by treating "Indians" as individuals, by means of abolishing the Indian status, the *Indian Act*, the Department of Indian Affairs, etc. The plan was to hasten as much as possible the assimilation of "Indians" into the mainstream of society, making them ordinary Canadians. The proposal had been abandoned in 1971 in the face of strong opposition, but without an alternative and without changing Trudeau's vision.²⁰

Through these years, Frank Calder, a chief of the Nisga'a people and the first ever indigenous Member of the British Columbia legislature, had brought a legal claim of Aboriginal title to land. This claim eventually made its way to the Supreme Court of Canada. While the Supreme Court ruled against Calder on a technicality, it did recognize that indeterminate land rights do exist.²¹ In the wake of this judgment, Trudeau admitted that Aboriginal rights exist,²² reversing the position he had articulated in the *White Paper* and passionately defended. This reversal eventually opened the way for the 1982 recognition of Aboriginal rights in the Canadian constitution: section 35(1) states that "existing aboriginal and treaty rights... are hereby recognized and affirmed," and section 35(2) defines Aboriginal peoples of Canada as including Indians, Inuits and Métis.²³ Considerable uncertainty remains, however, because the Constitution does not spell out what these "existing rights" actually are: in the absence of agreements and treaties that would do this, it has been left to the Courts to decide.²⁴

Despite constitutional recognition of "existing rights," British Columbia governments continued to refuse negotiations. This changed only in 1991, when an NDP government led by Mike Harcourt was elected and agreed to open

marking the beginning of the end of this situation.

¹⁹ Canada, *Statement of the Government of Canada on Indian Policy* (Ottawa: Supply and Service Canada, 1969) [hereinafter *White Paper*].

²⁰ See O. Dickason, *Canada's First Nations. A History of Founding Peoples from Earliest Times* (Toronto: McClelland & Stewart, 1992) at 384–88.

²¹ *Ibid.* at 349.

²² *Ibid.*

²³ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

²⁴ In the past several years, the Supreme Court of Canada has handed down several judgements to this effect. See in particular *R. v. Sparrow*, [1990] 1 S.C.R. 1075, *R. v. Badger*, [1996] 1 S.C.R. 771, and *R. v. Van der Peet*, [1996] 2 S.C.R. 507. For a critique of these cases, see the papers contained in (1997) 8:2 *Const. For.*

negotiations with the Nisga'a people and other First Nations.²⁵ It quickly became apparent that the Nisga'a process would serve as the model for several dozen other treaty negotiations. In the fall of 1995, the federal and B.C. governments finally proposed a settlement to the Nisga'a people. Soon after, negotiations were concluded with the signature of an Agreement-in-Principle, in 1996, which led to two more years of "fine tuning" before the *Final Agreement* was signed on 4 August 1998.

CONTRADICTIONS OF COLONIALISM

In a sense, the *process* of negotiation is more important than the specific *result* of the negotiation that produced the Nisga'a treaty. This is because First Nations will not all want to exercise the same powers to the same degree, and so will approach negotiations with different expectations and needs. Some, such as the Mohawk Nation (in Ontario and Québec) will seek more powers of self-government; others will seek less. Since each First Nation is the best authority to know what form and degree of self-government is appropriate in its case, it would make little sense to criticize the Nisga'a treaty on the basis of what it contains without first taking into account how the various parties approached the negotiations.

The peculiarity of the situation, which makes an assessment of the process so important, stems from two facts: first, recognition of an inherent right would seem to place a large burden on both levels of government to honour the aspirations of indigenous peoples; second, and perhaps even more importantly, in Canada's current legal framework the federal government has a *fiduciary* responsibility toward indigenous peoples, which means that the federal government must promote policies that are in the best interest of indigenous peoples. This colonialist concept has rarely been implemented, typically being trumped by more powerful concepts such as national interest.²⁶ It has, nonetheless, been a staple of the federal government's rhetoric. And it can be tactically useful to indigenous leaders, who often call on reluctant federal governments to live up to their responsibilities. Because of this, and for the sake of brevity, what follows will focus on government demands that put into

²⁵ In B.C., this door was actually opened by the previous government months before the election of the Harcourt government. On the Harcourt government, the development of a treaty negotiation process, and the Nisga'a claim negotiation, see D. Gawthrop, *High-Wire Act: Power, Pragmatism, and the Harcourt Legacy* (Vancouver: New Star Books, 1996).

²⁶ See M. Boldt, *Surviving as Indians: The Challenge of Self-Government* (Toronto: University of Toronto Press, 1993).

question their commitment to the principles and laws they claim to uphold in their relation to indigenous peoples.

Because of recognition of inherent right as a *starting point* in negotiations, one might expect governments to refrain from imposing major non-negotiable items as conditions of agreement. And because of the federal fiduciary responsibility, it is inappropriate *in principle* to see the negotiating process as adversarial in a way similar to, for instance, labour relations. Thus, when the federal government and a First Nation negotiate, both sides are supposed to seek, as a matter of priority, the First Nation's best interest. Indeed, for the federal government this is a matter of law. It is only when a provincial government becomes involved that, in principle, an adversarial relationship may develop.

Assuming the federal government took its fiduciary responsibility seriously (which, historically, it has not), and assuming that a First Nation knows best what is in its best interest,²⁷ a negotiation is not exactly what ought to happen between these two players. The federal government ought to ascertain what the First Nation wants, and then do its part in the implementation of that claim. When a provincial government resists, the federal government ought to pressure it on behalf of the First Nation.

The negotiation leading to the Nisga'a Agreement-in-Principle (1996) and *Final Agreement* (1998) should be assessed based on these principles. What, then, do we find? In the Agreement signed by the three parties, the Nisga'a people obtain title to about eight per cent of the land in their original claim, logging rights over some further land, financial compensation, and political autonomy amounting to a form of municipal government. They agreed to surrender their exemption from income taxes and they were forced to accept sharply curtailed fishing rights, limited to their own harvesting under federal and provincial policy: the B.C. government had imposed a veto on granting the

²⁷ There is something contradictory in these assumptions: the colonialist logic that is the basis for fiduciary responsibility is repudiated by the notion that First Nations know best what is good for them. There is no reconciling this in principle. In the interest of equality between peoples, fiduciary responsibility should be struck from Canadian law. But this can only be done in the context of a thorough redefinition of the relationship between Canada and First Nations. In the meantime, fiduciary responsibility is still a matter of law, and can — in principle — be put to work on behalf of First Nations as a tool in the unmaking of colonialism. Whether this happens is another story entirely, as this paper argues.

Nisga'a control over the fishing industry in their region. Finally, the Nisga'a agree to be bound by the *Charter*: a federal government *sine qua non*.²⁸

The Nisga'a, then, obtain a very small part of what they had claimed, not only in terms of amounts of land, resources and autonomy but also in terms of the kind of autonomy and right to self-government. Rather than being wholly autonomous of provincial regulation of fishery and forestry, and of the *Charter*, they are very much subject to provincial and federal supervision.

A large part of these concessions were made to the provincial government: the amount of land obtained, the limits to logging and fishing rights. Indeed, the B.C. government left the negotiating table in the summer of 1995 over a conflict about financial aspects of logging.²⁹ And, on some issues, the federal government stepped in to compensate the Nisga'a for provincial intransigence. This could be construed as the fiduciary responsibility in action, but in a rather weak form: rather than having to bend in the face of federal and Nisga'a pressure, the provincial government got what it wanted, and the Nisga'a got a consolation prize from the federal government. Other concessions were made to the federal government: abandoning the tax exemption, for instance, and—most importantly—abiding by the *Charter*.

The letter and the spirit of most of these concessions had been strongly resisted by the Assembly of First Nations and other native groups during the 1992 Charlottetown constitutional negotiations, on the grounds that deciding the scope of self-government belonged exclusively to indigenous peoples—self-government could not be subject, in particular, to non-indigenous norms such as the *Charter*. The AFN model of self-government (see Table 1) was itself considered overly moderate by the Alberta Treaty Chiefs and the Mohawk Nation, among others, who boycotted the Charlottetown process and referendum.

²⁸ It is not clear whether this position resulted from a lingering colonialist attitude of “Ottawa knows what’s best for you,” in keeping with fiduciary responsibility, or from a disregard of that responsibility in favour of assumed pro-*Charter* feelings among a majority of Canadians. Either way, a colonialist rationale was at work, undermining governmental claims affirming the inherent right to self-government.

²⁹ See Gawthrop, *supra* note 25.

TABLE 1
Three models of Aboriginal self-government³⁰

	Sechelt / Nisga'a	AFN (Charlottetown)	Alberta Treaty Chiefs, Mohawk
Within Canadian Constitution	Yes	Yes	No
Self-Government	Municipal	Prov. / Fed.	Prov. / Fed.
Application of Charter	Yes	No	No
Justice System	Minor offences	Wider	Wider

This diversity complicates matters. The terms sought by the pan-Canadian leadership are much more radical than what many bands and nations are seeking, while being less than what others want: this could be seen as an appropriate middle way. Indeed, it is generally argued that the “official” (*i.e.* pan-Canadian) position is inclusive of the more moderate ones, leaving out only the most radical ones: it is true that limited self-government agreements such as that of the Sechelt in British Columbia³¹ could easily proceed within the framework sought, for instance, by the Assembly of First Nations. The difficulty rests with the fact that local and regional negotiations are being conducted (and concluded) before a general framework has been established. In this context, being more radical than what many First Nations seek, the AFN position makes it difficult for these more limited deals to be achieved and it delegitimizes them — nations seeking limited deals are said to undermine pan-Canadian efforts. Conversely, when the leadership is weakened and governments go directly to individual nations to make agreements, it is the official position that is delegitimized; and the

³⁰ C. Denis, *We Are Not You: First Nations and Canadian Modernity* (Peterborough: Broadview Press, 1997).

³¹ On Sechelt self-government, see T.M. Jeffries, “Sechelt Women and Self-Government” in D. Jensen & C. Brooks, eds., *In Celebration of Our Survival: The First Nations of British Columbia* (Vancouver: University of British Columbia Press, 1991).

leadership appear as just another series of politicians disconnected from their grassroots.

One of the results of the failed Charlottetown process, as already noted, has been the weakening of the pan-Canadian indigenous leadership. This weakness has allowed the federal government to seek local accommodations with individual First Nations in a piecemeal process, with no regard for the positions advanced by pan-Canadian organizations. In turn, individual First Nations witnessing the federal government's local overtures and the inability of these large organizations to achieve concrete results, had sufficient incentive to negotiate, overlooking pan-Canadian representatives' objections.

In this context, and contrary to its fiduciary obligation, the federal government has been pursuing its own agenda of containing the scope of indigenous demands. In this sense, it is surely significant that neither the Nisga'a Agreement-in-Principle nor the *Final Agreement* contain an explicit recognition of the inherent right to Aboriginal self-government.³² Thus, while reluctant to criticize the achievements of the Nisga'a negotiators, then National Chief Ovide Mercredi made it clear upon release of the Agreement-in-Principle that he was less than pleased with its general framework — and, most of all, with the mean-spiritedness of the two governments' negotiating strategies. One necessary result of successful negotiations at the local level is an automatic weakening of the pan-Canadian indigenous organizations. No matter what these organizations' current shortcomings might be, this weakening cannot be a positive development for indigenous peoples, whose need of them was demonstrated in the Charlottetown process. In this respect, one might say that the unofficial motto of the federal government regarding post-Charlottetown indigenous issues is "divide and rule."

The Nisga'a, then, were negotiating from a weak position. Not only were they unable to rely on a general framework, as would have been provided by the Charlottetown Accord, but they were facing governments that — while willing to negotiate — were not very flexible. The timing of the last year of negotiations before reaching the Agreement-in-Principle put more pressure on the Nisga'a negotiators: in 1995, the very unpopular NDP government was arriving at the end of its electoral mandate, was widely expected to be beaten in the coming election, and was the only political party in British Columbia committed to a settlement with the Nisga'a. In other words, the Nisga'a negotiators had to come to an agreement before the election, or they might have been back to square one.

³² The *Final Agreement*'s preamble would have been a good place to make such a statement.

For one hundred years, their people had faced provincial governments unwilling to negotiate, and the window of opportunity opened in 1991 was probably about to close. They were not going to let that happen. Dealing at that time might curtail the Nisga'a's ability to govern themselves in ways that would have seemed unacceptable before, but there were no desirable options.

THE NISGA'A ACCORD: ON GOVERNANCE AND SOCIAL CONTROL

The outrages most often noted about life in the Canadian Fourth World are the extreme suicide rates and poverty on most reserves, and the grotesque overrepresentation of indigenous people in jail.³³ In seeking to put an end to colonialism, self-government is expected to ameliorate each of these problems. The development of a separate indigenous justice system, as well, has been touted as a key in ending the current high rate of legal troubles among indigenous people. In the literature on these issues, however, self-government and an indigenous justice system are often treated separately. But it should be obvious that the latter is a function of the former: one of the defining dimensions of self-government is the collectivity's ability to sanction deviance. In this perspective, an evaluation of the Nisga'a treaty's clauses regarding the administration of justice should be instructive of the spirit in which negotiations were conducted.³⁴

The first thing to note is that the Nisga'a court and police service are to be considered as a kind of substitute for the B.C. courts and police services. As such, they are under the authority of the provincial government, and they must operate according to existing B.C. standards. When we look at the specific authority of the Nisga'a court, we find that when non-members of the Nisga'a Nation (who live in Nisga'a jurisdiction) have dealings with the judiciary, they are given the option of either going to the Nisga'a or the B.C. court systems; and a non-citizen who has agreed to the Nisga'a Court's authority has to further

³³ See K. Makin, "Top court appalled as natives fill Canada's jails" *Globe and Mail* (24 April 1999) A1. On colonialism and indigenous overrepresentation in the justice system, see P. Monture-Angus, "Lessons in Decolonization: Aboriginal Overrepresentation in Canadian Criminal Justice" in D.A. Long & O.P. Dickason, eds., *Visions of the Heart: Canadian Aboriginal Issues* (Toronto: Harcourt Brace Canada, 1996).

³⁴ This is, however, only one dimension of the Accord, and the assessment of this one part cannot stand for the whole. This analysis only aims to be illustrative of the pressure that was brought to bear on Nisga'a negotiators in areas of legal capacity. I would expect similar pressure to have been applied in other areas, but this can be no more than a (perhaps well-grounded) supposition.

agree if the penalty is other than “those generally imposed by provincial or superior courts in Canada.”³⁵ Finally, when *anyone*’s potential sentence is prison, that person may also choose the B.C. Court.³⁶

If this treaty does turn out to be an influential model for future self-government agreements, the jurisdiction of the indigenous justice system will be highly dependent on whether the person brought to justice is a First Nation citizen. In the Nisga’a treaty, a person is entitled to citizenship either through ancestry or adoption, and may therefore enrol as an official member of the Nation; this person has to apply for enrolment and, once a member, may resign his or her membership.³⁷ Under the *Indian Act*, bands already have the authority to grant membership to applicants. What changes here is how membership/citizenship modulates the authority of the indigenous nation’s court.

Let us look at an actual case. In related research,³⁸ I studied the early 1990s story of a man, Joseph Peters, born into a family of the Coast Salish indigenous people. His wife had grave concerns about how Peters was leading his life and how he was treating her, and she asked the indigenous community for help in dealing with him. After hearing her case, they agreed that Peters was what we would call deviant, but not in a criminal way: he was spiritually ill, and so they decided that he needed “healing.” Consequently, they forcibly initiated him into a spiritual ritual which they call *syewen*, involving fasting and other physical hardships over a four-day period. Upon being allowed to leave after four days, he hired a lawyer and sued the community members for assault, battery and false imprisonment, claiming that he was not a member of the Salish community. He won his lawsuit, with the judge deciding that his rights as a Canadian citizen had been violated.

Under the Nisga’a system, what would have happened? It is hard to say, and rather technical, but chances are that the outcome would have been the same.³⁹ On the other hand, it could have happened that Peters was indeed healed by a

³⁵ See *Nisga'a Final Agreement*, *supra* note 5 at c. 12, “Administration of Justice,” s. 43.

³⁶ *Ibid.*, c. 12, ss. 38(c), 39(a). These sections limit the Nisga'a Court’s jurisdiction to Nisga'a citizens except when the person accepts its authority; and section 44 limits the type of penalties the Nisga'a Court may impose on non-citizens to culturally dominant practices. Further, s. 43 offers any accused person the option of going to the Provincial Court of British Columbia if the penalty may be imprisonment.

³⁷ See *ibid.*, “Eligibility and Enrolment,” c. 20, ss. 1, 7, 17.

³⁸ Denis, *supra* note 30.

³⁹ The analysis that leads me to this conclusion is presented in Appendix 1.

coercive initiation, he would not have sued, and the community would have been doubly strengthened — by having its practices affirmed and by gaining a better integrated member. But this could have happened just as well without self-government: it depended on whether or not Peters, the presumably deviant man, chose to sue.

WHAT OF “INHERENT RIGHT”?

If something like the initiation of Joseph Peters had taken place on Nisga'a territory after the treaty took effect, he would have had the same legal options as he had before. To a large extent, these limits to the Nisga'a gains are due to the very hard line taken by the nominally progressive B.C. government, which had to deal with public opinion and a political opposition little inclined to entertain the notion of substantial Aboriginal self-government advocated by the “national” leadership of indigenous peoples. With regard to issues involving justice and social control/discipline, the federal government’s insistence on applying the *Charter* is even more important.

And yet, governments claim that they recognize the inherent right. But their actions, in negotiations with the Nisga'a and others, belie that recognition. With no treaty possible without such conditions, this bullying into accepting culturally dominant practices and authority is inconsistent with a serious recognition of the inherent right to self-government. Why bother to say that they recognize “inherent right”? We are finding out now, with the Nisga'a treaty, that recognition of inherent right costs little: it allows governments to pay lip-service to (fairly) radical indigenous claims, while denying them in the practicalities of accords. But nobody could have known this in advance. How did this happen?

Over the last few years,⁴⁰ indigenous claims have gained legitimacy among Canadians in exact proportion to the loss of legitimacy of Québec nationalism. It is clear that indigenous claims are *used* by Canadians for their deleterious effect on Québec — and this raises very ominous prospects for the ability of First Nations to finally obtain autonomy, respect and compensation for the colonial regime that they have been enduring. When the Québec-related issues are put aside, there is nothing like a consensus among Canadians on a just

⁴⁰ That is, since indigenous objections to the Meech Lake Accord acquired prominence as one good reason why Canadians should resist recognizing Québec as a “distinct society.” On the history of that particular debate, see A. Cohen, *A Deal Undone: The Making and Breaking of the Meech Lake Accord* (Vancouver: Douglas & McIntyre, 1990); and P. Fournier, *Autopsie du Lac Meech* (Montreal: VLB, 1990).

settlement of indigenous claims. While this dissension is often interpreted as a growing backlash among Canadians against First Nation claims,⁴¹ it is more likely that the resistance was there all along but was hidden from view by the anti-Québec alliance. Indeed, the so-called backlash has not made the slightest dent in Canadian solidarity with the Cree of northern Québec: the same person can enthusiastically come to the defence of the James Bay Cree *and* adopt a hard line on any number of indigenous claims in English Canada.

As soon as the Nisga'a Agreement-in-Principle was announced, the opposition B.C. Liberal Party declared that it reserved the right, if it won the coming election, to renegotiate the treaty,⁴² even to “tear up any deal that gives B.C.’s native Indians special status” because “there has to be an agreement that there is to be one law for all British Columbians.”⁴³ As hard-nosed as the B.C. government was, its very willingness to come to an agreement depended significantly on the will of the Premier, Mike Harcourt, who was to leave politics before the election. In that context, wrote Victoria’s *Times Colonist*, “the proposed deal is set to become embroiled in a no-holds-barred provincial election — perhaps the dirtiest ever in British Columbia.”⁴⁴

As it eventually happened, the Nisga'a accord was a non-issue in the electoral campaign. As the former B.C. Liberal leader Gordon Gibson commented after the election, both major parties were afraid of the issue, so they kept it out of the

⁴¹ As a prime example of the backlash, M.H. Smith, *Our Home or Native Land?: What the Governments’ Aboriginal Policy is Doing to Canada* (Victoria: Crown Western, 1995).

⁴² From 12 February 1996, when the Agreement-in-Principle was reached, it was expected (accurately, as it turned out) that two more years would be needed to produce a finalized treaty; a provincial election was to be held no later than October 1996. The election, in fact was held on 28 May 1996.

⁴³ S. Bell, M. Hume & J. Hunter, “Nisga'a Treaty Sales Job Begins” *The Vancouver Sun* (13 February 1996) A1–2. The first quote is from the reporters paraphrasing Liberal leader Gordon Campbell; the second one is a direct quote from Campbell reacting to the announcement of the Agreement-in-Principle.

⁴⁴ Unsigned Editorial, “Nisga'a Deal a Political Football” *Victoria Times Colonist* (14 February 1996) A4. On the climate of opinion in B.C. regarding indigenous issues in 1995 and 1996, see also D. Gawthrop, *supra* note 25.

campaign.⁴⁵ Only the B.C. Reform Party campaigned on the accord, some of its billboards saying “One country, one people, one law.”⁴⁶

Still, with only the governing NDP supporting the accord, and against all expectations, the New-Democrats were re-elected, just barely, and were able to proceed with the negotiation of the *Final Agreement*, signed in 1998 and ratified by the three parties in 1999–2000. Opposition to the treaty process, however, did not disappear, as a much-weakened B.C. government moved gingerly toward ratification and toward negotiating agreements with many First Nations. Indeed, a lawsuit against the *Nisga'a Final Agreement* was brought — and lost — by the leader of B.C.’s Liberal Party, Gordon Campbell, in 2000.⁴⁷

Since 1996, and especially since the signing of the *Final Agreement* in 1998, other events have been disheartening. In particular, reaction to the RCAP Report has been lukewarm, to say the least, leading to serious and lasting doubts as to the prospects of its implementation. Politicians and commentators immediately denounced the “big government” implications of the report’s recommendations, as well as its thrust to “ghettoize” indigenous peoples (as opposed to looking to integrating them into the mainstream of Canadian society). The dust from this criticism settled very quickly, however, to the point that it was practically forgotten. In the federal electoral campaign of 1997, and again in 2001, practically no mention was made of the RCAP Report or of indigenous issues in general. One short-lived ray of hope was the 1999 federal budget, which earmarked a considerable amount of money for implementation of the Report’s recommendations. Three years later, little visible progress has been made. Even more ominously, the federal government has embarked on a wide-ranging revision of the *Indian Act* in the face of strong (but ignored) opposition by the Assembly of First Nations and many other organizations representing Canada’s indigenous peoples.

In 2001, British Columbia’s NDP government called another election, which it lost, crushingly, to Gordon Campbell’s Liberals — who opposed the treaty process and had promised a referendum on the issue. The referendum was held

⁴⁵ Gordon Gibson, seen on the television programme “Politics,” CBC Newsworld, 29 May 1996. On Gibson’s own widely circulated Reform-like views on the issue of Aboriginal title, see D. Gawthrop, *supra* note 25.

⁴⁶ I saw this sign on the side of the main road between Kamloops (B.C.) and Jasper (Alberta) in April 1996. One may find something troubling in this slogan of the hard-right Reform party, in its parallel with the Nazi slogan “One people, one party, one leader.”

⁴⁷ *Campbell et al. v. British Columbia (Attorney General)*, [2000] B.C.S.C. 1123.

by mail-in ballot in May 2002, and the results were announced in July. The referendum questions were widely and heavily criticized, boycott calls were issued, and the whole exercise was all but universally condemned. In the end, barely half of the eligible voters returned their ballot, but those who did vote supported overwhelmingly the government's anti-treaty positions. So armed, the B.C. government is claiming to be ready to re-open treaty negotiations — including the *Nisga'a Treaty*, which it claims is unconstitutional — on the basis of a specific and legally binding popular mandate. The minister responsible for the referendum and the whole treaty process is B.C.'s Attorney General, Geoffrey Plant, who had been one of the co-plaintiffs in the 2000 lawsuit against the *Nisga'a Final Agreement*.

We are left to conclude from these prominent developments (and many others) that Canadians are favourable to native claims so long as they themselves are not affected, and so long as the claims can be used against Québec: there should be no cost to Canadians, who should not be expected to change anything about themselves. Thus, as the *Nisga'a Final Agreement* itself shows, when indigenous claims are dealt with on their own merits (as opposed to their utility as a Québec-busting weapon), indigenous peoples are muscled into agreements that leave colonialism very much in place.

Appendix 1

Peters v. Campbell and the Nisga'a court

Assuming that an agreement such as that of the Nisga'a (which is widely seen as establishing the model for self-government in B.C.) had been in place between Joseph Peters' indigenous nation, Canada and B.C., what would have happened in *Peters v. Campbell*?⁴⁸ Let us first recall the basic elements of the case. Having grave concerns about how her husband was leading his life and how he was treating her, Peters' common-law wife asked the indigenous community for help in dealing with him. After hearing her case, they agreed that he was a disturbing presence in the community — what we would call deviant, but not in a criminal way: he was spiritually ill, and they decided that he needed "healing." Consequently, they forcibly initiated him into a spiritual ritual which they call *syewen*, involving fasting and other physical hardships over a four-day period. Upon release, he hired a lawyer and sued them for assault, battery and false imprisonment, claiming that he was not a member of the Salish community. He won his lawsuit, with the judge deciding that his rights as a Canadian citizen had been violated.

Under the Nisga'a system, could Peters have pulled out of the indigenous nation by claiming non-membership? Could his lack of consent to being initiated have been legitimately overruled by the indigenous community? What kind of help to the indigenous community would a Nisga'a type of self-government have been in the case of Joseph Peters?

First, in order to be treated as an ordinary Canadian citizen, Peters would have had to stay off the relevant First Nation's citizenship register in advance of his conflict with his initiators. Had he done so, any action by his would-be initiators would have been subject to his consent. Had they initiated him without his consent, he could have sued them in the B.C. Supreme Court and won — just as he actually did. On the other hand, had he previously applied for and obtained citizenship in the indigenous nation, things get complicated.

We have first to remember that this *syewen* initiation is not a punishment: it is "healing." In the Nisga'a Agreement, therefore, it would conceivably be

⁴⁸ This lawsuit is analyzed in detail in Denis, *supra* note 30. For reasons of respect for the people involved in the lawsuit that was brought in British Columbia in the late 1980s, "Peters" and "Campbell" are aliases — which means that *Peters v. Campbell* cannot be found in court records.

regulated by the paragraphs on Health Services and Aboriginal Healers in the chapter on Nisga'a Government.⁴⁹ In cases where there is conflict between Nisga'a law and federal/B.C. law, the latter prevails with regard to Health Services, but the former prevails when it comes to Aboriginal healers. It is not clear how a conflict between these two types of settlement would be resolved. In addition, the chapter on the Administration of Justice forbids the establishment of "places of confinement, other than jails or lockups" operated by the police service.⁵⁰ Chances are that conducting coercive *syewen* initiations and establishing the places of confinement necessary for them would be disallowed unless further negotiations widened the possibilities.

Let us suppose that such negotiations happened and that coercive initiations became legal. In such a situation, the indigenous justice system would become involved in one of two ways: either only *after* the initiation, to deal with Peters' complaint against his initiators, who would have acted under the authority of Aboriginal Health Services; or, if the story began with Peters himself going to trial for some presumed offence, and the First Nations court finding that he needed to be healed. In the first case, given that the *Charter* applies to Nisga'a self-government, Peters could have gone to the B.C. Supreme Court and claimed that his rights under the *Charter* had been violated — and he likely would have won. In the second case, if the potential sentences included prison (as well as a coercive initiation) Peters would have had the option of asking to be tried by the B.C. Court. Given a sentence of coercive initiation, he could have challenged it by invoking the *Charter*, and he could well have won.

Under the Nisga'a regime, then, the integrity of such traditional practices as *syewen* remains vulnerable to the consent *at any time* of the person who is being "helped," and who may well be considered deviant by the community. In other words, under the Nisga'a regime, the outcome of the Peters initiation could easily have been the same as what actually happened: a lawsuit would have delegitimated *syewen* as a means of discipline, and therefore destructured the Salish people as a self-governing community; or, at his own trial, Peters could have opted for the B.C. Court or issued a *Charter* challenge.

⁴⁹ See *Nisga'a Final Agreement*, *supra* note 5, "Nisga'a Government," ss. 82–88, c. 11.

⁵⁰ See *Nisga'a Final Agreement*, *supra* note 5, "Administration of Justice," ss. 29. Section 28(b), c. 12; however, allows for possible agreements between Canada and the Nisga'a Nation "for the provision of services or programs for adult and young offenders, including their care and custody."

THE CONSTRUCTION OF NUNAVUT AND ITS IMPACT ON COLLECTIVE IDENTITY IN THE CANADIAN EASTERN ARCTIC

André Légaré*

The author examines the symbolic and spatial construction of Nunavut, as well as the impact of the birth of a territory on the collective identity of the Inuit. Légaré tries to understand how a region is constructed from specific cultural traits and how such a region is used to create a collective identity. Then again, the author emphasizes the fact that the redefinition of the Aboriginal collective identity of Nunavut is carried out through a non-Aboriginal process, that is, through the Canadian government.

L'auteur se penche sur la construction symbolique et spatiale du Nunavut, ainsi que sur l'impact de la naissance du territoire sur l'identité collective des Inuit. Légaré tente de comprendre comment une région est construite à partir de traits culturels spécifiques et comment une telle région est utilisée pour créer une identité collective. Là encore, l'auteur souligne que la redéfinition de l'identité collective autochtone du Nunavut se fait à travers un processus non-autochtone, c'est-à-dire à travers celui du gouvernement canadien.

INTRODUCTION

In 1999, a new political entity emerged in Canada. The Nunavut¹ Territory was carved out of the Northwest Territories (NWT) on 1 April 1999.² It is the largest political unit in Canada, covering one-fifth (2,121,102 km²) of the Canadian land mass. Nevertheless, this vast geographic area is sparsely inhabited by only 27,000 people, the majority of whom (eighty-two per cent) are Inuit.³ Nunavut's tiny population is scattered among twenty-seven far-flung communities. The capital city of Iqaluit is the largest community with only 5000 people.

Nunavut was first proposed in 1976 by the Inuit Tapirisat of Canada (ITC), the institution representing the political interests of Canadian Inuit. The Nunavut

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¹ "Nunavut" is an Inuktitut word which translates into English as "Our Land."

² A. Légaré, "An Assessment of Recent Political Development in Nunavut: The Challenges and Dilemmas of Inuit Self-Government" (1998) 18 Can. J. Nat. Stud. 271.

³ "Inuit" is an Inuktitut word which in English means: "The People." Although it is not grammatically correct, I sometimes use the word "Inuit" as an adjective. In addition, the word "Inuk," also found in this paper, is the singular form of Inuit referring to one person.

proposal⁴ was aimed at settling the outstanding land and political claims of the Inuit peoples living in the NWT. The basic idea behind the proposal was to create a Territory in which the vast majority of people would be Inuit.

The reasons the Inuit pushed for their own political unit in the 1970s were three-fold. First, there was the absence of any land cession treaty with the Canadian government. Second, the Inuit possess a demographic majority and thus there exists cultural homogeneity in the Canadian Eastern Arctic. Third, the Inuit desired to control their own political, social, and economic agendas.⁵ Ultimately, the ITC shared the idea that a Nunavut Territory would better reflect the geographical extent of Inuit traditional land use and occupancy in the Canadian Eastern Arctic, while its institutions would adhere to Inuit cultural values and perspectives.⁶

This paper will explore the symbolic and spatial construction of Nunavut, with particular attention paid to its impact on the collective identity of the Inuit.⁷ The primary question is centred on how a people's cultural traits have contributed to delineating the boundaries of a region, and how the regional symbolisms born from that process were used to shape a common collective regional identity. Asked another way: how is an emergent regional political unit spatially delimited, and how does it simultaneously define a corresponding collective identity? Answering this question is the main objective of this paper, and it opens up the opportunity to explore other important questions such as: which essential Inuit cultural indicators contributed to the spatial construction of Nunavut? Which symbols were used to create a collective identity within this new political unit? Which Inuit and non-Inuit actors were involved in the construction of Nunavut? Why did the idea of Nunavut emerge, and which alternative spatial conceptions of Nunavut were rejected?

To answer these questions, notions pertaining to collective identity and region as socially constructed categories will be explored.⁸ I will examine how

⁴ Inuit Tapirisat of Canada, *Nunavut: A Proposal for the Settlement of Inuit Lands in the Northwest Territories* (Ottawa: ITC, 1976) [hereinafter ITC].

⁵ A. Légaré, "The Process Leading to a Land Claims Agreement and its Implementation: The Case of the Nunavut Land Claims Settlement" (1996) 16 Can. J. Nat. Stud. 139.

⁶ ITC, *supra* note 4 at 15.

⁷ This paper will focus primarily on the notion of collective identity from a regional level.

⁸ Research and writings on social constructionism began as part of the field of sociology in the 1970s. Social constructionism was linked to the 1970s phenomenological current of thought, which argued that everything about the world was invented or imagined by humans

a region is constructed from specific cultural traits and how such a region, embedded with regional symbolisms, is used to create a common feeling of togetherness among all its residents, leading to a collective identity.

Before answering these, I wish to raise a caveat. I am not trying to ascertain a micro-level or supranational-level of collective identity among the general Inuit population of the Canadian Eastern Arctic based on individual surveys, but rather I intend to obtain an indication of the socio-political symbols used regionally by actors while Nunavut was under construction. The focus, therefore, is on the “elite.” An examination of how the concepts of “Nunavut” and “Nunavummiut”⁹ are absorbed by the general Inuit and non-Inuit population is beyond the scope of this paper.

DEFINING THE CONCEPTS

The intellectual context of this research is shaped by writings and traditions found in the works pertaining to political geography, focusing specifically on the concept of political space and group identity within such a space.

(H. Blumer, “Social Problems as Collective Behaviour” (1971) 18 Soc. Problems 291; M. Spector & J.I. Kitsuse, *Constructing Social Problems* (Menlo Park, Calif.: Cumming Publishing, 1977)). Social constructionism is defined as the process through which certain people assign meaning to the world based on some assumptions of cultural and political conditions (J. Best, ed., *Images of Issues: Typifying Contemporary Social Problems* (New York: Aldine De Gruyter, 1989)). In the 1980s and 1990s, many geographers adapted the concept of social construction to the field of political geography (C.H. Williams, “Conceived in Bondage — Called unto Liberty: Reflections on Nationalism” (1985) 9 Progress in Human Geography 331; F.W. Riggs, “What is Ethnic? What is National? Let’s turn the tables” (1986) 13 Can. Rev. Stud. in Nationalism 111; A. Paasi, “Deconstructing Regions: Notes on the Scales of Spatial Life” (1991) 23 Progress in Human Geography 239 [hereinafter “Deconstructing Regions”]; P. Jackson & J. Penrose, eds., *Constructions of Race, Place, and Nation* (London: UCL, 1993); D. Massey, *Space, Place, and Gender* (Cambridge: Polity Press, 1994)). This concept was introduced to question the uncritical use of certain political categories such as “region” and “identity.”

⁹ “Nunavummiut” is a Inuktitut word meaning “the people of Nunavut.” It applies to both Inuit as well as to non-Inuit citizens of Nunavut. “Nunavummiut” is a derivative from the Inuktitut word “Nunammiut” which means “the people of the land.”

Regions

The concept of “regions” has been, and still is, one of the basic categories of geographical thought. For traditional geographers such as Hartshorne,¹⁰ James,¹¹ and Hart¹² a region is commonly regarded as a part of the Earth’s surface which possesses the quality of cohesion. Such regions are always defined by specific criteria of homogeneity (*e.g.* physiographic regions, economic regions, political regions, *etc.*). Thus, in traditional geographic thought, a political region is defined as a political spatial unit found within a State where the cultural is dissociated from the political.¹³

This idea of a political region with its common territory, institutions and citizenship, detached from any cultural referents is, I believe, too limited. It fails to consider that a region has recognizable cultural characteristics that are specific to that area.

In fact, a political region should not be treated as a simple political spatial framework, but should instead be seen as a dynamic manifestation of political, historical and cultural processes.¹⁴ In the context of this paper I define a region as an existing or an emergent political administrative unit (*e.g.* Nunavut, Nunavik, Québec, Greenland, Scotland, *etc.*), located within a nation-state (*e.g.* Canada, Denmark, United Kingdom, *etc.*).

One must not assume that a region is some sort of given political administrative unit; rather the region is the arena of political processes (*i.e.* government and administrative institutions) and the cradle of various cultural processes (*i.e.* languages, customs, *etc.*). To that end, I argue that a region is socially constructed. It embodies a collection of physical, historical and cultural meanings which, in turn, awake in a group of people a common collective regional identity that tends to emphasise their differences from other surrounding groups of people. However, questions remain as to what identity is and how one

¹⁰ R. Hartshorne, *Perspective on the Nature of Geography* (Chicago: Rand McNally, 1959).

¹¹ P. James, “Introduction: The Field of Geography” in P. James & C. Jones, eds., *American Geography: Inventory & Prospect* (Syracuse: Syracuse University Press, 1954) 2.

¹² J.F. Hart, “The Highest Form of the Geographer’s Art” (1982) 72 *Annals of the Assoc. of American Geographers* 1.

¹³ James, *supra* note 11 at 123.

¹⁴ A. Paasi, “The Institutionalization of Regions: a theoretical framework for understanding the emergence of regions and the constitution of regional identity” (1986) 164 *Fennia* 105 at 110 [hereinafter “The Institutionalization of Regions”].

defines collective identity. Moreover, how can one decipher between regional, territorial and cultural identities? What are their similarities and their differences?

Collective Identity

The second concept to be explored is the idea of “collective identity,” a term which has been used in a variety of ways. A collective or group identity is but one of many identities in an individual repertoire.¹⁵ Actually each individual may identify himself or herself with several social characteristics: a country, a region, a culture, a religion, a gender, a political party, an economic status and so on. He or she may belong to all of these social characteristics at the same time.¹⁶ None of us has a single identity; as members of a society, each of us occupies a number of statuses and plays a variety of roles. This brings us to the question, What is identity?

According to scholars, there is not one thing called identity.¹⁷ Identity is an idea that is hard to define. It is, in its essence, a social construct, just as one’s own conscious identity is a product of one’s meeting with different forms of others’ identities. Researchers have generally established that an individual may identify himself or herself with others on three levels.¹⁸ First, a personal level where one may identify oneself with some important persons in one’s life (*e.g.* family, friends, co-workers). Second, a social level where one may identify oneself with certain social groups (*e.g.* a gender, a sexual orientation or an economic activity such as hunting). Third, a group level where one may identify oneself with a broad category of persons (*e.g.* a cultural group or a political unit). The last level is the focus of this paper.

¹⁵ M. Mackie & M.B. Brinkerhoff, “Ethnic Identification: Both Sides of the Border” (1988) 20:2 Can. Ethnic Stud. 101.

¹⁶ E.E. Roosens, *Creating Ethnicity: The Process of Ethnogenesis* (Newbury Park, Calif.: Sage Publications, 1989) at 16 [hereinafter *Creating Ethnicity*].

¹⁷ S. Hall, “Cultural Identity and Diaspora” in J. Rutherford, ed., *Identity: Community, Culture, Difference* (London: Lawrence & Wishart, 1990); R. Breton, “The Production and Allocation of Symbolic Resources: an Analysis of the Linguistic and Ethnocultural Fields in Canada” (1984) 21:2 Can. Rev. Socio. & Anthro. 123; L. Driedger, *The Ethnic Factor: Identity and Diversity* (Scarborough: McGraw-Hill Ryerson, 1989) [hereinafter *The Ethnic Factor*].

¹⁸ *The Ethnic Factor*, *ibid.*; *Creating Ethnicity*, *supra* note 16.

An examination of academic commentary on collective identity tends to reveal two distinct forms of collective identities: cultural and territorial.¹⁹ Cultural identity is referred to as a person's attachment to a particular cultural group (*e.g.* Inuit), while territorial identity is referred to as a person's attachment to a political unit (*e.g.* Nunavut).

Cultural identity has often been portrayed as transparent or unproblematic.²⁰ However, as is well translated in Jenkins' works, one should not portray cultural identity as some sort of immutable bundle of cultural traits.²¹ In fact, there is no pure cultural identity resting on some essentialist past. Rather, as Hall expresses, cultural identity is based on a re-telling of the past; where past cultural events are mediated by various actors (*e.g.* governments, cultural organizations, *etc.*) who, for political or social gain, reconstruct past symbols and memories.²² Cultural identity becomes a socially constructed category which undergoes constant transformation. It is subject to the continuous play of history and power.

Territorial identity (also called political or civic identity) is based on a group of people sharing a common political unit where cultural belongingness is dissociated from the political aspect of the political entity.²³ The political unit is the essential ingredient in a people's identity; it is where individuals identify with a territory, and it is the place within which people's activities can take place. Although it is understood that there are several levels of territorial identities in one's repertoire (*i.e.* local, regional, national, international), this paper is primarily concerned with identity in Nunavut.

As with cultural identity, regional identity is mediated and socially constructed by various actors who draw upon a group's repertoire of political symbolisms in order to shape a group's regional identity. In so doing actors emphasize group homogeneity within a particular political region, while pressing differentiation from neighbouring regions: “[T]he region is defined as a specific

¹⁹ *Creating Ethnicity*, *supra* note 16; G.A. De Vos & L. Romannucci-Ross, eds., *Ethnic Identity: Creation, Conflict, and Accommodation* (London: Sage Publications, 1995); L. Driedger, C. Thacker, & R. Currie, “Ethnic Identification: Variations in Regional and National Preferences” (1982) 14:3 *Can. Ethnic Stud.* 57.

²⁰ Hart, *supra* note 12.

²¹ R. Jenkins, “Rethinking Ethnicity: Identity, Categorization and Power” (1994) 17:2 *Ethnic & Racial Stud.* 197.

²² Hall, *supra* note 17 at 225–26.

²³ A.D. Smith, “The Myth of the Modern Nation and the Myth of Nations” (1988) 11:1 *Ethnic & Racial Stud.* 1 at 10.

set of cultural relationships between a group and particular places. It is based on a certain awareness among its inhabitants of their common culture and of their differences from other groups.”²⁴

Some scholars have tried to define collective identity as either primarily territorial where one’s association with his or her region is a key factor in one’s identity (*e.g.* Nunavummiut, Nunavimmiut, Labradorimiut), or primarily cultural where geopolitical referents are absent from one’s identity (*e.g.* Inuit).²⁵ Recent research on Inuit collective identity conducted by various scholars²⁶ shows us that the Inuit of the Canadian Eastern Arctic²⁷ are at a transitional stage of the identity process. They still choose to identify themselves primarily in cultural ways (*i.e.* Inuit), but will use various spatial referents (*e.g.* Inuit of the circumpolar world, Inuit of Canada, or Inuit of Nunavut). For now, most adhere only secondarily to a collective regional identity (*i.e.* Nunavummiut).

However, as it has been shown in the case of the Inuit of Greenland who now call themselves Greenlanders, one may predict that the Inuit of the Canadian Eastern Arctic will adhere more and more to a regional collective identity (*i.e.* Nunavummiut): “Group identity is changeable, it can move from primarily cultural to primarily regional.”²⁸ Still, one must not assume that cultural identity has no land referent or that regional identity has no cultural values embedded within it.

Actually, several scholars consider the attempt to define collective identity through two different approaches (cultural and territorial) as counter

²⁴ A. Gilbert, “The New Regional Geography in English and French-speaking Countries” (1988) 12 *Progress in Human Geography* 208 at 210.

²⁵ De Vos & Romanucci-Ross, *supra* note 19 at 28.

²⁶ J. Dahl, “From Ethnic to Political Identity” (1988) 57:3 *Nordic J. of Int’l L.* 312; L.J. Dorais, “Language, Culture and Identity: Some Inuit Examples” (1995) 15 *Can. J. Nat. Stud.* 293 [hereinafter “Language, Culture and Identity”]; L.J. Dorais, *Quaqtaq: Modernity and Identity in an Inuit Community* (Toronto: University of Toronto Press, 1997); B. Saladin d’Anglure, “L’ethnicité, un outil politique pour les autochtones de l’Arctique et de l’Amazonie” (1995) 19:1 *Études\Inuit\Studies* 37.

²⁷ The term “Inuit of the Canadian Eastern Arctic” is a generic geographical term which has no meaning as a concept for Inuit collective identity. In this paper the term is used solely for the purpose of locating the subject group.

²⁸ Dahl, *supra* note 26 at 315.

productive.²⁹ One may contend that there is no pure territorial identity where all cultural features are completely disconnected from a given political unit. A territorial identity can be interpreted as a complex collection of cultural and territorial group consciousness.

I define collective identity primarily as a sense of belonging to a particular region and a particular culture. The concept is not a given, but rather it is subjectively based as it is generally tied to cultural orientations, political values and languages.³⁰ Like many other scholars,³¹ I share the idea that one's collective identity is a socially constructed concept determined by the geographical, the political and the cultural contexts through which one is raised and lives. Consequently, collective identity is set according to regions, cultural communities and social groupings.

Now that we have examined the concepts of region and collective identity, it is time to address the main questions posed in this paper: How is a region and a group's collective identity constructed? How is space implicated in the construction of a group identity?

THE BUILDING BLOCKS OF A COLLECTIVE IDENTITY: EXAMINING THE ROLES OF ACTORS, BORDERS, AND SYMBOLS

A collective identity is engraved on a group of people by actors who will subjectively use symbols and geopolitical borders to highlight the differences between that group and other groups.³² In so doing, sentiments toward a given land, and the cultural symbolisms attached to it, become essential in forging a collective identity.

²⁹ D.R. Reynolds, "Political Geography: the Power of Place and the Spatiality of Politics" (1994) 18 *Progress in Human Geography* 234; D. Newman & A. Paasi, "Fences and Neighbours in the Postmodern World: Boundary Narratives in Political Geography" (1998) 22 *Progress in Human Geography* 186; *The Ethnic Factor*, *supra* note 17.

³⁰ A. Légaré, *The Evolution of the Government of the Northwest Territories (1967–1995): The Debate over its Legitimacy and the Emergence of Nunavut and Denendeh* (Québec: GETIC, 1998) at 3.

³¹ Jenkins, *supra* note 21; L.W. Pye, "Identity and the Political Culture" in L. Binder, ed., *Crises and Sequences in Political Development* (Princeton: Princeton University Press, 1971) 101; Reynolds, *supra* note 29; "Deconstructing regions," *supra* note 8.

³² E.D. Said *et al.*, eds., *Nationalism, Colonialism, and Literature* (Minneapolis: University of Minnesota Press, 1990); Massey, *supra* note 8; "Deconstructing Regions," *supra* note 8.

The Mediating Role of Actors

To comprehend the emergence of a regional collective identity among a group, one must first understand the crucial role played by actors such as political and social institutions. These actors may come from inside and from outside of a given region. Through their actions, they reinforce the significance and the role of cultural practices as building blocks for a collective identity.

Actors manipulate, and even recreate or invent a group's cultural characteristics in order to attain their political objectives.³³ In fact, the collective identity of a group of people never comprises the totality of the observable culture; instead it is only a combination of selected characteristics that actors ascribe and consider relevant. Actors will present their own interpretations of cultural traits as "the truth."³⁴ Furthermore, to communicate these messages to the population, public forums (*e.g.* information sessions held by actors within the concerned communities) and mass media will be used.³⁵ Ultimately, the production and reproduction of regions and collective identities occurs through contested efforts expressed by all actors.

In the Canadian Eastern Arctic, actors like the federal and territorial governments and Aboriginal organizations like the Inuit Tapirisat of Canada, Tungavik Federation of Nunavut (TFN), Nunavut Tunngavik Incorporated (NTI), Nunavut Implementation Commission (NIC), Office of the Interim Commissioner (OIC), the Inuvialuit and Dene-Métis Nations, are the main players in both the construction of Nunavut's geopolitical boundaries, and in the emergence of a regional identity for the residents of Nunavut.

The social constructionist approach teaches us that one can place these actors in three categories:³⁶ (1) claim-makers (*i.e.* ITC, TFN, NTI, NIC, OIC, and the Nunavut government), (2) policy-makers (*i.e.* the federal government along with its agent the Department of Indian and Northern Affairs, and the government of the NWT), (3) stakeholders (*i.e.* the NWT population, the Inuvialuit, the NWT Dene-Métis Nations, the Denesuline Nation of Northern Saskatchewan, the

³³ Roosens, *supra* note 16; D.B. Knight, "Identity and Territory: Geographical Perspectives on Nationalism and Regionalism" (1982) 72:4 Annals of the Association of American Geographers 514.

³⁴ Roosens, *supra* note 16 at 156.

³⁵ "Deconstructing regions," *supra* note 8 at 246.

³⁶ Spector & Kitsuse, *supra* note 8; Best, *supra* note 8; V. Lemieux, *La Structuration du Pouvoir dans les Systèmes Politiques* (Québec: Presses de l'Université Laval, 1989).

Sayisi Dene of Manitoba, the Inuit of Northern Quebec and of Labrador and the James Bay Cree). What sort of interaction exists between these actors in Nunavut when the formation of a collective identity occurs?

Claim-makers are the internal actors. They represent the Inuit people by formulating the claimant group's demands and submitting them to the policy-makers. Claim-makers also organize and educate the people about the claim, and they inform the policy-makers and stakeholders about their intentions. Policy-makers receive the claim and have to adopt and implement solutions. To that end, they put forward public policy which is used as a guideline by all actors involved in the construction of Nunavut. Stakeholders are representatives of other Aboriginal groups who have traditionally harvested some portions of land within the claimed area. They want to make sure that their ancestral Aboriginal land rights will remain intact once Nunavut is created. In addition, through their land use and occupancy studies, they may also influence the location of Nunavut's boundaries.³⁷

The Formation of Geopolitical Borders

Geopolitical borders, by definition, are lines of separation and contact between regions.³⁸ Even though borders are more or less arbitrary lines between territorial entities, they also have deep symbolic, cultural and historical meanings. They have always played a key role in the development of a group's collective identity.³⁹ In fact, groups often conceptualize their identity within the context of geopolitical boundaries. The borders must be seen as a determining force; all those who live within a given region share a common existence resulting from geographical and political propinquity. Borders are a means of socially and politically securing the identity of a group of people.⁴⁰

³⁷ Indian Brotherhood of the Northwest Territories, *Dene Map Project* (Yellowknife: IBNWT, 1975); C. Brice-Bennett, ed., *Our Footprints are Everywhere: Inuit Land Use and Occupancy in Labrador* (Nain: Labrador Inuit Association, 1977); P.J. Usher, *Recent and Current Land Use and Occupancy in the Northwest Territories by Chipewyan-Denesutine Bands* (Ottawa: P.J. Usher Consulting Services, 1990).

³⁸ Newman & Paasi, *supra* note 29 at 191.

³⁹ R.W. Widdis, "Borders, Borderlands and Canadian Identity: A Canadian Perspective" (1997) 15 Int'l J. Can. Stud. 49 at 50.

⁴⁰ Newman & Paasi, *supra* note 29 at 195.

Boundaries both create identities, and are created by identity.⁴¹ One may say that identity and border construction are different sides of the same coin. When geopolitical boundaries do not already exist, their formation will often emerge as a result of diverging cultural and political practices.⁴² Boundaries, then, will be related to specific historical and cultural factors.⁴³ Thus, borders should be understood as the spatial outcome of various societal processes, where the production of geopolitical boundaries becomes a form of constructing and reinterpreting cultural space.⁴⁴

The concept of space delimited by people's history, customs and traditions are at the centre of a region's territorial shape. If, as in the case of Nunavut, geopolitical boundaries do not already exist and are not clearly demarcated, then claim-makers will strive to establish political boundaries which correspond as much as possible to cultural boundaries. However, they will also have to take into account the fact that the boundaries of a region might not necessarily correspond exactly to the cultural space of the dominant cultural group living within that region.⁴⁵

Ultimately, the quest for claim-makers is to achieve a close congruence between a group's cultural space and the territorial shape of the corresponding region. Such a region will then be embedded with the cultural practices of the demographically dominant group within that region. In consequence, the territorial shape of the region would be looked upon as reflecting the historical and traditional cultural space of the dominant group of that region. This in turn will facilitate the identity conversion, and will help to cement a collective regional identity.

⁴¹ *Ibid.* at 194.

⁴² A. Paasi, "Constructing Territories, Boundaries and Regional Identities" in T. Forsberg, ed., *Contested Territory: Border Disputes at the edge of the Former Soviet Union* (Helsinki: Finnish Institute for International Affairs, 1995) at 44.

⁴³ J.R.V. Prescott, *Political Frontiers and Boundaries* (Boston: Allen & Unwin, 1987) at 123.

⁴⁴ Cultural space is the geographical area occupied by a distinct cultural group of people (e.g. the Inuit, the Acadian, Cree, etc.). R. Jackson & L. Hudman, *Culture Geography: Peoples, Places and Environment* (New York: West Publishing Company, 1995) at 30.

⁴⁵ "Homogeneous regions" are those where political and cultural boundaries coincide. Such regions, however, remain rare occurrences (C.H. Williams, "Identity Through Autonomy: Ethnic Separatism in Quebec" in A.D. Burnett & P.J. Taylor, eds., *Political Studies from Spatial Perspectives: Anglo-American Essays on Political Geography* (Toronto: John Wiley & Sons, 1981) 389 at 391).

For Nunavut, the policy which structured the negotiation between all actors was based on the federal government's Aboriginal Comprehensive Land Claims Policy.⁴⁶ The policy states that in exchange for proof of use and occupancy of the land, an Aboriginal group may hold land ownership and land management control over vast geographical areas.⁴⁷ This policy is rooted in moral conceptions of fairness and of just compensation for Euro-Canadian society's failure to grant moral validity to claims of prior occupancy by an Aboriginal group.⁴⁸

In an effort to maintain control over parcels of land in the Canadian Eastern Arctic, in 1974 the ITC initiated a land use and occupancy study to determine the spatial extent of certain cultural Inuit traditions.⁴⁹ The purpose of the study, published two years later in a report entitled *Inuit Land Use and Occupancy Project*,⁵⁰ was to prove to the government that Inuit have used and occupied virtually all of the land and oceans in the Canadian Eastern Arctic for more than 4,000 years.

Some 1,600 map biographies, collected from Inuit hunters and depicted in the Land Use and Occupancy Report, trace the territory over which each hunter has ranged in search of game.⁵¹ As is well portrayed in the works of Giddens,⁵²

⁴⁶ Department of Indian Affairs and Northern Development, *Indian Affairs Policy Statement* (Ottawa: Supply and Services Canada, 1973).

⁴⁷ *Ibid.* at 22.

⁴⁸ J.R. Ponting, *First Nations in Canada: Perspectives on Opportunity, Empowerment, and Self-Determination* (Toronto: McGraw-Hill Ryerson, 1997) at 357.

⁴⁹ The funds for this study were provided by the federal government as part of its Native Land Claim Policy.

⁵⁰ Milton Freeman Research Limited, *Inuit Land Use and Occupancy Project* (Ottawa: DIAND, 1976).

⁵¹ In order to avoid any conjecture as to the location of Inuit harvesting activities, the map biographies represent only the harvesting journeys travelled by living Inuit hunters (Department of Indian Affairs and Northern Development, *Progress in Negotiation of Eastern and Central Arctic Claim* (Ottawa: DIAND, 1983)). Thus, these maps delineate the Inuit cultural space as it existed all the way back to the 1920s and do not necessarily take into account areas travelled by historical Inuit groups. In sum, these map biographies provide a modern picture of Inuit cultural space.

⁵² A. Giddens, *A Contemporary Critique of Historical Materialism* (Berkeley: University of California Press, 1981).

Brody⁵³ and Sterritt,⁵⁴ groups which, until recently, were nomadic do possess a conception of territoriality. It is different, however, from that of Euro-Canadians: “[N]omadic societies occupy definite, if only diffusely bounded social spaces which they lay claims to.”⁵⁵

Besides the location of harvesting journeys, Inuktitut place names also played a crucial role in determining the spatial extent of Inuit occupancy. Research on nomadic societies⁵⁶ has demonstrated that the extent of a group’s cultural space is clearly produced by the termination of place names relating to one’s group, and the beginning of those of another: “Names ... indicate ownership by a person or a group. More importantly, they establish power and territorial claim.”⁵⁷ In addition, historical cultural signs such as old camp sites, burial grounds, and cairns⁵⁸ also helped to locate the extent of Inuit land occupancy in the Canadian Eastern Arctic.

The gathering of hunter’s mental maps and of Inuit historical sites, resulted in the publication of an Inuit cultural space map within the Canadian Eastern Arctic.⁵⁹ Claim-makers used such a map to determine the likely geographical extent of the claimed Nunavut region.

In sum, to help delineate Nunavut’s geopolitical boundaries, the geographical location of specific cultural and historical indicators were used by the ITC such as Inuit hunters’ harvesting journeys, cairns, camp sites, burial grounds and Inuktitut place names. These indicators constitute the cornerstones of Nunavut’s territorial shape.

⁵³ H. Brody, *Maps and Dreams: Indians and the British Columbia Frontier* (Vancouver: Douglas & McIntyre, 1988) [hereinafter *Maps and Dreams*].

⁵⁴ N.J. Sterritt et al., *Tribal Boundaries in the Nass Watershed* (Vancouver: University of British Columbia Press, 1998).

⁵⁵ Giddens, *supra* note 52 at 45.

⁵⁶ T.C. Correll, “Language and Location in Traditional Inuit Societies” in M.M.R. Freeman, *Inuit Land Use and Occupancy Study*, vol. 2 (Ottawa: DIAND, 1976) 173; *Maps and Dreams*, *supra* note 53; B. Collignon, “The Variations of a Land Use Pattern: Seasonal Movements and Cultural Change Among the Copper Inuit” (1993) 17:1 *Études\Inuit\Studies* 71.

⁵⁷ M. Nuttall, *Arctic Homeland: Kinship, Community and Development in Northwest Greenland* (Toronto: University of Toronto Press, 1992) at 50.

⁵⁸ Cairns are man-made piles of stones used as reference points over the treeless Arctic landscape.

⁵⁹ Freeman Research, *supra* note 50 at 167–68.

Although the territorial shape of Nunavut does largely reflect the spatial extent of Inuit cultural space in the Canadian Eastern Arctic, other factors also had to be taken into account. Rather than undertake the dangerous and politically dangerous task of drawing Nunavut's boundaries to coincide precisely with Inuit cultural space in the Canadian Eastern Arctic, claim-makers did not request jurisdiction over land beyond the southern border of the present NWT.

The southern boundary of the present NWT was established in 1912 and follows the northern extent of provincial boundaries. As a result of the principle of territorial integrity, no province would have acquiesced to a reduction of their northern lands to transfer them to an emerging Nunavut region, despite the fact that some of these northern lands (*e.g.* Québec, Manitoba and Labrador) may have been occupied by or used by Canadian Eastern Arctic Inuit in the past. To facilitate the boundary delineation process, the ITC requested that the borders of Nunavut be in close congruence with other political boundaries already in existence in the NWT (*i.e.* Nunatsiaq federal electoral district), with boundaries that existed in the past (*i.e.* Arctic Islands Game Preserve, 1926–1946⁶⁰) or with proposed past boundaries (*i.e.* Nunatsiaq Territory, 1962⁶¹). To that end, ITC first suggested that all of the land north of the NWT treeline be part of a future Nunavut Territory.

The social construction of a region's territorial shape is influenced not only by internal actors, but also by external ones. Once the federal government accepted the idea of creating Nunavut, it supported an eastern border for Nunavut which would follow the existing NWT geopolitical boundary around Hudson Bay and James Bay.⁶² This border was supported despite the fact that the

⁶⁰ On 19 July 1926, a Canadian Order in Council was adopted which created the Arctic Islands Game Preserve. The whole purpose of the Preserve was to protect both the Natives and the wildlife and to place something on the map to indicate that the Canadian government controlled and administered the area. The Preserve was abolished once Norwegian claims to the area had been settled (D. Pharand, *Canada's Arctic Waters in International Law* (Cambridge: Cambridge University Press, 1988) at 52–54).

⁶¹ In 1962, the NWT Council asked the federal government to divide the NWT in two. Thus, the territories of Nunatsiaq and MacKenzie were proposed. The idea, originating from western NWT politicians and businessmen, was to permit the establishment of a responsible government for the more developed western part of the NWT. However, with the change of government in Ottawa in 1963, from Progressive Conservative to Liberal, the proposal died on the Order Paper (*supra* note 4 at s. 402.1).

⁶² Bill C-132, *Nunavut Act*, 3d Sess., 34th Parl., 1993, cl. 5.1.

waters and the islands in James Bay had never been used or occupied by the Inuit.⁶³

One should also not forget the pivotal role of other actors like the stakeholders in forging Nunavut's boundaries. Very few cultural spaces remain uncontested, and homogeneous divergent interests are bound to exist with regard to the use of the land in an area by other Aboriginal groups. For instance, very soon after the ITC presented its first map proposal, the ITC had to take into consideration the Inuvialuit land claim area.⁶⁴ In addition, the Dene-Métis claimed exclusive use of some land which had been selected by the Inuit as being solely occupied and utilized by them.⁶⁵

Today, the western boundary of Nunavut undercuts part of the cultural space of the Dene-Métis who now find some of their traditional hunting ground within Nunavut. This may constitute a cultural loss for the Dene-Métis peoples. The newly created Nunavut government will redefine these lands as part of the heartland of Inuit cultural space and, like any province, will jealously guard its geopolitical integrity. The claim-makers' actions will therefore threaten the continuing cultural ties that the Dene-Métis have with these lands located in Nunavut.

In addition to the Dene-Métis, the Denesuline of Saskatchewan, the Sayisi Dene of Manitoba, the James Bay Cree and the Inuit of Nunavik have also used some of the land which is now part of Nunavut for harvesting purposes. The likely loss of stakeholders' cultural spaces in Nunavut may be understood by the fact that in the process of constructing a region's territorial shape, claim-makers redefine the significance of the region as truly reflecting the cultural space of the region's dominant group of people.

⁶³ This course of action was chosen to avoid opening the century-old debate regarding provincial ownership of offshore islands in Hudson Bay and James Bay. H. Dorion, *et al.*, *Commission d'étude sur l'intégrité du territoire du Québec* (Québec: Gouvernement du Québec, 1970).

⁶⁴ The Inuvialuit, faced with oil and gas development in the MacKenzie Delta and the Beaufort sea areas, decided to come to a quick land claim settlement with the federal government in order to obtain financial benefits and control over the oil and gas development. In 1978, they pulled away from the Nunavut process initiated by the ITC, and came with their own claim which they called *Inuvialuit Nunangat*. In 1984, while the Nunavut claim was still under negotiation, the Inuvialuit signed their final land claim settlement with the federal government.

⁶⁵ W.C. Wonders, *Overlapping Land Use and Occupancy of Dene, Métis, Inuvialuit and Inuit in the Northwest Territories* (Ottawa: DIAND, 1984).

In sum, the social construction of Nunavut's geopolitical boundaries was determined by: (1) the spatial localization of certain past and present Inuit cultural practices over the claimed region; (2) the pre-existing presence of various borders; and (3) the interests of stakeholders who also used some of the same lands claimed by claim-makers. In the end, the interaction of these combined elements gave Nunavut its present territorial shape.

The Formation of Symbols

During the social construction of a region's boundaries, certain cultural or regional symbols are established through which the people learn the distinctiveness and the uniqueness of their region. These symbols canonize certain features which distinguish the region from others.⁶⁶ Thus, once a region's boundaries are determined, symbols are reinforced and are used as components in an emerging regional collective identity.⁶⁷ These symbols express the physical, social, psychological and political integration of a group of people within a particular region.

One should not perceive symbols as given or immutable, rather they change with time; they are forged in a social context and are continually reinvented. For scholars such as Roosens,⁶⁸ Driedger,⁶⁹ De Vos, Romanucci-Ross,⁷⁰ and Dybbroe⁷¹ it is clear that symbols are social constructions. However, they are not without factual foundation. Actually, symbols are borrowed from the constituent elements of a group's cultural identity. Roosens goes so far as to say that a culture manifests itself in the form of symbolism; in other words, cultural symbols are idealized versions of cultural traits.⁷²

Cultural symbols can be created from one's own tradition, or from other people's: "Groups often create their cultural symbolism based on outsiders perspectives of them."⁷³ Their predominant malleability make symbols

⁶⁶ "Deconstructing Regions," *supra* note 8 at 245.

⁶⁷ "The Institutionalization of Regions," *supra* note 14 at 125.

⁶⁸ Roosens, *supra* note 16.

⁶⁹ *The Ethnic Factor*, *supra* note 17.

⁷⁰ De Vos & Romannucci-Ross, *supra* note 19.

⁷¹ S. Dybbroe, "Questions of Identity and Issues of Self-determination" (1996) 20:2 Études/Inuit/Studies 39.

⁷² Roosens, *supra* note 16 at 155.

⁷³ De Vos & Romannucci-Ross, *supra* note 19 at 351.

remarkably flexible and useful as building blocks for a collective identity.⁷⁴ The meaning that one ultimately will give to them is largely determined by one's present.⁷⁵

Symbols are usually created to consolidate and to legitimize political claims, and to enhance the social status or economic advantages of a group of people. "A group can legitimize its claim by mythologyizing cultural symbols."⁷⁶ Symbols create a sense of belonging, a sense of purpose and a sense of continuing tradition.⁷⁷ Thus, to be efficient, symbols must be exaggerated and dramatized by actors who create a reinterpretation of a group's history in order to organize the social relevance of political or social claims.

Symbols are shaped and manipulated by certain actors in an attempt to communicate their vision of political and social development to other actors. Symbols are spread by internal actors (*e.g.* claim-makers) as much as by external ones (*e.g.* policy-makers): "The symbol system of a region can be based upon non-local forces shaping life in the region."⁷⁸ Actors' interpretations of symbols are not random, rather they are responsive to historical and political circumstances. Symbols are "invented tradition," they are used differently, at different times and their meaning may change over time. In sum, the use of symbols is an ongoing struggle on the part of actors for political gain.

Symbols legitimize and celebrate the existence of a common collective identity. They do not simply float in the minds of actors, but are manifested in the field of communication, and they also materialize in the forms of books, publicities and memorials.⁷⁹ The production of social and political symbols such as parades, ceremonies, flag days, *etc.*, reminds individuals that they are all members of the same unique region. In Nunavut, NTI has declared July 9 to be Nunavut's "national holiday" since on that date in 1993 the Nunavut Political Accord received royal assent.

Symbols provide people with the means to make meaning. Although the meaning that a group of people may attach to symbols may differ among the group's individuals, they still share similar symbols. Indeed, their common

⁷⁴ Roosens, *supra* note 16 at 161.

⁷⁵ *Ibid.* at 155.

⁷⁶ De Vos & Romannucci-Ross, *supra* note 19 at 351.

⁷⁷ *The Ethnic Factor*, *supra* note 17 at 146.

⁷⁸ "The Institutionalization of Regions," *supra* note 14 at 250.

⁷⁹ *The Ethnic Factor*, *supra* note 17 at 140.

ownership of symbols may be so intense that they may be quite unaware or unconcerned that they attach different meanings to them. For example, the Inuit stone monument called “Inukshuk” may have several interpretations.⁸⁰

For traditional Inuit hunters, Inukshuit are used as referent points on a treeless landscape, and as “scarecrows” over enclosed valleys in order to scare and to ambush game such as caribou. However, more recently, the Inukshuk has taken on other meanings. It has become the ideal pictorial tool for highlighting the distinctiveness of the region to outside observers. Thus, Inukshuit are found on Nunavut’s coat of arms and flag. They are pictured as emblems on many Inuit and non-Inuit political and economic organizations in Nunavut. Inukshuit are also utilized on Nunavut tourism promotion pamphlets. Even though the Inukshuk may have several meanings, actors have used this symbol to emphasize the uniqueness of the region.

In sum, a symbol like an Inukshuk functions quite effectively as a means of communication without its meaning being rigorously tested: “Symbols are effective because they are imprecise.”⁸¹ Symbols express things in ways which allow their common form to be retained and shared among the members of a group, while not imposing on these people the constraints of uniform meaning.

Regions are important repositories of symbols. The name of the region, its flag, as well as its printed political map are especially important symbols.⁸² Thus, the map of Nunavut is used as a logo on Nunavut’s Internet sites and on most Nunavut government documents. Nunavut’s territorial boundaries are also depicted on the 1999 Canadian two-dollar coin.

The proliferation of logo-maps depicting the geopolitical boundaries of a region cause among people a new self-consciousness about the land, and a new sensitivity to the territorial shape of the region. In sum, one may comprehend maps as cultural texts which construct the world.

⁸⁰ An Inukshuk is a cairn. Inukshuk is an Inuktut word whose translation into English is: “in the form of a person.” The plural of Inukshuk is Inukshuit.

⁸¹ A.P. Cohen, *The Symbolic Construction of Community* (London: Horwood & Tavistock, 1985) at 21.

⁸² “The Institutionalization of Regions,” *supra* note 14 at 125.

The name of a region, such as Nunavut,⁸³ is venerated above all other symbolic elements as the ultimate symbol of the region's group identity. It is the most widespread and diffuse word in the region. Further, the regional identity name, Nunavummiut, is derived from the region's name, Nunavut. In so doing, the name of the region connects its image with the regional consciousness of its inhabitants. Furthermore, the region's name carries its meaning to the outside world.

Today, several institutions spread throughout Nunavut make use of regional symbols in their names or on their logos. Organizations tend to employ as indicators only those symbols of the region which distinguish it from other regions.⁸⁴ For instance, institutions featuring on their logos the map of Nunavut, certain Arctic animals, an Inukshuk, an igloo or an Inuk are now common while such logos were unknown thirty years ago.

One can use the spatial diffusion of the territorial symbols of a region as a good indicator of the level of a region's formation.⁸⁵ For example, the wide spread diffusion of the network of organizations, businesses and companies carrying the name "Nunavut" demonstrates the spatial spread among the public of this new region. In 1970, the name "Nunavut" was unknown as a political symbol. However, twenty-five years later, in 1995, more than fifty-two companies and various organizations, located in Nunavut, included this spatial terminology as part of their institution's name identification.

Through the diffusion and creation of symbols, political and social traditions are being implemented and are being constantly expanded. In time, people develop an attachment to the symbols of a region. They create feelings of togetherness, transmit ideal criteria for collective identity, and maintain, as well as promote, the cultural uniqueness of a region.⁸⁶ Since the symbols are the same for all individuals living in the region, they help to create a regional bond among all regional residents of diverse cultural backgrounds: "Symbols remind people

⁸³ Like all other symbols, the word Nunavut may contain several meanings. In traditional Inuit society, the word was used to mean land familiar to Inuit hunting parties. However, since 1976 it has taken on a more political meaning, defining an emergent political unit.

⁸⁴ "The Institutionalization of Regions," *supra* note 14 at 130.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.* at 129.

that they have a common predicament, a common destiny, and common political institutions inexorably tied to the region.”⁸⁷

In sum, the formation of symbols is based largely on regional, cultural and physical elements of distinctiveness such as the Arctic climate and ecology, or the traditional Inuit economy of harvesting, which are reinterpreted by actors. Following a careful examination of the literature on Nunavut one may assert that the most reoccurring symbols of identity in Nunavut rest upon three forms of manifestations: (1) rituals (Nunavut holiday), (2) pictorial graphics (Nunavut’s flag, logo-map of Nunavut, Arctic wildlife, an igloo, an Inuk and an Inukshuk), and (3) social and political names (Nunavut, Nunavummiut). These forms of manifestation are exposed in various regional institution’s toponyms and largely communicated to the population through regional newspapers (*e.g. Nunatsiaq News*⁸⁸).

THE EMERGENCE OF A COLLECTIVE REGIONAL IDENTITY

As we have seen, the emergence of a collective identity happens when certain historically contingent geographical and cultural features, materialized in the form of symbols, are reinterpreted and mediated by actors and are instilled into the social fibre of a regional group of people. This “indoctrination” of people into a collective identity based on a region takes place in the various political and social practices of daily life encountered in the region, and in particular through the education system⁸⁹ and the mass media which carry the messages of the actors.

Thus, in the 1960s the education system implemented in Canada’s Arctic engendered a sense of large scale collective identity to the Inuit who until then

⁸⁷ C.H. Williams & A. Smith, “The National Construction of Social Space” (1983) 7:4 Progress in Human Geography 502 at 515.

⁸⁸ Throughout 1978, the term “Nunavut” was found fifty-seven times in all articles printed by the weekly newspaper *Nunatsiaq News*, while the word “Nunavummiut” was non-existent. In 1998, an examination of the same newspaper revealed that the word “Nunavut” appeared throughout the year 556 times, while the word Nunavummiut occurred 106 times.

⁸⁹ Paasi pretends that group identity consciousness normally develops in individuals at the approximate age range of twelve to twenty years (“Deconstructing Regions,” *supra* note 8 at 251). According to Paasi, it is at this time that social and political events have the most impact on the development of group identity. Thus, the curriculum of a region’s education system, in particular history and geography courses, plays a crucial role in shaping the minds of young people to the idea of sharing a common collective identity.

identified themselves through small groups (collective tribal identity⁹⁰). Reading some of the history of early contact between Inuit and Euro-Canadians, one concludes that in the Canadian Eastern Arctic the idea of instilling a collective regional identity in the Inuit first evolved in the 1960s. This evolution resulted from initiatives introduced by non-Aboriginal people, the introduction of the Inuit co-operative system and the suggestion of creating a new Territory in the Canadian Eastern Arctic. In fact, one may pretend that collective identity in the Canadian Eastern Arctic has evolved from being primarily tribal, in early and pre-contact times, towards a more regional concept in modern times. The origin of collective regional identity is, however, a non-Aboriginal category which was reaffirmed by claim-makers in the 1970s, through the Nunavut project.

With the establishment of the Nunavut government on 1 April 1999, and with the growth of additional Nunavut political institutions,⁹¹ one may expect a progressive assertion of collective identity in the region. Indeed, according to Paasi social and political institutions attempt to portray a region as reflecting a single collective history, culture and politics.⁹² This process is reinforced once a region is equipped with all its political institutions as it has been shown in Greenland.⁹³

⁹⁰ Historians and anthropologists have identified close to twenty Inuit traditional tribal groups in the Canadian Eastern Arctic: Ahirmiut, Sadlermiut, Igloolimiut, Netsilitmiut, etc. See D. Damas, ed., *Handbook of North American Indians*, vol. 5 (Washington: Smithsonian Institution, 1984); K.J. Crowe, *A History of the Original Peoples of Northern Canada* (Montreal & Kingston: McGill-Queen's University Press, 1991); K. Coates, *Canada's Colonies: A History of the Yukon and Northwest Territories* (Toronto: Lorimer, 1985); W.R. Morrison, *True North: The Yukon and Northwest Territories* (Toronto: Oxford University Press, 1998); H. Brody, *The People's Land: Inuit, Whites and the Eastern Arctic* (Toronto: Douglas & McIntyre, 1991). In fact, the generic term "Inuit" was used by these groups only when they were confronted, in traditional times, with Indian groups or more recently with Europeans. See N.M. Mitchell, *From Talking Chiefs to a Native Corporate Élite: The Birth of Class and Nationalism among Canadian Inuit* (Montreal: McGill-Queen's University Press, 1996).

⁹¹ A. Légaré, "The Government of Nunavut (1999): A Prospective Analysis" in J.R. Ponting, ed., *First Nations in Canada: Perspectives on Opportunity, Empowerment, and Self-Determination* (Toronto: McGraw-Hill Ryerson, 1997).

⁹² A. Paasi, *Territories, Boundaries and Consciousness: The Changing Geographies of the Finnish-Russian Border* (Rexdale: John Wiley & Sons, 1996).

⁹³ Before the establishment of Greenland's home-rule in 1979, the Greenland Inuit defined themselves in small-scale tribal groups. However, recent surveys conducted in the 1990s ("Language, Culture and Identity," *supra* note 26), have demonstrated that a majority of Inuit in Greenland now have a primary regional identity; Dahl, *supra* note 26.

Thus, as a region is being highlighted or constructed, the basis of membership in the collective identity becomes more reliant upon large-scale politico-spatial terms, and less and less reliant upon purely cultural terms or communal traditional terms. In today's Nunavut, the Inuit collective identity is redefined around large-scale political and spatial characteristics to incorporate all Inuit as well as the people of non-Inuit descent into a common identity: Nunavummiut. However, because of the dominant Inuit presence in the region, the "Nunavummiut identity" would inevitably inherit strong Inuit cultural foundations (*e.g.* the Inuktitut language would eventually be the official language of work for all Nunavummiut).⁹⁴

In sum, it is clear that the emergence of a collective identity in Nunavut was intimately linked and paralleled with the construction of its geopolitical boundaries. Symbols born as part of the territorial formation were used to instil among Nunavut's population a common group regional identity. Such collective identity is embedded with the region's cultural, spatial and political characteristics. How, then, can we best adapt a framework portraying what has been examined in this paper? In other words, can we find a model which will help us to understand the links between actors, borders and symbols which may allow us to conceptualize the process leading to the construction of a collective identity?

IN SEARCH OF A CONCEPTUAL MODEL

Few researchers have looked at how actors and socio-cultural characteristics of regions are employed in the formation of a common collective identity. In fact, to the best of my knowledge, Paasi through his "institutionalization model" is the only one who attempts to propose such a framework by examining how actors, borders and symbols interact with each other and are socially constructed.⁹⁵ The model has recently been used in the works of other social scientists.⁹⁶

⁹⁴ Nunavut Implementation Commission, *Footprints in New Snow* (Iqaluit: NIC, 1995).

⁹⁵ "The Institutionalization of Regions," *supra* note 14; "Deconstructing Regions," *supra* note 8.

⁹⁶ R.J. Johnston, "Approaches to the Study of Place" in R.J. Johnston, ed., *A Question of Place: Exploring the Practice of Human Geography* (Cambridge: Blackwell, 1991) 69; Reynolds, *supra* note 29.

Paasi's institutionalization model involves three stages.⁹⁷ The first is "the formation of territorial shape." At this stage, what Paasi calls "social practices"⁹⁸ help to delimit the spatial extent of a region. The second is "the formation of symbolic shape," where certain symbols and signs of a region are used to establish a common collective identity for a group of people. The third is "the formation of a collective identity," where the administrative and economic practices of the emerging region provide the foundation for a group's common collective identity. According to Paasi, all of these stages are symbiotic, occur simultaneously, influence each other and are mediated by certain actors.⁹⁹

However, to render Paasi's conceptual model useful and to answer the questions asked in this paper, one has to supplement administrative and economic practices as bases for the formation of collective identities with the idea that a group's cultural traits are the main ingredients in constructing a collective regional identity. Thus adjusted, the model becomes an interesting analytical tool in explaining the interaction between actors, borders and symbols, and the resulting collective identity formation.

CONCLUSION

The analysis of the process leading to the formation of a regional collective identity has demonstrated clearly the interconnectedness between actors, borders and symbols. Inuit cultural characteristics helped to define the territorial shape of Nunavut. The symbolisms emerging from the construction of Nunavut as a political reality, became the cornerstones of an emergent collective regional identity. In Nunavut, while claim-makers tried to shape a particular region from certain Inuit cultural traits, the regional symbolisms became reified and venerated; they became the ultimate manifestations of identification for Nunavut's residents.

The conceptual model proposed here does not pretend to explain all forms of collective identity constructions. It is however an interesting theoretical framework for interpreting the creation of collective identities in emerging public regional governments, where Aboriginal peoples are the majority in a region which they share with a non-Aboriginal minority.

⁹⁷ "Deconstructing regions," *supra* note 8 at 243–44.

⁹⁸ For Paasi, "social practices" are grounded in the administrative and economic features of an emerging region, rather than on cultural factors.

⁹⁹ "Deconstructing Regions," *supra* note 8 at 242.

In its final report, the Royal Commission on Aboriginal Peoples suggested the implementation of Aboriginal self-government, through regional political units based on the sixty to eighty Aboriginal First Nations in Canada.¹⁰⁰ Further, the report also proposed implementing public government administrations for most of these new regions where the interests of both Aboriginal and non-Aboriginal peoples would be represented.¹⁰¹ The report mentioned the soon-to-be-created Territory of Nunavut as a model of governance that should be followed by other Aboriginal groups.¹⁰² However, as the Nunavut case shows, implementing public governments in areas where Aboriginal peoples are a majority may, as a consequence, have to lead eventually to Aboriginal groups being more and more identified on a regional scale. This would further divide Aboriginal groups.

The salient point about the creation of a region like Nunavut is the birth of a new group identity allegiance. As a consequence, one may suppose that the creation of strong collective regional identities among the Inuit people of the circumpolar world could further balkanize their cultural unity (*e.g.* the Inuit of northern Québec become Nunavimut, the Inuit of the Western Arctic become Inuvialuit, and the Inuit of Labrador become Labradorimut). Each of these newly constructed regions create their own collective regional identity, but they often do so at the expense of their neighbours' cultural space and identity. This may ultimately give rise to further dissension among Aboriginal groups as has been shown in Nunavut.¹⁰³ In the final analysis, it is interesting to note that the redefinition of Aboriginal collective identity is inspired by, and takes place through, a non-Aboriginal process (*i.e.* the Canadian government policies on land claims and self-government).¹⁰⁴

¹⁰⁰ Royal Commission on Aboriginal Peoples, *People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Supply and Services Canada, 1996) at 29.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.* at 112.

¹⁰³ The Sayisi Dene and the Denesuline have launched court actions against the federal government in order to assert their land claims rights within Nunavut.

¹⁰⁴ Department of Indian Affairs and Northern Development, *Comprehensive Land Claims Policy* (Ottawa: Supply and Services Canada, 1987); Department of Indian Affairs and Northern Development, *Aboriginal Self-Government: Federal Policy Guide* (Ottawa: Supply and Services Canada, 1995).

CITIZENS SUPPLICANT?: ALAN CAIRNS' CITIZENS PLUS AND THE POLITICS OF ABORIGINAL / CONSTITUTIONAL SCHOLARSHIP

Alexandra Dobrowolsky*

Richard Devlin**

Alan Cairns' Citizens Plus is a significant intervention in the debate on Aboriginal rights that merits careful consideration. The authors advance three basic claims. First, Citizens Plus can only be fully appreciated when read in the context of Cairns' larger constitutional vision. Second, while there is much to be celebrated in Citizens Plus, because of Cairns' commitment to an ideology of "oneness" he is unable to provide a thick recognition of Aboriginal difference within the Canadian constitutional regime. Third, to be persuasive, the idea of "citizens plus" will require further elaboration, because in its current form Aboriginal peoples look more like citizens supplicant.

L'ouvrage d'Alan Cairns intitulé Citizens Plus fut d'emblée considéré comme une contribution très importante concernant la question autochtone au Canada. Les auteurs défendent trois thèses concernant cet ouvrage: d'abord, que la vision proposée par Alan Cairns sur les Autochtones doit être située dans le contexte plus général de son oeuvre; que la reconnaissance des droits des Autochtones à la différence reste limitée; enfin, que le projet de 'citoyen plus' nécessite une plus grande élaboration.

Constitutions embody the highest principles and ideals of a political community, linking the past with the present and future, breathing life into and giving form to the very conception of citizenship.

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¹ A. Cairns & C. Williams, eds., *Constitutionalism, Citizenship and Society in Canada* (Toronto: University of Toronto Press, 1986) at 41.

These federal and provincial differences of opinion over the scope of unilateral federal powers reflect the fundamental axiom of the politics of constitutional bargaining — minimize the resources available to your opponents and maximize those under your own control. The politics of constitutional change, like Leo Durocher's approach to baseball, is governed by the maxim: Nice guys finish last.

Alan Cairns²

*Citizens Plus*³ is widely perceived to be an important intervention in contemporary debates about the status of Aboriginal peoples in the Canadian legal and constitutional order. Some have celebrated the book, others have been highly critical.⁴ Despite their differences, most commentators have approached *Citizens Plus* as if it were a relatively freestanding text. In contrast, we attempt to locate *Citizens Plus* in the context of Alan Cairns' larger constitutional corpus, one that has been unfolding for over forty years. We suggest that much of what Cairns argues has been implicit in his previous constitutional engagements, and that the great virtue of *Citizens Plus* is that Cairns has finally provided us with a coherent presentation of his constitutional vision. However, we will also argue that while we are in broad agreement with aspects of Cairns' vision, it is vitiated by several significant problematics.

Our central thesis is that, overall, *Citizens Plus* fits quite closely with Cairns' larger constitutional agenda. There are, however, a few notable exceptions. The problem is that despite Cairns' efforts to develop a constitutional conceptualization that is open to diversity, because of his institutionalist predilections, his underambitious conception of citizenship, and his discomfort with "otherness," he is ultimately resistant to a "thick" constitutional recognition of difference. Specifically, we shall argue that although Cairns intends to champion the idea of citizens plus (*i.e.* the proposition that Aboriginal persons should have all the same rights as any other Canadian with the addition of some special entitlements to reflect their unique status within confederation) a careful reading of his work reveals that he provides little substance as to the content of these special entitlements. Indeed, we argue that because of his ongoing commitment to the traditional institutions of a homogenizing pan-Canadianism,

² A. Cairns, "Constitution-Making, Government Self Interest and the Problem of Legitimacy" in *Political Support in Canada: The Crisis Years* (Durham, N.C.: Duke University Press, 1983) at 393 [hereinafter "Constitution-Making"].

³ A. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: University of British Columbia Press, 2000) [hereinafter *Plus*].

⁴ See *e.g.* various authors, *Bridging the Divide between Aboriginal Peoples and the Canadian State* (Montreal: Centre for Research and Information on Canada, 2000) [hereinafter *Bridging the Divide*].

his unduly harsh critique of the Royal Commission on Aboriginal Peoples, his mischaracterization of “Aboriginal nationalism,” and his rejection of Aboriginal rights claims, Cairns may construct Aboriginal peoples as citizens supplicant, whose claims are dependent upon the goodwill, the tugging of the “heart strings,” of the non-Aboriginal majority.

The remainder of the essay comprises three parts. First, we adumbrate the broader context of Cairns’ constitutional vision, which we suggest is essential to an understanding of *Citizens Plus*. In particular, we identify his intellectual methodologies, his (changing) conception of the role of the scholar, and the core elements of his constitutional imagination. Second, we provide a critical assessment of *Citizens Plus*, and some other related essays, by addressing his reliance on demographic necessitarianism, his invocation of the discourse of Aboriginal nationalism, his critique of Aboriginal rights claims, and his attempt to resurrect the concept of citizens plus. Third, we offer a brief conclusion.

CONTEXT

The Challenge

There is little doubt that Alan Cairns is one of Canada’s pre-eminent constitutional thinkers. Indeed, a core theme of much of his scholarship since the mid-1970s has been a critique of the poverty and shallowness of constitutional theorizing in Canada⁵ and the “need for indigenous constitutional theorizing.”⁶ Cairns has spent much of his career trying to fill this gap.

Persuasive constitutional theorization requires, at a minimum, three interrelated talents: an ability for cogent description; a capacity to articulate and

⁵ A. Cairns, *Constitution, Government and Society in Canada*, ed. by D. Williams (Toronto: McClelland & Stewart, 1988) at 16 [hereinafter CGSC]; Cairns & Williams, *supra* note 1 at 45; A. Cairns, *Disruptions: Constitutional Struggles from the Charter to Meech Lake*, ed. by D. Williams (Toronto: McClelland & Stewart, 1991) at 246 [hereinafter Disruptions]; A. Cairns, *Reconfigurations: Canadian Citizenship and Constitutional Change*, ed. by D. Williams (Toronto: McClelland & Stewart, 1995) at 252 [hereinafter Reconfigurations].

⁶ A. Cairns, *The Charter versus Federalism: The Dilemmas of Constitutional Reform* (Montreal & Kingston: McGill-Queen’s University Press, 1992) at 70 [hereinafter CVF]. This focus on the particular needs of Canada is not driven by any form of nativism, but rather emerges as a result of Cairns’ keen awareness of the specific conjunctures in which Canada has found itself. See more generally A. Cairns, “Political Science in Canada and the Americanization Issue” (1975) 8 Can. J. Poli. Sci. 191.

apply conceptual frameworks and analytic constructs; and the development of a normative constitutional vision to ground and justify the foregoing descriptive and analytic projects. In this essay, we have little to say about the descriptive and analytic dimensions of Cairns' work because, undoubtedly, he has done much to increase our understanding of Canadian constitutional developments. Rather, we seek to map out and assess Cairns' normative constitutional vision with a particular emphasis on the question of Aboriginal peoples. We had assumed that the first (mapping) part of this two-fold project would be relatively straightforward and that the real challenge would be in the second (assessment) stage. However, each task has been equally imposing. The reason for this is that although Cairns has devoted several decades to analysing Canada's constitutional gyrations, nowhere has he ever clearly adumbrated his own preferred vision. In retrospect, we might suggest three reasons why one of Canada's leading constitutional theorists has never systematically articulated his own constitutional prescriptions: his scholarly method, his conception of the role of the scholar, and the level of theory he prioritizes.

First, his scholarly method. Despite forty or more years of engagement in constitutional matters, and a truly prodigious scholarly output, Cairns has only published one cohesive monograph on the subject, *Citizens Plus*, and that only in 1999. His other books are collections of essays or lectures. The common approach underlying his scholarly mission, including *Citizens Plus*, is critique. Cairns waits for others — sometimes governmental actors, sometimes citizens groups, sometimes academics, sometimes Royal Commissions — to develop an approach, then he interrogates the underlying constitutional vision or normative assumptions. There is nothing wrong with such a scholarly mission and much of what he does is engaging, inspiring and even gutsy. But it means that Cairns' own views only surface interstitially. As a result, readers find themselves on an archeological dig trying to piece together the elements of a structure from an array of diverse and disperse sources.

Second, Cairns' conception of the role of the scholar. As we will discuss below, there appears to be some movement over time in his understanding of the responsibilities of the scholar. In his earlier work, Cairns argued vehemently that the role of the scholar was to be a dispassionate analyst who avoided partisan engagement. In the 1990s, however, he seems to have abandoned this position to acknowledge that scholars do have an important advocacy role to fulfil. For the purposes of the present discussion, we suggest that while for most of his career Cairns believed he was ruled by the sign of impartiality, it was inappropriate for him to articulate his own normative constitutional theory because that would be to enter the fray. Hence, in much of his scholarship,

Cairns' prescriptions remain implicit rather than explicit. *Citizens Plus*, therefore, provides us with a unique opportunity to analyze Cairns' fundamental constitutional assumptions and commitments. Further, an interrogation of his larger constitutional preferences helps us to understand some of the apparent tensions within, and potential weaknesses of, *Citizens Plus*.

Third, there is the level at which Cairns pitches his theory. Theory can operate on a number of different planes and serve a variety of functions.⁷ In the main, we would suggest that the emphasis in Cairns' work is in the realm of middle-order theory⁸ and "constitutional politics that deal with the elemental questions of a people's existence."⁹ As a result, he focuses on a wide range of questions: What do we mean by community? Can we make moral sense of our collective existence? What is the nature and function of a constitution? To whom does the constitution belong? Where is the locus of sovereignty? How do we understand citizenship? What is the nature of the relationship between a state and its citizens? What will hold us together? Is there any common "we" group to which we all belong? Who are we as a people? Once again, we believe that these are vitally important questions and that Canadians are deeply indebted to Cairns for focussing our collective attention on these sometimes taken-for-granted assumptions. However, when these relatively abstract concerns are fused with a scholarly method that prioritizes particularized critique over large scale construction and, at the same time, strives for impartiality, then the end result is a slippery normativity. In sum, as interpreters we have been forced, pastiche style, to pull together what we conceive to be the core elements of Cairns' normative constitutional vision.

However, before doing so it may be helpful to highlight his shifting conception of the role of the scholar as this frames aspects of Cairns' constitutional theory, and his conception of legitimate Aboriginal scholarship. As will become obvious, this is important because *Citizens Plus* is not just an academic rumination; it is a passionate (perhaps polemical) political intervention designed to reject one political vision which he characterizes as "Aboriginal nationalism," and to champion another, the "inclusive citizenship" of citizens plus. In our opinion, such an engagement is to be welcomed, indeed celebrated

⁷ For further discussion of some of the functions of theory, see R. Devlin, "The *Charter* and Anglophone Legal Theory" (1996) 3 Rev. Const. Stud. 1 at 7.

⁸ See also D. Williams, "In Praise of Hedgefoxes: Alan Cairns's Contribution to Canadian Constitutionalism" Editor's Preface, *Reconfigurations*, *supra* note 5 at 10, who characterizes it as middle-range theorizing.

⁹ *CGSC*, *supra* note 5 at 12.

but, as we shall argue, Cairns' adoption of an explicit ideological position precludes him from criticizing other scholars simply because of the political nature of their positions. The reality is that all scholarship dealing with Aboriginal peoples is necessarily political because Canada is caught in a choice between ongoing colonization and decolonization that scholars cannot ignore or transcend. Cairns' work is of great assistance in that it demonstrates the complexities of the choices and the dangers of superficial solutions. Unfortunately, it is also premised on a conception of citizenship that may be insufficient.

The Role of the Scholar

On several occasions in the course of his *oeuvres*, Cairns pauses to consider the role of the scholar. In our opinion there are some tensions, if not inconsistencies, in his prognoses.

In the Introduction to his first collection of essays, *Constitution, Government, and Society in Canada*, Cairns advocates the position of scholarly neutrality:¹⁰

Some of the intellectual tending of institutions, and the keeping of them in repair, can only be performed by detached external observers alert to discrepancies between an institution's performance and the purposes it is assumed to serve, and cognizant that changes in the environment in which institutions operate may generate unintended consequences previously absent. Such tending, much of which is undertaken by academics, may lead to an unmasking of an institution's deficiencies or the exposure of other shortcomings in the conventional wisdom that clusters around it.

Elsewhere he indicates his preference for the “scholarly task of impartially analysing the functioning of the constitution” and he is harshly critical of academics who “[blend] ... political and scholarly concerns [which] ... has a tendency to sacrifice the integrity and quality of the latter for the convenience of the former.”¹¹ He demonstrates little doubt that he believes that academics perform their assigned responsibility better when they are “outside the charmed circle of power holders”¹² and claims that his own work has “little explicit reform thrust.”¹³ Similarly, in *The Charter versus Federalism*, he argues:¹⁴

¹⁰ *Ibid.* at 20; CVF, *supra* note 6 at 96.

¹¹ CGSC, *supra* note 5 at 22.

¹² *Ibid.*

¹³ *Ibid.* at 21.

¹⁴ CVF, *supra* note 6 at 98.

Thus the constitution has a scattered existence in a host of bureaucratic and private memories that select, distort, and forget in the service of particular aspirations. For participants, especially in times of conflict, constitutional visions and the search for understanding and lessons from the past are driven primarily by self-interest. The normative role and integrating capacity of the constitution writ large tend to fade from view. At such times, active players may forget to ask about who is to take care of the constitution or who will see it as a whole. Responsibility for asking and answering such questions devolves on others who are less involved. Thus a crucial lesson from Meech Lake for the scholarly community — or more gently phrased, a reminder — is that as constitutional conflict escalates, the scholarly role should not be entirely sacrificed on the alter of direct participation. Canadians will not suffer from a deficiency of partial, self-interested, short-term analysis if scholars resist getting in the trenches.

In view of the preceding, the considerable traffic between the academic community and direct participants should not obliterate the division of labour between them. Scholars should try to complement and supplement the partiality, passion, and immediacy of the participants by a lesser involvement in the fray, by employing a comprehensive perspective that encompasses as many of the players as is humanly possible, and by striving for the long view.

His preferred metaphor for such an impartial approach is that of an observing constitutional anthropologist who sympathetically enters the world of the constitutional other.¹⁵

However, a slightly different position is detectable in *Disruptions*, published in 1991. In the main, Cairns indicates that he is still inclined towards academic “dispassion and clinical objectivity,”¹⁶ “the long view and the cool vision,”¹⁷ and “disinterested constitutional scholarship.”¹⁸ He argues that “academics have an obligation to seek objectivity, to avoid seeking cheap publicity, and to sit courageously on the fence where appropriate.”¹⁹ In fact, he is openly critical of the “politicization of the academic community of commentators”²⁰ and their adoption of “insider” roles.²¹ Elsewhere he praises “a few academics who have performed their duty of disrobing emperors.”²²

¹⁵ *Ibid.* at 72–73, 99–100; *Reconfigurations*, *supra* note 5 at 64, 121–22.

¹⁶ *Disruptions*, *supra* note 5 at 32; see also at 237.

¹⁷ *Ibid.* at 63.

¹⁸ *Ibid.* at 222.

¹⁹ *Ibid.* at 59. Interestingly, in the same collection of essays, within about twenty pages, he criticizes the Supreme Court of Canada’s decision on the *Patriation Reference* [1981] 1 S.C.R. 753 as a “convoluted fence straddling decision.” *Ibid.* at 80.

²⁰ *Ibid.* at 153; see also at 219.

²¹ *Ibid.* at 220.

²² *Ibid.* at 151.

However, despite these predilections Cairns also admits that such “divine disinterestedness or insouciance is neither what we feel nor seek to attain when our own country is our subject”²³ and that “Lord Acton’s ideal, detached historian … does not find a congenial environment at conferences that discuss divisive contemporary issues.”²⁴ Thus, he acknowledges that he cannot be exempted from the politicization concern,²⁵ and notes that some readers may observe a potential bias in his work “founded on [his] sympathy for the Charter.” However, he refuses to “offer … apologies for the perhaps too thinly veiled passion and commitment that lie behind these essays.”²⁶ Even more interestingly, he appears to positively regard scholars who “were pulled away from their academic cloisters by both the sense of civic duty and the exciting prospect that they might influence the Prince.”²⁷ Indeed, towards the end of the book he seems to endorse political engagement by academics:²⁸

To condemn the public involvement of scholars in constitutional matters on the ground that it may consciously or unconsciously damage their objectivity is akin to bewailing the law of gravity, a childish attempt to deny the inevitable. Further, like the law of gravity, scholarly involvement brings important benefits in its wake, both to the quality of constitutional policy-making and to the enhanced understanding that constitutional participation brings to scholarship. Further, the various private groups involved in constitutional affairs lack the in-house resources that governments routinely enjoy, and thus they could not compete effectively with the big battalions of government if they were deprived of enriching contact with the academic community. Such academic involvement with private groups weakens the domination that governments would otherwise enjoy in constitutional politics.

However, four years later, in *Reconfigurations*, Cairns appears to backtrack from that position:²⁹

Accordingly, the responsibilities of constitutional scholars and constitutional players differ. The former should be less partisan, less involved, more concerned with the whole, more attentive to deeper underlying social forces, and in general simply more academic. What is

²³ *Ibid.* at 33.

²⁴ *Ibid.* at 153. Elsewhere he has characterized the argument “that a political theorist exists outside of space and time, detached from the struggle that every generation encounters” as “absurd.” A. Cairns *et al.*, “WJS’s Weltanschauung and Ideology” in B. Czaykowski & S. LaSelva, eds., *Holding One’s Time in Thought: The Political Philosophy of W.J. Stankiewicz* (Vancouver: Ronsdale Press, 1997) 17 at 19.

²⁵ *Ibid.* at 153.

²⁶ *Ibid.* at 32.

²⁷ *Ibid.* at 183.

²⁸ *Ibid.* at 219–20.

²⁹ *Reconfigurations*, *supra* note 5 at 143.

the point of having a division of labour between scholars in their study and the active players on the field if the former simply duplicate the often self-serving analyses of the latter, without the benefit of equivalent insider knowledge.

Elsewhere in the same book he argues that academics have “an obligation to step back, to adopt a longer-run perspective, and to raise issues that the more directly involved may overlook or prefer to leave unexamined.”³⁰ He seems especially perturbed about the politics of voice.³¹

The controversies precipitated by these developments straddle the political and academic arenas. In a recent lecture I argued that the quality of public constitutional discussion in Canada was threatened by the near monopolistic possession of the right to speak on particular subjects by particular groups — section 28 and the sex equality provision of section 15, for example, by women. I suggested that men, or women who do not espouse feminist perspectives, are looked on coolly, somewhat as interlopers or intruders if they enter, uninvited, this discursive terrain. I went on to assert the need to keep alive a disinterested scholarly discourse with no connection to causes or movements, but rather an approach committed to understanding and that focused on the constitution as a whole. I was informed at the time that I was simply using the standard technique by which dominant males protect their privileges by pretending to speak *ex cathedra* from some genderless Olympian mountaintop, one that existed only in my imagination. I appreciate the criticism, which is not the same as accepting it, and I am still mulling it over.

Then, in *Citizens Plus*, four years later again, we see another flip-flop:³²

In preparing this material for publication, I have been acutely conscious of the pressures and cross-currents of this deeply conflicted policy area. The subject of Aboriginal/non-Aboriginal relations — its history, present situation, and future direction — does not lend itself to clinical detachment. The “isms” that mobilize emotions intrude at every turn. However, who among us could speak if pure detachment — absolute disinterestedness — were a criterion? Who would speak if a well-rounded competence, given the complexity of the issues and the mountains of literature available, were a requirement? And surely none would speak on this issue if potential disagreement were sufficient to deter them. We overcome these hesitations with the recognition that it is in the pooling of our separate, limited understandings that a democratic society increases the likelihood that future policy will have a better stock of intellectual capital at its disposal than past policies had.

³⁰ *Ibid.* at 280; see also A. Cairns, “Citizens, Scholars and the Canadian Constitution” (1995) 12 Int’l J. Can. Stud. 285 [hereinafter “Citizens, Scholars and the Canadian Constitution”].

³¹ *Reconfigurations*, *supra* note 5 at 125 [footnotes omitted]; see also A. Cairns, “The University and Society: Historical and Sociological Reflections” in W. Neilson, ed., *Universities in Crisis: A Medieval Institution in the Twenty-First Century* (Montreal: Institute for Research on Public Policy, 1986) 251 at 263–66.

³² *Plus*, *supra* note 3 at 11.

Moreover, one paragraph later, and notably, given his earlier emphasis on academic impartiality, he refers to the *Hawthorn Report* of 1966–67 and says:³³

That report, for which I was one of the senior staff, responsible for research in the general area of broad constitutional policy, proposed that the Indians should be viewed, as already noted, as citizens plus. By that we meant to bring them fully into the category of Canadian citizens, believing that much of the social malaise from which they suffered was a product of the neglect that had flowed from their historical post-Confederation status as wards.

Then within one paragraph he adds.³⁴

It is also true — indeed is reflective of a deeper belief — that the goal of an academic contribution to a public policy debate is not to vanquish the opposition but to have a debate. This does not preclude passionate advocacy. It should, however, preclude the arrogant belief that questions have been replaced by answers. Now, in my fourth decade of academic life, I am more than ever committed to the belief that we should argue passionately without forgetting our fallibility. In the last chapter, I repeat the strong support for the concept of citizens plus, which I first supported a third of a century ago. I hope that I am driven by more than nostalgia.

Later in the book he acknowledges, in parentheses, that:³⁵

I was involved in the research and writing of the Hawthorn Report, and in the discussion that led to the citizens plus recommendation. Accordingly, the reader is warned that my initial commitment to the concept survives, whether as a naïve unwillingness to let go of my own past, or as a laudable allegiance to a concept that merits resurrection, and is supported later in this chapter.

Finally, and of particular note, he is explicitly critical of legal “scholars focusing on Aboriginal issues [who] are more akin to an intellectual social movement than participants in a broad ranging debate with checks and balances.”³⁶

Our point is not simply that there are several changes of position here. Indeed, one expects an academic to rethink his or her assumptions over time.³⁷

³³ *Ibid.* at 11–12. See H.B. Hawthorn, ed., *A Survey of the Contemporary Indians of Canada*, 2 vols. (Ottawa: Queen’s Printer, 1966 & 1967).

³⁴ *Ibid.* at 12–13.

³⁵ *Ibid.* at 162.

³⁶ *Ibid.* at 179. We find it curious that Cairns singles out legal scholars, when other political theorists have been at least as forceful in their support of Aboriginal claims. For example, in *Citizens Plus* Cairns never mentions James Tully’s *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995).

³⁷ *Disruptions*, *supra* note 5 at 32.

Rather, it is the apparent inconsistency of (retroactively) admitting one's own passionate advocacy in the 1960s, unreservedly condemning other academics for adopting passionate advocacy in the 1970s, 1980s and especially the 1990s, and then celebrating one's own passion in the 1990s while simultaneously lambasting others. One might be forgiven for asking in whose service is his own scholarship? (As we shall suggest later, despite his apparent rejections of nationalism, the answer may be a pan-Canadian nationalism.)

Our own view is that to conceptualize the role of the scholar through the prism of (dis)interestedness is to misconceptualize the issue.³⁸ Scholars are social beings who are deeply influenced by a matrix of personal, institutional, political and ideological formative contexts. They can never achieve the view from nowhere. The important questions are not one's proximity to Olympian heights or whether a scholar has entered the fray,³⁹ but the normative and political defensibility of one's preferred scholarly position. We contend that the more explicit a scholar is about his or her normative vision, the more progress we can make not only as scholars, but also as engaged citizens who take our civic responsibilities seriously.

In the next section, we attempt to piece together Cairns' constitutional vision as it has unfolded over the last forty years, and in the subsequent sections we assess its strengths and weaknesses by focussing on the assumptions and arguments deployed in *Citizens Plus*. The great virtue of *Citizens Plus* is that it brings into sharp relief the more abstract and elusive dimensions of Cairns' constitutional imagination. Its weaknesses, however, are directly connected to the relative timidity and conventionalism of that same imagination.

Cairns' Constitutional Vision

Since Cairns has never articulated a comprehensive statement of the key elements of his constitutional vision, what follows is our best-shot interpretation. Here certain tensions, even contradictions, become apparent. On one hand, Cairns builds on a sociological approach that is open to change, but on the other,

³⁸ For further discussion of the limitations of disinterestedness in the context of the judicial function, see R. Devlin, "Judging and Diversity: Justice or Just Us?" (1996) 20:3 *Prov. Judges J.* 4.

³⁹ "Citizens, Scholars and the Canadian Constitution," *supra* note 30 at 289.

his institutionalist orientations are more predisposed to fixity.⁴⁰ Second, Cairns recognizes difference, yet he ultimately prioritizes sameness. Third, Cairns articulates a critique of elites which he later, fundamentally, undermines.⁴¹

Cairns' constitutional vision, though indirect, is large. Cairns envisions a "well-functioning constitution" as more than a technical instrument that arranges the machinery of government; rather it is a living, organic, transient, evolving, dynamic and flexible cultural phenomenon that deserves respect.⁴² He is particularly interested in a constitution's symbolic, psychic, emotional and normative dimensions, and how it embodies, engenders, shapes and structures identities, values, allegiances and conceptions of the self, state, community and society, as well as their interactions.⁴³ Generally speaking, in pursuit of his twin theses that a constitution is a "social document of great symbolic value, the supreme instrument of social recognition and its denial"⁴⁴ and that "constitutional change [is] the master instrument of community transformation,"⁴⁵ three key points appear to be crucial: "keeping government responsible, strengthening the Canadian community, and enhancing loyalty by elaborating the meaning and practice of citizenship."⁴⁶

More specifically, Cairns' goal is to construct a constitutional morality that identifies and reinforces the reciprocal, civil, trusting, respectful, solidaristic, fraternal⁴⁷ and empathetic obligations that we owe to each other as Canadians in

⁴⁰ A. Dobrowolsky, "The Charter and Mainstream Political Science: Waves of Practical Contestation and Changing Theoretical Currents" in D. Schneiderman & K. Sutherland, eds., *Charting the Consequences: The Impact of the Charter of Rights on Canadian Law and Politics* (Toronto: University of Toronto Press, 1997) 303.

⁴¹ This third argument is more fully pursued in A. Dobrowolsky & R. Devlin, "Identity in the Encyclopaedia Cairnsiana: Contributions and Critique" in G. Kerner & P. Resnick, eds., *Rethinking Citizenship in the Canadian Federation* (Vancouver: University of British Columbia Press, 2003) [forthcoming] [hereinafter "Identity"].

⁴² CGSC, *supra* note 5 at 31–34, 183–84, 249; CVF, *supra* note 6 at 58; *Disruptions*, *supra* note 5 at 179.

⁴³ CGSC, *supra* note 5 at 12–13, 19, 21, 23–24, 31, 244, 250; CVF, *supra* note 6 at 33–34, 74, 83–84, 94; *Disruptions*, *supra* note 5 at 30, 31–32, 62, 118, 168, 246–47; *Reconfigurations*, *supra* note 5 at 115, 142, 263.

⁴⁴ *Disruptions*, *supra* note 5 at 118; see also at 160.

⁴⁵ CVF, *supra* note 6 at 38; see also at 94.

⁴⁶ CGSC, *supra* note 5 at 252; *Disruptions*, *supra* note 5 at 260.

⁴⁷ He mentions "sorority" once. *Reconfigurations*, *supra* note 5 at 155.

pursuit of a “more harmonious, just society.”⁴⁸ Drawing on his sociological insights that change is inevitable, that contingency and fragility are undeniable, and that Canadian society experiences both significant diversity/fragmentation/heterogeneity⁴⁹ and profound cultural interpenetrations,⁵⁰ Cairns is a self-described “middle ground(er)”⁵¹ between fundamentalists and constitutionalists,⁵² the imperialist homogenizers and the disciples of difference.⁵³ Whether he is discussing Federalism, the Judicial Committee of the Privy Council, electoral politics, big government, the administrative state, state–society relations, the constitution, constitutional reform, Québec separatism, the increasing political significance of gender and ethnic pluralism, First Nations, representational legitimacy, or the role of the courts, Cairns is committed to a pan-Canadian commonality that is “sympathetic to and supportive of a togetherness that is more than geographical”⁵⁴ and a “country-wide Canadian political community”⁵⁵ of common, shared, if perhaps asymmetrical or differentiated, citizenship.⁵⁶

Cairns acknowledges the importance of differences and the multiplication of cleavages in Canada. He appears to cautiously support modest regionalism,⁵⁷ the federalization of pluralism,⁵⁸ the possibility of limited asymmetrical

⁴⁸ *Plus, supra* note 3 at 19; see also at 115, 156, 160; *Disruptions, supra* note 5 at 262; *Reconfigurations, supra* note 5 at 60. Elsewhere he claims that “[t]he constitution must be analysed and understood as more than a political market within which rival armies clash.” *Disruptions, supra* note 5 at 220.

⁴⁹ *CGSC, supra* note 5 at 58–63, 231–34; *CVF, supra* note 6 at 57–58, 124.

⁵⁰ *Plus, supra* note 3 at 8.

⁵¹ *Ibid.* at 86; see also at 6.

⁵² *CGSC, supra* note 5 at 43–85.

⁵³ *Plus, supra* note 3 at 9.

⁵⁴ *Ibid.* at 6.

⁵⁵ *Ibid.* at 5; see also at 157.

⁵⁶ *Reconfigurations, supra* note 5 at 159, 173; *Plus, supra* note 3 at 9, 52; A. Cairns *et al.*, “Discussion” in *Bridging the Divide, supra* note 4, 18 at 19.

⁵⁷ A. Cairns, “From Interstate to Intrastate Federalism in Canada” (1979) 2 Bulletin of Can. Stud. 13 at 30; E. Black & A. Cairns, “A Different Perspective on Canadian Federalism” (1966) 1 Can. Pub. Admin. 27 at 44.

⁵⁸ *CGSC, supra* note 5 at 59, 79–80; *Disruptions, supra* note 5 at 260.

Federalism,⁵⁹ indigenous self-determination,⁶⁰ and the sensitive adaptation of a constitutional inheritance to new social forces.⁶¹ However, he clearly argues that our commonalities are, and should be, greater than our differences,⁶² and advocates that the ultimate goal should be interdependent coexistence,⁶³ “a constitutional *modus vivendi* responsive to the territorial communities of federalism … to the non-territorial societal pluralism of the various groups that attach themselves to the Charter, and to the complexities of the Aboriginal peoples.”⁶⁴ He seeks “*rapprochement* between the majoritarian and minoritarian elements in contemporary Canada,”⁶⁵ and a healing *rapprochement* between Aboriginal and non-Aboriginal peoples.⁶⁶ He calls on us to reject the “imperialisms of … single identities”⁶⁷ advocating instead “allegiance to a single

⁵⁹ *Reconfigurations*, *supra* note 5 at 225–28; A. Cairns, “Roadblocks in the Way of Constitutional Change” (1991) 2 *Const. For.* 54 at 58.

⁶⁰ A. Cairns, “Empire, Globalization and the Fall and Rise of Diversity” in A. Cairns *et al.*, eds., *Citizenship, Diversity and Pluralism: Canadian and Comparative Perspectives* (Montreal & Kingston: McGill-Queen’s University Press, 1999) 23 at 45 [hereinafter “Empire, Globalization”].

⁶¹ *Reconfigurations*, *supra* note 5 at 98.

⁶² A. Cairns, “Introduction,” *Citizenship, Diversity and Pluralism: Canadian and Comparative Perspectives* (Montreal & Kingston: McGill-Queen’s University Press, 1999) 3 at 21 [hereinafter “Introduction”].

⁶³ *Plus*, *supra* note 3 at 120.

⁶⁴ *Reconfigurations*, *supra* note 5 at 277.

⁶⁵ *Ibid.* at 141, 225, 258.

⁶⁶ *Plus*, *supra* note 3 at 89, 120.

⁶⁷ “Introduction,” *supra* note 62 at 20. He continues at 21:

Single identities are psychologically wrong. They mislead us by ignoring our complexity. They are politically wrong because they exacerbate our divisions. They are ethically wrong because they stifle empathy and allow us to do horrible things to each other with an undisturbed conscience. They make the noble calling of citizen unattainable.

Elsewhere he argues:

The disappearance of discrete, whole cultures elicits a search for alternative indicators of cultural uniqueness. This leads to the promiscuous spread of the word “culture” to domains where its applicability is problematic. Thus we now have gay culture, lesbian culture, feminist culture, culture of the disabled, the blind, the deaf and many others. These labels draw attention to a single trait, which their possessors speak of as if it encompassed the whole person. The exaggerated significance attributed to specific traits, followed by the latter’s imperialistic usurpation of the overall cultural identity of the individuals who possess them, conceals what we share in common and divides us from each other. Here, as in the larger claims on behalf of culturally unique societies,

polity”⁶⁸ where we “transcend differences” and pursue “meaningful togetherness”⁶⁹ and a “common fraternity of belonging.”⁷⁰ His ultimate goal is to achieve an “accommodation that will overcome our divisions”⁷¹ and establish “a Canadian citizenship that reinforces the ‘oneness’ that introspective diversities threaten to challenge.”⁷²

Consequently, Cairns is a vocal supporter of institutions and symbols that encourage “reciprocal sensitivity and a buildup of trust”⁷³ and that “[contain] and [accommodate] our rampaging diversities in a framework of tolerance and civility.”⁷⁴ He praises institutions that “foster a sense of common belonging,”⁷⁵ “provide enduring bonds of empathy,”⁷⁶ and reinforce the “bonds of citizenship.”⁷⁷ Specifically, he celebrates the *Charter* not just because it can protect vulnerable sub-communities⁷⁸ but because it is a “citizens constitution,”⁷⁹ one that enhances our “civic identity”⁸⁰ and encourages a “participant, rights conscious citizenry” and community.⁸¹ Moreover, the *Charter* can “philosophize our collective identity”⁸² and serve as a “central weapon” in the “educational task” of “bring[ing] us together [in] a strengthened sense of citizenship.”⁸³

culture is given a political role it cannot sociologically sustain.

⁶⁸ “Empire, Globalization,” *supra* note 60 at 44.

⁶⁹ *Plus*, *supra* note 3 at 28.

⁷⁰ *Ibid.* at 158; *CVF*, *supra* note 6 at 59; *Disruptions*, *supra* note 5 at 176; *Reconfigurations*, *supra* note 5 at 30.

⁷¹ “Introduction,” *supra* note 62 at 6.

⁷² *Reconfigurations*, *supra* note 5 at 155; see also at 161, 185, 187, 259.

⁷³ *Plus*, *supra* note 3 at 200.

⁷⁴ *CVF*, *supra* note 6 at 108.

⁷⁵ *CGSC*, *supra* note 5 at 229–30; see also at 249.

⁷⁶ *Plus*, *supra* note 3 at 80.

⁷⁷ *Ibid.* at 122.

⁷⁸ *Ibid.* at 160.

⁷⁹ *Reconfigurations*, *supra* note 5 at 213.

⁸⁰ *CVF*, *supra* note 6 at 7.

⁸¹ *Ibid.* at 5.

⁸² *CGSC*, *supra* note 5 at 255–56; *Disruptions*, *supra* note 5 at 160; *Reconfigurations*, *supra* note 5 at 198–202; A. Cairns, “The Charter: A Political Science Perspective” (1992) 30 Osgoode Hall L.J. 615 at 621 [hereinafter “The Charter”].

⁸³ *CVF*, *supra* note 6 at 86.

⁸⁴ *Ibid.* at 61. He does admit, however, that with regards to Francophone Québec, the *Charter* has not succeeded as a force for unity. *Ibid.* at 122.

Cairns is critical of political elites⁸⁴ and the bulldozing tactics of juggernaut executive Federalism⁸⁵ that can look “like a military manoeuvre … to keep the citizens at bay,”⁸⁶ or even “constitutional McCarthyism.”⁸⁷ He includes within his category of elites those who advance what he describes as “aggressive”⁸⁸ nationalist discourses, especially when adopted by spokespersons for Québec⁸⁹ and First Nations,⁹⁰ because the result will be “strangers indifferent to each other’s well-being.”⁹¹ As he presents his position somewhat understatedly in *Reconfigurations*, his is not a “paean to nationalism.”⁹² For Cairns, the twin vices of elitism and nationalism intensify the role of self-interest, engender centrifugal tendencies and impoverish a commitment to Canadian citizenship.⁹³

Cairns’ “resolution” to the challenges of difference and elitism is to engage in “never-ending” and “perpetual” dialogue,⁹⁴ debate, discussion, conversation and compromise,⁹⁵ to “talk to each other in a way that both articulates our differences and seeks with empathy to reconcile them in the search for at least a limited version of membership in a common community.”⁹⁶ The analogy is to a “never-ending public seminar by which a political people constantly refreshes its constitutional understandings.”⁹⁷ The goal is to develop a “composite constitutional discourse that simultaneously captures the territorial dimensions of national and provincial communities fostered by federalism and the growing racial and ethnic diversities within them.”⁹⁸ As a matter of constitutional morality, coherent constitutional dialogue requires the use of precise, explicit, transparent and reasoned language which identifies both the ends to be pursued

⁸⁴ *CGSC*, *supra* note 5 at 255.

⁸⁵ *CVF*, *supra* note 6 at 108; *Disruptions*, *supra* note 5 at 94, 158.

⁸⁶ *Disruptions*, *supra* note 5 at 135, 151.

⁸⁷ *Ibid.* at 204.

⁸⁸ *CGSC*, *supra* note 5 at 90.

⁸⁹ *Ibid.* at 165, 246; *Reconfigurations*, *supra* note 5 at 167.

⁹⁰ *Reconfigurations*, *supra* note 5 at 254.

⁹¹ *Plus*, *supra* note 3 at 80.

⁹² *Reconfigurations*, *supra* note 5 at 347.

⁹³ Cairns & Williams, *supra* note 1 at 41–45.

⁹⁴ *CGSC*, *supra* note 5 at 13, 20; *CVF*, *supra* note 6 at 75; *Disruptions*, *supra* note 5 at 200–202, 251.

⁹⁵ *Disruptions*, *supra* note 5 at 239, 248; *Reconfigurations*, *supra* note 5 at 147, 155.

⁹⁶ *Plus*, *supra* note 3 at 16, 85, 183.

⁹⁷ *Disruptions*, *supra* note 5 at 181. On occasion, he acknowledges that the “world of politics is not an academic seminar but a political world of interests whose advocates focus on the short run.” *Reconfigurations*, *supra* note 5 at 61.

⁹⁸ *Disruptions*, *supra* note 5 at 176.

and the means chosen to attain such ends.⁹⁹ It is also dependent upon a willingness to listen.¹⁰⁰

Cairns also addresses the issue of citizen participation. For the vast majority of his early work, despite his sociological orientation, Cairns tends to be highly institutionalist in his orientation, focussing prominently on how institutions of government work and especially how they exercise a “shaping power”¹⁰¹ over the social and economic forces of modern societies.¹⁰² Gradually, he has recognized that non-institutional actors can, and should, have a significant democratic impact on constitutional developments¹⁰³ and that “we have no alternative but to be democratically pluralist.”¹⁰⁴ For example, he seems to support *Charter* mobilization,¹⁰⁵ and the “messy pluralist politics of Canadian democracy,”¹⁰⁶ because they foster a “participant citizen ethic”¹⁰⁷ where Canadians can be “honourable participants in the exalted activity of constitutional politics.”¹⁰⁸ He even reminds Canada’s governors that they “are servants of the people, and [that they must] learn the new message that the constitution under and by which we all now live does not belong to them.”¹⁰⁹ Thus, he is an advocate of the citizen’s constitution, popular sovereignty and he supports the use of referenda as part of the process of constitutional reform.¹¹⁰ Indeed, more recently, there is an even greater invocation of the importance of citizens and their participation at the expense of institutions when he is deeply critical of RCAP’s excessive focus on

⁹⁹ *Ibid.* at 135, 139–43, 249–50; A. Cairns, “Limited Constitutional Vision of Meech Lake” in C. Rogerson & K. Swinton, eds., *Competing Constitutional Visions: The Meech Lake Accord* (Toronto: Carswell, 1988) 247; A. Cairns, “Looking into the Abyss: The Need for a Plan C” C.D. Howe Institute, Commentary No. 96 (September 1997) at 3, 13 [hereinafter “Abyss”]. It should be noted that in one of his more pessimistic moments Cairns has commented that “[c]larity, consistency and publicity in the pursuit of constitutional objectives are not necessarily bargaining assets.” “Constitution-Making,” *supra* note 2 at 403.

¹⁰⁰ *Disruptions*, *supra* note 5 at 261.

¹⁰¹ *CGSC*, *supra* note 5 at 8, 14.

¹⁰² *Ibid.* at 169–70; *Reconfigurations*, *supra* note 5 at 40–41, 94.

¹⁰³ *CGSC*, *supra* note 5 at 229, 252–55; *Disruptions*, *supra* note 5 at 108–38, 262; *Reconfigurations*, *supra* note 5 at 20.

¹⁰⁴ *Reconfigurations*, *supra* note 5 at 115.

¹⁰⁵ *CVF*, *supra* note 6 at 4; *Disruptions*, *supra* note 5 at 18, 20–21, 98.

¹⁰⁶ *CVF*, *supra* note 6 at 106.

¹⁰⁷ *Disruptions*, *supra* note 5 at 112.

¹⁰⁸ *Ibid.* at 259, 262–63.

¹⁰⁹ *Ibid.* at 138.

¹¹⁰ “Abyss,” *supra* note 99 at 21, 24; “The Charter,” *supra* note 81 at 622.

the nation-to-nation status and emphasis on Aboriginal governments and institutions.¹¹¹ “The ‘nation’ basis of their claim clashes with, or at least does not facilitate an easy simultaneous allegiance to the concept of the individual Canadian citizen.”¹¹² However, at the same time, he argues that Aboriginal peoples would be best served if they channelled their political energies into the stabilizing conventional institutions of competitive majoritarian politics such as political parties and legislatures.¹¹³

In sum, for Cairns the key element of his constitutional morality is the construction of an “institutional arrangement” which he calls “inclusive citizenship,” for it can “both tame the leviathan and predispose people to undertake common endeavours” and therefore “[make] empathy a natural fellow-feeling for all within [citizenship’s] compass.”¹¹⁴ *Citizens Plus* can be read as an application of how these more general demands of an inclusive citizenship can be developed in the context of Aboriginal peoples. As we shall discover in the next section, it also encapsulates the benefits and burdens of that larger constitutional morality with its yearning to “transcend difference” in the pursuit of “oneness.”

AN ASSESSMENT

The foregoing analysis makes it clear that Cairns is a sophisticated constitutional theorist who has much to offer. Nonetheless, several assumptions, certain tensions and even contradictions have already become apparent. In the remainder of this essay we will elaborate on some of these ideas and provide an assessment that identifies both the strengths and weaknesses of his normative vision.

Praise

Cairns is a perceptive analyst and a lucid, evocative writer who, drawing upon his interdisciplinary talents, has done much to describe, conceptualize and clarify our understanding of Canada’s constitutional complexities. Particularly impressive is his ability to identify conundrums, competing claims and dysfunctions generated by the curious conjunctures in which Canadians have found themselves. He has been a pioneering voice in a political science

¹¹¹ *Plus*, *supra* note 3 at 134–42, 151, 192.

¹¹² *Ibid.* at 167.

¹¹³ *Ibid.* at 143–46, 172.

¹¹⁴ “Introduction,” *supra* note 62 at 5.

community that historically has paid relatively little attention to the political importance of non-governmental identities (such as race, ethnicity and gender).¹¹⁵ Cairns is also a courageous interlocutor who is willing to engage candidly, and critically, with what he calls “taboo subjects,”¹¹⁶ despite the fact that others will challenge his interpretations and even question his legitimacy to speak. He is a tough, some might even think harsh, critic who does not shy away from the liberal usage of adjectives to disparage those with whom he disagrees.¹¹⁷ His emphasis on the international and global context for Canada’s evolution and dilemmas is often enlightening. His explicit sensitivity to stubborn realities that are often ignored by others is grounding and helps us to avoid false idealizations. Cairns has been pivotal in moving discussions of culture and identity, and especially the links between them, to the centre of our constitutional discourses. Moreover, we are sympathetic to his passionate commitment to the preservation of a strong sense of Canadian community.

Cairns’ serious attention to the status of Aboriginal peoples in the Canadian constitutional order and his rejection of the ideology of “British settler Liberalism”¹¹⁸ are particularly noteworthy. He is frank that colonialism has ongoing ramifications and that imperial mentalities do not die easily; he is keenly attuned to the complexities of the relationships between Aboriginal and dominant societies; he reminds us of the large Aboriginal population that lives off reserve and that their needs are inadequately addressed by both Aboriginal and non-Aboriginal leaders; he highlights the vital significance of intermarriage rates and the educational explosion among Aboriginal peoples; and he urges us not to forget the significance of cultural overlaps or to freeze and romanticize Aboriginal communities. His concerns about the governance capacity of relatively small Aboriginal communities are undoubtedly salutary. We are in particular agreement with his argument that non-engagement can be a form of paternalism,¹¹⁹ and with his fluid conception of both identity and culture and

¹¹⁵ See A. Dobrowolsky, *supra* note 40. See generally, A. Dobrowolsky, *The Politics of Pragmatism: Women, Representation and Constitutionalism in Canada* (Toronto: Oxford University Press, 2000).

¹¹⁶ *Disruptions*, *supra* note 5 at 207; *Reconfigurations*, *supra* note 5 at 253.

¹¹⁷ See e.g. A. Cairns, “A Study of the Provinces: A Review Article” (1972) 14 B.C. Studies 73; A. Cairns, “A Reply to Professor Robin’s Comment” (1972–73) 16 B.C. Studies 81. See also *Disruptions*, *supra* note 5 at 224; *Plus*, *supra* note 3 at 8, 78.

¹¹⁸ P. Haverman, ed., *Indigenous Peoples’ Rights in Australia, Canada and New Zealand* (Aukland: Oxford University Press, 1999) 1.

¹¹⁹ *Disruptions*, *supra* note 5 at 214.

people's ability to possess multiple and complementary identities.¹²⁰ For all these reasons, Cairns has done much to positively shape Canada's academic "langscape"¹²¹ and constitutional comprehension.

Critique

As we have indicated, Cairns has never fully developed his normative constitutional vision in monographic form. However, looking back over his scholarly career, it seems that as he has warily come to accept the legitimacy of advocacy scholarship, he has become increasingly candid about some key components of his constitutional bottom line. These have surfaced most clearly in *Citizens Plus*. This text, and some of his other writings on Aboriginal peoples, exemplify not only the strengths of his analyses, but also some significant problems. In particular, we will focus on the following infelicities: his acceptance of demographic necessitarianism, his mischaracterizations of Aboriginal nationalism, his critique of Aboriginal rights claims, and his failed attempt to resurrect the concept of citizens plus. These flaws not only indicate some weaknesses in Cairns' analyses of the situation of Aboriginal peoples in the social, economic, political and constitutional order we call Canada; they also reveal a constitutional morality, institutional orientation, and conception of citizenship that is resistant to demands for fundamental change.

Demographic Necessitarianism

In *Citizens Plus* and elsewhere, Cairns reiterates some important demographic facts: there are serious problems of constitutional fit and effective and efficient governance;¹²² "hundreds of thousands of Canadians with Aboriginal ancestry do not identify themselves as Indian, Inuit or Métis";¹²³ approximately fifty per cent of Aboriginal people are urban dwellers;¹²⁴ intermarriage rates between Aboriginal and non-Aboriginal peoples are extremely high;¹²⁵ there are serious tensions between Aboriginal women and

¹²⁰ *Reconfigurations*, *supra* note 5 at 256, 346; *Plus*, *supra* note 3 at 194; "Empire, Globalization," *supra* note 60 at 46–47.

¹²¹ S. Youngblood Henderson, "Mikmaw Tenure in Atlantic Canada" (1995) 18 Dal. L.J. 196 at 205.

¹²² *Reconfigurations*, *supra* note 5 at 306–309.

¹²³ *Plus*, *supra* note 3 at 65; see also at 126.

¹²⁴ *Reconfigurations*, *supra* note 5 at 343; *Plus*, *supra*, note 3 at 79.

¹²⁵ *Plus*, *supra* note 3 at 100, 125.

men;¹²⁶ there is a lack of homogeneity between Indians, Métis and Inuit;¹²⁷ and typical Aboriginal nations are quite small — often ranging between 5,000–7,000 persons, but sometimes as low as 2,000.¹²⁸ These are important facts that demand “down-to-earth analysis.”¹²⁹

But, as every good lawyer knows, facts are like statistics; it depends on what you do with them.¹³⁰ Cairns uses them to construct what he calls a “modernizing Aboriginality,”¹³¹ a conception of Aboriginality that is sensitive to both cultural change and identity fluidity.¹³² We are in strong support of such an orientation. However, he also uses these facts to polemicize against the RCAP and others for both their “analytical neglect,”¹³³ “brutal logic,”¹³⁴ “implicit stigmatization,”¹³⁵ and for invoking a traditionalist, reified and “frozen” Aboriginality¹³⁶ which overemphasizes reserve-based Aboriginal people and ignores the large urban population as “lost souls.”¹³⁷

¹²⁶ *Reconfigurations*, *supra* note 5 at 343; *Plus*, *supra* note 3 at 74.

¹²⁷ *Reconfigurations*, *supra* note 5 at 164; *Plus*, *supra* note 3 at 76, 88.

¹²⁸ *Plus*, *supra* note 3 at 79.

¹²⁹ *Disruptions*, *supra* note 5 at 212.

¹³⁰ M. Eberts, “New Facts for Old: Observations on the Judicial Process” in R. Devlin, ed., *Canadian Perspectives on Legal Theory* (Toronto: Emond Montgomery, 1991) 467.

¹³¹ *Plus*, *supra* note 3 at 103; see also at 204.

¹³² *Ibid.* at 61.

¹³³ *Ibid.* at 127.

¹³⁴ *Ibid.* at 130.

¹³⁵ *Ibid.* at 130.

¹³⁶ *Ibid.* at 104. At times he acknowledges that RCAP does “[report] and [support] a modernizing Aboriginality.” *Ibid.* at 106. Such acknowledgements are, however, rare.

¹³⁷ *Ibid.* at 126, 131. He also uses these facts to claim that Aboriginal societies are “penetrated societies.” *Ibid.* at 101–102. The following two paragraphs give a stronger sense of what exactly he means by an adaptable, modernizing Aboriginality:

In a sense, it is not that the process of cultural transformation has changed, but that we now think of it differently. Driving a car, watching television, drinking Pepsi, going to university, are no longer thought of as signs of assimilation, but as responding to a changing environment, as simply indicating contemporary ways of being Aboriginal. ...

When viewed from a modernizing perspective, Aboriginality is no longer defined in terms of an authenticity with roots in the distant past. Rather, its redefinition presupposes a constant, selective, adaptive, and incorporative behaviour as individuals and communities remake themselves by choosing from the options at hand. Borrows observes that for his ancestors, the Chippewa, the “Christian religion, farming, and education [were instruments to] ... provide the strength necessary to retain much of what they already enjoyed as self-governing peoples.”

To assume new practices and values is simply to be open to change. Indianness and Aboriginality are now capacious concepts no longer confined to historical ways of life. Aboriginality now incorporates non-traditional beliefs, practices, and values from outside without ceasing to be Aboriginality. Dara Culhane, describing Gitksan and Wet'suwet'en society, agreed that change followed contact, but denied that this meant "transforming from the status of 'truly Aboriginal' peoples to that of ones 'not truly Aboriginal.'" Borrows' summary is apposite: "Aboriginal peoples are traditional, modern and post-modern."

Ibid. at 104–105 [footnotes omitted].

Of course no sophisticated commentator would advocate a fossilized conception of Aboriginality, but it seems to us that Cairns' analysis is just too thin. The generality is too large. There is no attempt to discuss how the adaptation of modernist ways continue to be aboriginalized, modified or transformed as opposed to flattening. For example, within ten pages of the aforementioned comments he says, "[s]everal generations of off-reserve living, especially if accompanied by intermarriages, will weaken Aboriginal identity, and in some cases lead to its disappearance. This is unavoidable." *Ibid.* at 114. What is the difference between drinking a Pepsi and the disappearance of an identity? Cairns' analysis remains too abstract to provide an answer, preferring instead to invoke abstractions such as a "modernizing Aboriginality [that is] an ongoing, selective, eclectic incorporation of values, behaviours, and identities with their updated Aboriginal counterparts." *Ibid.* at 204. The overall impression that we get from Cairns' fluidic conception of identity is that it is so fluidic that ultimately it should not matter as a political category. We would suggest that if this is an accurate interpretation, it goes too far. As the Supreme Court noted in *Corbière*, citing RCAP:

Aboriginal identity lies at the heart of Aboriginal peoples' existence; maintaining that identity is an essential and self-validating pursuit for Aboriginal peoples in cities. ... Cultural identity ... is also tied to a land base or ancestral territory. For many, the two concepts are inseparable. ... Identification with an ancestral place is important to urban people because of the associated ritual, ceremony and traditions, as well as the people who remain there, the sense of belonging, the bond to an ancestral community, and the accessibility of family, community and elders.

Corbière v. Canada, [1999] 2 S.C.R. 203 at 222.

The difference between Cairns' approach and that of John Borrows, who he cites approvingly as an advocate of "an outward-looking Aboriginality" and a fellow "middle ground[er]" (*Plus, supra* note 3 at 205–207, 209) is that the latter seeks to provide concrete examples of how Aboriginal practice and ideals can transform, transmute and actively contribute the needs of a profoundly pluralist and multinational society with an *entrenched legal regime* that is constitutionally committed to the rights of Aboriginal peoples, that rejects the assumptions of majoritarian competitivism and is hostile to the domestication of First Nations. J. Borrows, "Sovereignty's Alchemy" (1999) 37 Osgoode Hall L.J. 537; "With or Without You: First Nations Law (in Canada)" (1996)

We suggest that there is another way to interpret the approach adopted by RCAP, based upon the principle of charity in interpretation. Such an approach would identify the lopsided nature of RCAP's analysis, but then ask why? One answer might be that, in light of the demographic trends that suggest the real possibility of demographic extinction,¹³⁸ then *strategically* it makes sense to devote one's efforts and limited resources to improve circumstances on reserves in order to stall, if not reverse, the out-migration. The goal of RCAP therefore might be to help "counter the non-Aboriginal cultural bombardment they — especially youth — personally experience,"¹³⁹ something that Cairns acknowledges in his discussion of cultural survival,¹⁴⁰ but does not seem to fully appreciate when he characterizes it as merely "some cultural erosion" and "a weaker Aboriginal cultural identity."¹⁴¹

The problem here, as we see it, is that Cairns' constant invocation of reality, even "massive reality,"¹⁴² slips into what might be called "demographic necessitarianism": he assumes that certain demographic trends are inevitably moving society in a particular direction and that if Aboriginal peoples do not comply, then they risk placing themselves "on the wrong side of history"¹⁴³ because "[o]urs is an urban civilization."¹⁴⁴ In this sense, Cairns is fatalistic. RCAP refuses to succumb to such demographic determinism: it recognizes these societal trends, and although it may not analyse them carefully enough, it makes a decision to advocate for innovative structural and institutional changes to resist such trends. But Cairns balks, preferring traditional institutional responses.

41 McGill L.J. 629; "Living Between Water and Rocks: First Nations Environmental Planning and Democracy" (1997) 47 U.T.L.J. 417; "Uncertain Citizens: Aboriginal Peoples and the Supreme Court" (2001) 80 Can. Bar Rev. 15; "Domesticating Doctrines: Aboriginal Peoples After the Royal Commission" (2001) 46 McGill L.J. 615. As we shall argue later, Cairns does not share these commitments. (Borrows' problem is whether any of the power elites in the dominant society will accept his generous offers of mutuality. Given past failures, we are somewhat pessimistic.)

¹³⁸ See also P. Palmater, "An Empty Shell of a Treaty Promise: *R. v. Marshall* and the Rights of Non-Status Indians" (2000) 23 Dal. L.J. 102 at 117–20.

¹³⁹ *Plus, supra* note 3 at 44.

¹⁴⁰ *Ibid.* at 128–32.

¹⁴¹ *Ibid.* at 130, 131. He quotes RCAP which explicitly seeks to ensure that "Aboriginal cultures have support to preserve and transmit the core of language, beliefs, traditions and knowledge that is uniquely Aboriginal." *Ibid.* at 123.

¹⁴² *Ibid.* at 204.

¹⁴³ *Ibid.* at 130, 185.

¹⁴⁴ *Ibid.* at 185.

Consequently we suggest that RCAP is much more optimistic and empowering for Aboriginal peoples.

Moreover, such fatalism may represent a potential reversal in Cairns' theorizing because, as we have seen, a major theme of his previous work was to resist structural determinism and highlight the contingency¹⁴⁵ of social and constitutional change.¹⁴⁶ Previously, he had emphasized the importance of agency, the social management role of the state,¹⁴⁷ and especially "the capacity of government to make society responsive to its demands."¹⁴⁸ It seems to us that this is exactly what RCAP has tried to do. Rather than trivializing the dangers of cultural imperialism and prostrating themselves before the altar of demographic necessity (a stance that would signal the end of politics), RCAP Commissioners have decided that "institutions matter,"¹⁴⁹ and therefore perhaps as a strategy of resistance, to focus on the problems of reserves. For many Aboriginal people, if there is any possibility of maintaining Aboriginal worldviews, then the reserves are the most likely location to do so, both politically and geographically. As Chief Bernard Omniyak has indicated:¹⁵⁰

As Lubicon, we see our traditional territory differently than the oil and gas and forestry companies. They see it as a place to conquer, exploit, and then leave. We see it as the place we belong, the place where the Creator put us and intends for us to stay. We have no place else to be. If we can no longer survive on our traditional lands, we will cease to exist as a people.

Aboriginal Nationalism

Cairns devotes much of his critique in *Citizens Plus* and other recent writings to the emergence of what he calls the discourse of Aboriginal nationalism or "parallelism."¹⁵¹ Indeed, time and again he analogizes Aboriginal with Québec

¹⁴⁵ *Disruptions*, *supra* note 5 at 198.

¹⁴⁶ *Ibid.* at 104–105.

¹⁴⁷ A. Cairns & C. Williams, *supra* note 1 at 1–2, 9, 15, 27, 41.

¹⁴⁸ *CGSC*, *supra* note 5 at 141.

¹⁴⁹ A. Cairns, "Comment on 'Critics of the Judicial Committee: The New Orthodoxy and an Alternative Explanation'" (1986) 19 Can. J. Poli. Sci. 521 at 527.

¹⁵⁰ Forward, *Blind Spots: An Examination of the Federal Government's Response to the Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Aboriginal Rights Coalition, 2001) [hereinafter *Blind Spots*].

¹⁵¹ *Plus*, *supra* note 3 at 92.

nationalism.¹⁵² He characterizes it as “separatist,”¹⁵³ designed to break out, not break in.¹⁵⁴ Pointedly, he paints a picture of Aboriginal elites “stimulat[ing] ‘otherness’ in the service of redemptive nationalism.”¹⁵⁵

However, we suggest that Cairns’ invocation of the discourse of “nationalist contagion”¹⁵⁶ is a false homogenization. Nationalism is an essentially contested phenomenon and can manifest itself in a variety of forms.¹⁵⁷ Claims of Aboriginal nationalism are far from being “separatist”; rather, they are calls for incorporation and inclusion; they are claims for what Martha Minow calls equality of attention.¹⁵⁸ Again Cairns acknowledges, but does not give sufficient weight to, a variety of indicia that make it clear that RCAP’s position is integrative not secessionist, such as: the references to “within Canada”,¹⁵⁹ the

¹⁵² *Reconfigurations*, *supra* note 5 at 204–207, 276, 322–23; *Plus*, *supra* note 3 at 134, 171; “Abyss,” *supra* note 99 at 19; “Introduction,” *supra* note 62 at 8. In a brief review of Kymlicka’s *Finding Our Way: Rethinking Ethnocultural Relations in Canada*, Cairns does acknowledge significant differences between Québec and Aboriginal nationalism, but these distinctions are not pursued or elaborated in his larger projects such as *Citizens Plus*. See A. Cairns, “Book Review” (1999) 32 Can. J. Poli. Sci. 369 at 370.

¹⁵³ *Plus*, *supra* note 3 at 93, 188.

¹⁵⁴ *Ibid.* at 95–96.

¹⁵⁵ *Ibid.* at 102.

¹⁵⁶ *Reconfigurations*, *supra* note 5 at 175.

¹⁵⁷ See e.g. O. Özkirimli, *Theories of Nationalism: A Critical Introduction* (New York: St. Martin’s Press, 2000); S. Ranchod-Nilsson & M. Tétreault, eds., *Women, States, and Nationalism: At Home in the Nation?* (New York: Routledge, 2000). We find it curious that in Cairns’ extensive discussions of nationalism he does not discuss a recent and vibrant tradition of “liberal nationalism” which is quite supportive of claims advocated by minorities such as Aboriginal peoples. See e.g. W. Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995); Y. Tamer, *Liberal Nationalism* (Princeton: Princeton University Press, 1993); D. Miller, *On Nationality* (Oxford: Oxford University Press, 1995); J. Spinner, *The Boundaries of Citizenship: Race, Ethnicity and Nationality in the Liberal State* (Baltimore: Johns Hopkins University Press, 1996).

¹⁵⁸ M. Minow, *Making all the Difference: Inclusion, Exclusion and American Law* (Ithaca: Cornell University Press, 1990) at 297. At times Cairns seems to be aware of this, but glosses over it in his crusade against nationalism. For example, in the context of Meech Lake he acknowledges that Aboriginal peoples, among others, spoke the language of “honourable inclusion and recognition” (*Disruptions*, *supra* note 5 at 129). Elsewhere, he actually quotes RCAP’s claim that “Aboriginal governments provide the Constitution with its deepest and most resilient roots in the Canadian soil” (*Plus*, *supra* note 3 at 32).

¹⁵⁹ *Plus*, *supra* note 3 at 136.

application of the *Charter*,¹⁶⁰ which in his other work he touts as emblematic of a symbolic commitment to Canadianism; the ongoing participation in a variety of federal and provincial support programs,¹⁶¹ the profoundly collaborative third volume of the RCAP Report *Gathering Strength*¹⁶² and the integrative *Partners in Confederation*;¹⁶³ and finally, passports that recognize both First Nations and Canadian citizenship.¹⁶⁴ Elsewhere, Cairns has outlined the recurrent and explicit desire of many Aboriginal peoples (including Ovide Mercredi and Matthew Coon Come) not only to opt out of a secessionist Québec, but also to stay in Canada and “request protection from the Canadian military.”¹⁶⁵ These are not just “perfunctory” ploys, as Cairns suggests on occasion.¹⁶⁶ Rather, they demonstrate a strong commitment to the creation and integration of an innovative third order of government *within* the Canadian constitutional order. Cairns himself quotes RCAP, but does not appear to adequately internalize:¹⁶⁷

[W]hereas Aboriginal peoples were once like trees growing in relative isolation on an open plain, they are now more like trees in a grove, co-existing with others in a complex ecological system. So, while the ancient pine of Aboriginal governance is still rooted in the same soil, from which it draws its sustenance, it is now linked in various intricate ways with neighbouring governments.

Instead of characterizing nationalist discourse as fragmenting and divisive, it might be understood as a way to enhance citizenship, and to reinforce social cohesion.¹⁶⁸ Indeed, to dismiss it, as Cairns suggests, may be a recipe for even greater alienation.

The discourse of Aboriginal nationalism is a relative newcomer to the politico-discursive scene, as Cairns rightly points out.¹⁶⁹ In our opinion, this is

¹⁶⁰ *Ibid.* at 141.

¹⁶¹ *Ibid.* at 151.

¹⁶² *Ibid.* at 158–59.

¹⁶³ *Ibid.* at 192.

¹⁶⁴ *Ibid.* at 153.

¹⁶⁵ *Reconfigurations*, *supra* note 5 at 338–41.

¹⁶⁶ *Plus*, *supra* note 3 at 153.

¹⁶⁷ *Ibid.* at 192.

¹⁶⁸ See also J. Borrows, “Uncertain Citizens: Aboriginal People and the Supreme Court” (2001) 80 Can. Bar Rev. 15 at 40–41.

¹⁶⁹ *Plus*, *supra* note 3 at 169. This is not to claim that Aboriginal communities have not adopted nationalist conceptions of themselves historically (see e.g. A. Simpson, “Paths toward a Mohawk Nation: Narratives of Citizenship and Nationhood in Kahnawake” in D. Ivison *et al.*, eds., *Political Theory and the Rights of Indigenous Peoples* (New York: Cambridge University Press, 2000) 113). Rather, as we argue in the rest of this

because all previous discourses seem to have fallen on deaf ears. Thus, rather than blaming Aboriginal peoples for adopting such a strategic discourse, perhaps the responsibility lies with the dominant society because it would seem that the only way to get attention, the only language that is seriously listened to by those who celebrate Canada as the best country in the world in which to live, is the discourse of nationalism. Thus, Cairns' claim that he does not offer a "paean to nationalism" is only partially accurate; he rejects a certain form of nationalism (Aboriginal nationalism), but in so doing celebrates another form of nationalism, an integrative polyglot nationalism, an "enthusiastic" Canadian nationalism¹⁷⁰ which elsewhere he claims merits "[a]t a minimum, a 'B+'.¹⁷¹ Rather than rejecting nationalism *per se*, what Cairns rejects is "ethnic nationalism," favouring instead "a civic nationalism that transcends particular ethnicities."¹⁷² However, as Philip Resnick has argued, the civic versus ethnic nationalism dichotomy is "not particularly helpful in sorting out the problems which multinational states face."¹⁷³

These concerns about Cairns' understanding of the strategic use of language generate concerns about his reliance upon the importance of rational dialogue.¹⁷⁴ Since contact, Aboriginal peoples have pursued a series of discursive engagements with settler and immigrant communities. Each one has been a failure and Aboriginal peoples have been increasingly moved to the margins of Canadian society. Treaty discourse failed. Inuit claims for recognition by the federal government were ignored despite affirmation by the Supreme Court of Canada. Consultations with the federal government prior to the 1969 *White Paper* failed. The "Citizens Plus" discourse of the Hawthorn Report failed. Constitutional conferences failed. The Charlottetown Accord failed. Royal Commission Reports have been ignored by the government and the Prime Minister.¹⁷⁵ Indeed, throughout his work, Cairns acknowledges and denounces

paragraph, Aboriginal nationalism has come to the fore as part of a strategic discursive repertoire.

¹⁷⁰ *Plus, supra* note 3 at 153.

¹⁷¹ *Disruptions, supra* note 5 at 33.

¹⁷² A. Cairns, "States and Nations" in R. Gibbins & S. J. Randall, eds., *Federalism and the New World Order* (Calgary: University of Calgary Press, 1994) 71 at 73.

¹⁷³ P. Resnick, "Civic and Ethnic Nationalism: Lessons from the Canadian Case" in R. Beiner & W. Norman, eds., *Canadian Political Philosophy: Contemporary Reflections* (Toronto: Oxford University Press, 2001) 282.

¹⁷⁴ See also "Identity," *supra* note 41.

¹⁷⁵ See *Blind Spots, supra* note 150.

all these failures.¹⁷⁶ Now, even as we write this review, the present Minister for Aboriginal Affairs, Robert Nault, is planning to proceed with significant changes to the *Indian Act* in spite of the representations of wary and worried First Nations spokespersons.¹⁷⁷ Similarly, the current Prime Minister still seems to believe that there was nothing wrong with the assimilationist policies of the *White Paper* which he introduced decades earlier (1969), as Minister of Indian Affairs.¹⁷⁸ However, when Aboriginal peoples adopt a discourse that mobilizes and empowers from within, and generates at least some attention from without (nationalism), Cairns seeks to undercut such an approach and send them back to a prior discourse of citizenship and equality (*citizens plus*) which he not only admits has already failed,¹⁷⁹ but is also historically identified with the “federal government[’s] racist assimilative policies.”¹⁸⁰

Even more disturbingly, in the final few pages of *Citizens Plus* Cairns celebrates a publication of the Federation of Saskatchewan Indian Nations which he suggests “powerfully argues a counter-position to the RCAP Report.” He continues:¹⁸¹

There is no dwelling on past mistreatment, no attempt to instil guilt in the majority, and no appeal to rights as the rationale for better treatment. The monograph is simply a straightforward appeal for help to fellow members of a common community, one of whose peoples is in trouble.

In our view, such a discourse reduces Aboriginal people to the status of petitioning supplicants.¹⁸² It may well be, as Cairns suggests, that such a strategy

¹⁷⁶ CVF, *supra* note 6 at 101; *Disruptions*, *supra* note 5 at 128; *Reconfigurations*, *supra* note 5 at 105–107, 244–46; *Plus*, *supra* note 3 at 52, 81, 91, 121–22, 165, 168, 189, 190.

¹⁷⁷ “Ottawa Refuses to End Native Talks” *The Globe and Mail* (20 July 2001) A6. In making this point we are not uncritically endorsing the position of Aboriginal chiefs, for undoubtedly there are significant problems of representation and voice within Aboriginal communities. See S. Chase, “Some Native Women Like Nault’s Plan” *The Globe and Mail* (10 August 2001) A6. However, unilateralism by the federal government is not the way to resolve such issues.

¹⁷⁸ “PM Blames Natives for System of Reserves” *The Globe and Mail* (8 September 2001) A4.

¹⁷⁹ *Plus*, *supra* note 3 at 165.

¹⁸⁰ *Ibid.* at 168 (quoting Joyce Green).

¹⁸¹ *Ibid.* at 208.

¹⁸² It is striking to compare this discussion of Aboriginal rights with his earlier celebration of *Charter* rights:

The constitutional conversation precipitated by the Charter is not confined to

is a response to the “catastrophic” impact of “present trends of unemployment, social exclusion and anomic conditions.”¹⁸³ However, if supplicancy is what Cairns perceives as “the middle ground,”¹⁸⁴ then Canada’s constitutional morality must be truly impoverished. The problem with dialogism is not just (which he acknowledges, but once again only in passing) that “constitutional discussion does not take place within a framework of shared assumptions but founders on the disharmonious coexistence of divergent first principles,”¹⁸⁵ but that it can never be neutral. As Dale Spender reminds us, “The group that has the power to ordain the structure of language, thought and reality has the potential to create the world in which they are the central figures, while those who are not of their group are peripheral and therefore may be exploited.”¹⁸⁶ Cairns’ endorsement is in favour of that which is palatable to the sensibilities of the more powerful in Canadian society, which is not necessarily the same as what Aboriginal peoples are entitled to.

Cairns’ reflections on Aboriginal constitutionalism are surprisingly ahistorical. While his other work has been explicitly and systematically historical,¹⁸⁷ we would suggest that despite two chapters in *Citizens Plus*, he pays insufficient attention to the ongoing impact of the history of colonization and

court rooms and does not require a law degree of its participants. On the contrary, the Charter elevates the significance of citizenship as a dynamic political category in all the arenas in which civic roles can be played. Those who claim rights are not supplicants, and those who respect them are not aristocratic benefactors generously exercising discretion in the expectation of gratitude. As Alexis de Tocqueville wrote: “There is nothing which, generally speaking, elevates and sustains the human spirit more than the idea of rights. There is something great and virile in the idea of right which removes from any request its suppliant character, and places the one who claims it on the same level as the one who grants it.” This equalizing aspect of rights makes the Charter a democratizing instrument supportive of a participant political culture.

CVF, supra note 6 at 4 [footnotes omitted].

¹⁸³ *Plus, supra* note 3 at 208.

¹⁸⁴ *Ibid.* at 209.

¹⁸⁵ *Disruptions, supra* note 5 at 205.

¹⁸⁶ D. Spender, *Man Made Language*, 2d ed. (London: Routledge & Kegan Paul, 1985) 143.

¹⁸⁷ *Reconfigurations, supra* note 5 at 16–27, 94, 97–118; A. Cairns, “The Shadows Cast by Previous Constitutional Reform Efforts and Their Subsequent Interpretations” in J. Laponce & J. Meisel, eds., *Debating the Constitution* (Ottawa: University of Ottawa Press, 1994) 19.

subordination.¹⁸⁸ Our argument is not that history automatically engenders normative priority; rather it is, as he acknowledges elsewhere, that the past has a heavy hand on the present and that current claims can only be understood in the light of past (failed) experiences.¹⁸⁹ In short, Cairns' work, while historical and sociological,¹⁹⁰ is not historical and sociological enough. For example, Cairns adopts two quotations from the post-colonialist theorist, Edward Said, to contest the purity of national groups, and then uses these quotations to challenge what he suggests are the essentialist underpinnings of some Aboriginal claims.¹⁹¹

Said remarked that “all cultures are involved in one another; none is single and pure, all are hybrid, heterogeneous, extraordinarily differentiated, and unmonolithic.” And: “We have never been as aware as we now are of how oddly hybrid historical and cultural experiences are, of how they partake of many often contradictory experiences and domains, cross national boundaries, defy the *police* action of simple dogma and loud patriotism. Far from being unitary or monolithic or autonomous things, cultures actually assume more ‘foreign’ elements, alterities, differences, than they consciously exclude.”

But what is missing here is context. While it is true that Said seeks to contest all forms of racial purity, as we read his work, the more predominant theme is his use of the critique of group purity to challenge the dominant groups in the world to accept their interdependence with, construction of and responsibility for the formerly colonized communities — the oppressed. Not only are the quotations from Said’s book *Culture and Imperialism*, but the first quotation utilized by Cairns is actually prefaced by “Partly because of empire...”¹⁹² Paradoxically, Cairns uses Said’s argument against one colonized group, the First Nations of Canada, to resist their claims for a thick constitutional recognition.¹⁹³ A more grounded appreciation of the past, and its ongoing impact on the present, might engender more context-sensitive assessments of future-oriented claims of Aboriginal peoples.

Much of *Citizens Plus* is an appeal to First Nations to backtrack from “nationalism” and to trust in Cairns’ larger constitutional morality: the

¹⁸⁸ “Dissension over the past gets in the way of agreement on our future.” *Plus*, *supra* note 3 at 39.

¹⁸⁹ *Reconfigurations*, *supra* note 5 at 16–27.

¹⁹⁰ See generally, A. Cairns, “Alternative Styles, National Influences on the Study of Politics” (1974) 7 Can. J.Poli. Sci. 101.

¹⁹¹ *Plus*, *supra* note 3 at 103.

¹⁹² E. Said, *Culture and Imperialism* (New York: Alfred Knopf, 1994) xxv.

¹⁹³ Similarly, Cairns is critical of the RCAP because its “[c]oncern for the ‘other,’ the larger Canadian constitutional order is limited.” *Ibid.* at 152. Again, this is a curious use of the discourse of “other.”

reciprocity of a common community and sense of belonging. However, the first two chapters of *Citizens Plus* and some of his earlier writings¹⁹⁴ provide comprehensive reasons why Aboriginal peoples should not trust the dominant society. Somewhere along the way power(lessness) seems to disappear from Cairns' analysis in his pursuit of normativity.¹⁹⁵ Again this is in sharp contrast to the vast majority of his other work which was very sensitive to "the driving force of self-interest,"¹⁹⁶ "[the] calculations of self-interest"¹⁹⁷ and "the facts of power and self-interest."¹⁹⁸ Quite simply, for someone who has often identified the "chaotic process" whereby constitutional renovation has been shaped by being "tugged and pulled by competing interests seeking advantage,"¹⁹⁹ "competitive brinksmanship,"²⁰⁰ "the ruthlessness of democratic politics when the stakes are high"²⁰¹ and where the "reconstruction of a symbolic order

¹⁹⁴ *Reconfigurations*, *supra* note 5 at 301–13.

¹⁹⁵ Two examples might illustrate this point. First, Cairns is critical of

"the tendency...to be attracted to the big themes of decolonization and cultural diversity at the expense of the more practical problems of urban living where the individual Aboriginal person is much more clearly a member of three non Aboriginal communities — urban, provincial, and national — on which that person depends for various services. Further, some of the neglected half presumably have made positive decisions to enter the majority society and succeed on its terms."

Plus, *supra* note 3 at 184.

The problem here is that he is drawing a false dichotomy between the big themes and the practical problems. The issue of urban First Nations persons is a particularly poignant example of the big themes of decolonization and cultural diversity in the face of possible cultural extinction where the ideas of autonomous choice and success are hugely problematic. Interestingly, within a page of making these comments Cairns acknowledges that "even if for many the choice is dictated by necessity." *Ibid.* at 185. Remarkably, this concession is never pursued. But in fact it may go a long way in explaining the emphasis of current pro-Aboriginal thought: that the focus on strengthening the possibility of survival outside the cities may be the only way to resist the dull compulsion of urbanization.

Second, at one point, in response to the claims of identity politics Cairns asserts "[e]ach one of us, after all, is simultaneously both an insider and outsider." "Introduction," *supra* note 62 at 12. True; but surely this is false equivalency which ignores the pervasive and systemic inequality of contemporary societies.

¹⁹⁶ *Reconfigurations*, *supra* note 5 at 45; "Constitution-Making," *supra* note 2.

¹⁹⁷ *Disruptions*, *supra* note 5 at 56.

¹⁹⁸ *CGSC*, *supra* note 5 at 180.

¹⁹⁹ *Ibid.* at 216.

²⁰⁰ *Ibid.* at 251.

²⁰¹ *Ibid.* at 248.

involves winners and losers,”²⁰² to call on Aboriginal peoples to embrace the politics of trust is baffling.²⁰³

In response, Cairns reiterates on several occasions one very serious pragmatic and prudential argument as to why it may be unwise for Aboriginal people to pursue the discourse of nationalism: if Aboriginal peoples reject a “strong common bond, morally located in a common citizenship”²⁰⁴ then the civic bonds of mutual responsibility and empathy will weaken. The result will be the abandonment of Aboriginal peoples by the dominant population and a correlative unwillingness to share.²⁰⁵ His concern is that the discourse of nationalism will “generate perceptions of ‘otherness’” that “presuppose and create boundaries,”²⁰⁶ “inhibit feelings of fraternity”²⁰⁷ and undercut the “positive fraternity effect.”²⁰⁸ We believe this us/them mentality and the abandonment thesis are important questions of group political psychology, and realistic possibilities that should not be ignored. But there are four issues here.

First, we suspect that if you asked most Aboriginal people about their experiences of the “positive fraternity effect” demonstrated by their fellow Canadians, the answers would be less than positive. Second, what does the abandonment thesis say about the state of Canada’s political and constitutional morality when at bottom the dominant communities are saying to Aboriginal peoples, Unless you act like one of “us,” and cater to our sense of aggrieved

²⁰² *Reconfigurations*, *supra* note 5 at 42.

²⁰³ Indeed, he has argued that:

Inevitably, the existing constitution is embroiled in and victimized by intergovernmental power struggles it cannot tame. Equally inevitably, constitutional change is pressed into service by political elites for its potential contribution to the goal of nation-building, province-building, or Quebec nation-building. Constitutional change, ostensibly sought for the elevation of the citizenry, is covetously pursued in the service of elite ambitions. The idea of the constitution as rules of the game is displaced by the unsavory reality of the constitution as weapon.

“Constitution-Making,” *supra* note 2 at 389.

²⁰⁴ *Plus*, *supra* note 3 at 182.

²⁰⁵ *Reconfigurations*, *supra* note 5 at 174, 214, 255, 300, 313–14; *Plus*, *supra* note 3 at 7, 93, 95, 99, 109, 155, 182, 187, 209–210; A. Cairns, “Citizenship and the New Constitutional Order” (1992) 15 Can. Parliamentary Rev. 2 at 6 [hereinafter “New Constitutional Order”]; “Introduction,” *supra* note 62 at 8.

²⁰⁶ *Plus*, *supra* note 3 at 93–94.

²⁰⁷ *Ibid.* at 141.

²⁰⁸ *Ibid.* at 153.

rebuff, we will cut you off?²⁰⁹ If this is the reality, how can Aboriginal peoples be expected to trust the dominant community? Third, we do not believe that it is the discourse of nationalism that *generates* otherness, and *presupposes* and *creates* boundaries. These already exist and have been a constitutive feature of the Canadian cultural and constitutional identity since before its inception. Elsewhere in his writings Cairns acknowledges this.²¹⁰ As we have suggested above, “nationalistic” claims by Aboriginal peoples are a pragmatic response to a pre-existing context of boundaries, exclusions and colonialism *not* the generative source. They represent a demand for equality of attention and inclusion. Fourth, if Cairns is serious about raising issues of collective political psychology, then surely a similar standard should be applied to his own preferred vision: why should the dominant society really care about, and positively respond to, a small, apparently demographically disappearing minority that seeks to reclaim significant elements of the wealth of the dominant society? The track record has been disastrous for the last five hundred years, so where is the wellspring for the sudden goodwill and empathy so crucial to Cairns’ vision?²¹¹ Has he spoken to any non-Aboriginal lobster fishers in Atlantic Canada lately?²¹² These concerns become especially worrisome in light of Cairns’ scepticism about Aboriginal rights claims, as we shall discuss next.

Critique of Aboriginal Rights

Not only is Cairns hostile to discourses of Aboriginal nationalism, he is also explicitly critical of Aboriginal invocations of rights discourses. For example, he suggests the RCAP invokes a rights analysis to revive a nation-to-nation

²⁰⁹ Cairns seems aware of this when he speculates on how the rest of Canada might respond to secession by Québec. *Reconfigurations*, *supra* note 5 at 318.

²¹⁰ *Ibid.* at 301–14.

²¹¹ In discussing the three possible reasons why Aboriginal peoples achieved such success under the Charlottetown Accord, the one to which he gives the least explanatory weight is the empathy argument. *Reconfigurations*, *supra* note 5 at 249. Indeed, elsewhere he has been more explicit about group political psychologies:

Each government recognizes that the other governments are driven by self-interest. In the Darwinian process of constitutional change each government fears that altruism will be a destructive act, for itself, for its successors, and for the future it seeks for the people partially under its jurisdiction. Concern for others, therefore, is carefully controlled.

“Constitution-Making,” *supra* note 2 at 390.

²¹² See e.g. T. Isaac, *Aboriginal and Treaty Rights in the Maritimes: The Marshall Decision and Beyond* (Saskatoon: Purich Publishing, 2001) 149–56.

regime based upon the world as it existed at the time of contact.²¹³ The following, admittedly somewhat lengthy, quotation encapsulates the core of his argument:²¹⁴

If a future nation-to-nation relationship will not emerge from the contemporary distribution of power, from mutual economic interdependence, or from military necessity, the crucial question then is “What is to sustain it in contemporary conditions drastically different from those of the early contact period?” The Commission’s answer emerges in the contrast between its antipathy toward majoritarian democratic politics and its consistent espousal of a regime of rights coupled with monitoring and enforcement mechanisms distanced from government and from the ebb and the flow of public opinion. What is missing in the Report, or perhaps more accurately, rejected, is an analysis followed by proposals for the participation of Aboriginal individuals and nations in the competitive politics of Canadian society — the world of voters, political parties, elections, and in general of participatory citizenship in federal and provincial political arenas...

A major Commission premise is that Aboriginal peoples, at least those in nation-governments, can and should be insulated from the ups and downs of democratic politics; their protection and guarantees for future treatment are to be sustained by a regime of rights and a battery of supportive institutions. The preference for law over politics feeds on Aboriginal, especially First Nation, distrust of Canadian governments and the majority society. This leads to distrust of majoritarian politics, to a weak sense of common citizenship, and to an unwillingness to accord credibility to a possible civic empathy reaching across the divides of a fractured society...

The Commission’s solution to the recovery in contemporary conditions of the historic equalities of the early contact period is, therefore, to gain recognition for a regime of rights and institutions that will keep the everyday politics of democracy at bay...

The Commission’s preference for an enforceable legal regime over resort to the competitive political process to advance and protect Aboriginal interests is an attempt to duplicate in the modern era relationships that were functional several hundred years, and that developed in response to realities of power, numbers, mutual economic interdependence, and military necessity that no longer prevail...

The past supports for nation-to-nation relationships have vanished. The conventional contemporary democratic process is distrusted. The fundamental bond of citizenship receives only passing attention...

The credibility of the apolitical infrastructure that is to support the Commission’s constitutional vision is problematic. The Report lacks a workable political theory to support the institutional scaffolding that it proposes to both insulate Aboriginal nations from the vicissitudes of democratic politics, and simultaneously to guarantee them long-run, positive differential treatment by the majority society. This weakness based on Commission’s preference for law over politics is further revealed by the Report’s cursory discussion of “Representation in the Institutions of Canadian Federalism.”

²¹³ *Ibid.* at 142.

²¹⁴ Plus, *supra* note 3 at 143–46 [footnotes omitted].

On other occasions, Cairns characterizes Aboriginal claims as “claims for special treatment.”²¹⁵ Elsewhere, he advocates that Aboriginal people should make greater use of their franchise rights and participate more keenly in the conventional institutions of representative democracy,²¹⁶ thereby reminding provincial and federal governments that they are the representatives of all Canadians, not just non-Aboriginal Canadians.²¹⁷ Indeed, at one point, Cairns even yearns for an “Aboriginal ‘Trudeau’!”²¹⁸

There are at least four problems with Cairns’ critique of Aboriginal rights. First, the basic message, “law, not politics” is misconceived. The idea of constitutionally entrenching “rights and a battery of supportive institutions” is a form of politics, not the transcendence of politics by the creation of an “apolitical infrastructure.” It is an attempt to provide a balance against a majoritarianism that can and, in the case of Aboriginal peoples, might well result in cultural extinction. In other essays, Cairns has been vocally supportive of rights claims as a legitimate form of politics, praising them as Tocquevillian social equalizers,²¹⁹ but when they are embraced by Aboriginal peoples there appears to be a retreat.

Second, Aboriginal rights are not just demands for “special treatment”; rather, as Lamer C.J.C. has argued in *Van Der Peet*, their “special” nature is a consequence of Canada’s fundamental constitutional obligations:²²⁰

the doctrine of aboriginal rights exists, and is recognized and affirmed by s. 35(1), because of one simple fact: when Europeans arrived in North America, aboriginal peoples were already here, living in communities on the land, and participating in distinctive cultures, as they had done for centuries. It is this fact, and this fact above all others, which separates aboriginal peoples from all other minority groups in Canadian society and which mandates their special legal, and now constitutional, status.

²¹⁵ “Empire, Globalization,” *supra* note 60 at 45.

²¹⁶ *Plus*, *supra* note 3 at 172.

²¹⁷ *Ibid.* at 192–203.

²¹⁸ *Ibid.* at 173.

²¹⁹ CVF, *supra* note 6 at 4.

²²⁰ *R. v. Van Der Peet*, [1996] 2 S.C.R. 507 at 538–39 [underlining in original]. See also M. Asch, ed., *Aboriginal and Treaty Rights in Canada: Essays on Law, Equality and Respect for Difference* (Vancouver: University of British Columbia Press, 1997); P. Macklem, *Indigenous Difference and the Constitution of Canada* (Toronto: University of Toronto Press, 2001); A. Dobrowolsky, “Of ‘Special Interest’: Interest, Identity and Feminist Constitutional Activism” (1998) 31 Can. J. Poli. Sci. 707.

Third, Cairns' celebration of the virtues of competitive majoritarian politics seems decidedly out of place when much of his book is an acknowledgement of how this has failed, not only historically but also contemporaneously.²²¹ Indeed, competitive majoritarianism is, almost by definition, bound to fail for Aboriginal peoples given the demographic realities that he has frequently emphasized in his work. Is it surprising that Aboriginal people are distrustful, have a weak sense of common citizenship, or are sceptical of civic empathy, and seek to keep the everyday politics of democracy at bay when they are at the receiving end of a deeply fractured society? For example, although Canada ranks first in the United Nations Human Development Index, when Aboriginal communities in Canada are assessed by the same standard, they rank sixty-third.²²²

Fourth, Aboriginal reliance on the discourse of rights is not an attempt to duplicate the past, but is a harsh recognition that in a racialized society such as Canada the “fundamental bonds of citizenship” may look more like the bonds that tie Aboriginal peoples to perpetual subordination rather than a precondition to equality.²²³ In our opinion, the invocation of a rights hierarchy is anything but a withdrawal to nostalgic historicism; it is the deployment of a political strategy to create some space to resist not just the everyday politics of democracy but the systemic and everyday racism that goes along with such politics.²²⁴

Resurrecting Citizens Plus?

If nationalist discourses are uncivic and rights discourses misconceived, what does Cairns suggest as a more suitable constitutional strategy that conforms to his constitutional vision? His response is “citizens plus.” The problem, however, is not that citizens plus might not offer a potentially very attractive alternative vision; it is that Cairns never spells out what it might mean exactly. He acknowledges that thirty years ago Hawthorn *et al.* (including himself) did not provide specifics, preferring to leave the content of the plus aspect “to the

²²¹ *Plus*, *supra* note 3 at 196–99.

²²² *Blind Spots*, *supra* note 150 at 58.

²²³ *Ibid.* at 92–94, 110–32.

²²⁴ See e.g. S. Razack, *Looking White People in the Eye: Gender, Race and Culture in Courtrooms and Classrooms* (Toronto: University of Toronto Press, 1998). We are not necessarily endorsing the use of a rights discourse, because there are many dangers to such a strategy. See Devlin, *supra* note 7 at 19–23. However, we also recognize the possibility of using rights in counter-hegemonic ways. See A. Dobrowolsky, “Identity and Rights Reclaimed: Appreciating and Assessing Aboriginal Women’s Interventions” (2001) 6 Social Theory 59. We are simply arguing that Cairns’ particular objections are unpersuasive in the context of Aboriginal peoples.

political debates of the future.”²²⁵ However, the future is now and yet, remarkably, Cairns provides little in the way of specifically identifying what citizens plus might mean to Aboriginal persons. All he offers is an academic can-can: Citizens plus “can be filled … can accommodate … and can help shape.”²²⁶ He never adds flesh, or perhaps even bones, to the phantom, asymmetrical or differentiated Aboriginal citizen.²²⁷ All he says is that “[s]ome response to the specificity of Aboriginal peoples — including some degree of recognition, and where appropriate some self-governing powers — is essential”²²⁸ and that “[t]he retention of Aboriginal identity would be facilitated by generous, open-ended definitions appropriate to the realities of Toronto and Vancouver,”²²⁹ although again this is never given concrete form.²³⁰ At the very minimum, rather than simply suggesting that citizens plus has “expansive possibilities”²³¹ the book required one further chapter to focus on his reconstructive vision and to display the “necessary courage to be daringly creative” that he himself has promoted.²³² Sadly, this is weak advocacy when compared to the mobilization and empowerment engendered by a discourse of Aboriginal rights. Consequently, it is hardly surprising that citizens plus “languishes in the pages of a mid-1960s report, in the language of a few academics.”²³³

²²⁵ *Plus*, *supra* note 3 at 182.

²²⁶ *Ibid.* at 10.

²²⁷ *Ibid.* at 52, 204.

²²⁸ *Ibid.* at 90.

²²⁹ *Ibid.* at 131.

²³⁰ It also makes it difficult to accept his indignation when he reports that “[b]y 1996, the RCAP Report could refer dismissively to the citizens plus idea that Aboriginal peoples ‘are… citizens with a slightly expanded set of rights based on their descent from the original inhabitants.’” *Plus*, *supra* note 3 at 168. We are concerned not only with the problem that he adds little substance to the idea of citizen plus but also that in another essay published close to the same time as *Citizens Plus*, he seems favourably inclined toward the discourse of “standard citizens.” “Introduction,” *supra* note 62 at 6.

²³¹ *Plus*, *supra* note 3 at 183.

²³² CVF, *supra* note 6 at 126. Elsewhere he does a good job of identifying the issues, but provides little in the way of moving forward when he argues:

Finding a basis for cohesion without smothering difference is the task for coming decades. Or, beginning from the other end, finding a way to recognize difference and still preserve a basis for common action is the task for coming decades.

“Introduction,” *supra* note 62 at 19.

²³³ *Plus*, *supra* note 3 at 165.

Cairns makes much of the fact that several Aboriginal groups and spokespersons invoked the discourse of citizens plus to resist the 1969 *White Paper*,²³⁴ clearly as a strategy to legitimize the concept. But as he acknowledges elsewhere, those “[w]ho [participate] in developing the discourse, of course, [influence] its content.”²³⁵ As far as we have been able to determine,²³⁶ all members of the Hawthorn Commission were from either the Anglophone or Francophone communities, and there were no Aboriginal participants.²³⁷ The fact that citizens plus is subsequently invoked as a strategy of discursive resistance in the face of impending Trudeauian assimilation is important, but only because it demonstrates a capacity on the part of Aboriginal peoples to deploy whatever discourse may be available from a discursive repertoire to advance their perception of their interests, not that it is an inherently superior vision (especially when it is left relatively contentless). Indeed, could the same not be said of citizens plus that Cairns says of the Aboriginal leaders who supported assimilation in 1969, that “it reflected the limited possibility Indian peoples had to participate in defining their future?”²³⁸

The ideas underlying the concept of citizens plus relate more generally to a key aspect of Cairns’ larger constitutional morality, a society premised upon reciprocal empathy and solidarity.²³⁹ In the abstract, who could disagree? Like motherhood, empathy and solidarity are assumed to be unqualified social goods. But can they carry the political weight that Cairns hopes for? What do they mean, concretely? Are they enough? Take empathy, for example. In a context that Cairns does not address in his work, critical disability theorists have argued that while appearing to be part of the solution, empathy can be part of the problem.²⁴⁰ Is there not something deeply inequalitarian about a constitutional

²³⁴ *Ibid.* at 67–68, 163–64.

²³⁵ *Ibid.* at 5.

²³⁶ H.B. Hawthorn, *et al.*, *A Survey of the Contemporary Indians of Canada*, vol. 1 (Ottawa: Indian Affairs, 1966) at 1–4, 9.

²³⁷ *Plus, supra* note 3 at 23.

²³⁸ *Ibid.* at 62.

²³⁹ *Ibid.* at 12; A. Cairns, “Book Review: *Charting the Consequences*” (1998) 36 Alta. L. Rev. 1039 at 1046.

²⁴⁰ For brief introductions to critical disability theory, see D. Pothier, “Miles to Go: Some Personal Reflections on the Social Construction of Disability” (1992) 14 Dal. L.J. 526 and R. Devlin, “Jurisprudence for Judges: Why Legal Theory Matters for Social Context Education” (2001) 27 Queen’s L.J. 161 at 200–204. The selective and problematic nature of Cairns’ empathetic citizenship vision is also captured in the following suggestion:

When Bourassa used the notwithstanding clause to impose legislation

morality premised upon the “tugging at our civic heart strings”?²⁴¹ Empathy can be the reverse side of the coin of paternalism. Indeed, occasionally even Cairns seems to admit such realities when he acknowledges that perhaps there is only “shallow goodwill” and that “[w]here conflict with Native claims is direct — when control of land or access to resources is in dispute — sympathy tends to be overpowered by self-interested fears.”²⁴² But he fails to fully incorporate such vital insights into his analyses and normative vision. Sadly, like the citizens plus of thirty years ago, this version of *Citizens Plus* is, unfortunately, another “missed opportunity.”²⁴³

In sum, we suggest that when it comes to Aboriginal peoples, Cairns has failed on his own terms. Because he has provided inadequate substance to what citizens plus might mean,²⁴⁴ the danger is that the default position might not be the nationalism and rights claims of resistance, but a slow, imperceptible slide

discriminating against the use of English on signs, the negative reaction outside Quebec was not triggered simply by the perception that English-speaking residents of Quebec were being unfairly treated, but because their rights as Canadian citizens in Quebec were being violated. What in pre-Charter days would have been a provincial matter was elevated to a Canadian matter because the rights infringed were Canadian and thus Canadians outside Quebec could come to their defence. Our feelings of responsibility for each other flow directly from our shared possession of rights and a common citizenship.

Plus, supra note 3 at 156.

What is remarkable about this is that the empathy celebrated here is for the English-speaking minority in Québec, who are most like the English-speaking majority in the rest of Canada, not the French-speaking minority in North America one segment of which, when it is able to generate some political power, attempts to preserve its language and hence its sense of identity and community. Here, as elsewhere, the reference to common citizenship slips dangerously close to the ideology of sameness, “a Canadian citizenship that reinforces the ‘oneness’ that introspective diversities threaten to challenge.” *Plus, supra* note 3 at 200.

²⁴¹ “New Constitutional Order,” *supra* note 205 at 6; “Introduction,” *supra* note 62 at 8.

²⁴² *Plus, supra* note 3 at 89.

²⁴³ *Ibid.* at 165.

²⁴⁴ For example, he acknowledges that RCAP invoked four key principles: mutual recognition, mutual respect, sharing and mutual responsibility. *Plus, supra* note 3 at 119. These might dovetail quite nicely with aspects of Cairns’ constitutional morality. Yet, rather than incorporating and developing these ideas and connections, a strategy that could have deepened and enriched his project, he has decided to focus on the negatives.

into assimilative oblivion — the very danger that he, in good faith, has sought to avoid.

CONCLUSION

In this essay we have taken up Cairns' invitation to other academics to engage in "mutual, civic discussion."²⁴⁵ What we have offered is an internal critique of his work. Towards the end of *Reconfigurations* Cairns perceptively identifies five key challenges:²⁴⁶

The constitutional task that confronts Canada and humanity is to construct constitutional orders that (1) are responsive to the demands of territorial minorities that seek some degree of self-rule in the service of cultural distinctiveness or linguistic preservation; (2) protect dispersed minorities characterized by "otherness" against majority oppression; (3) appreciate the powerful reality that no culture is an island, and that individual choice leads to cultural exchange, and often to high intermarriage rates when inter-cultural contact is extensive, thus unceasingly transforming the substance of the cultural distinctiveness behind claims for limited self-rule or independence; (4) accept the reality of multiple identities, including the multiple civic identities of the citizens of federal polities, and resist the tendency to define individuals and communities by one (allegedly dominating) characteristic; (5) understand both the creative impact of constitutional change and the absence of a clean slate on which we can freely write our future.

This is a wonderfully succinct act of analysis and exposition. But Cairns' normative response has left us disappointed, even frustrated in the context of Aboriginal peoples. While we are broadly sympathetic to his goal, his approach, like those who he has spent a career criticizing, has "serious shortcomings"²⁴⁷ and is ultimately "inadequa[te] [in its] normative contribution."²⁴⁸ Many of the hard questions he asks are legitimate and fair; many of his insights are enlightening. But there is something about the tone and emphasis of his scholarship, culminating in *Citizens Plus*, that is disconcerting.

²⁴⁵ *Plus*, *supra* note 3 at 46.

²⁴⁶ *Reconfigurations*, *supra* note 5 at 347–48.

²⁴⁷ *Plus*, *supra* note 3 at 190.

²⁴⁸ *CGSC*, *supra* note 5 at 77.

Cairns' scholarship is ultimately resistant to new political alternatives and pervaded by a creeping pessimism.²⁴⁹ Like the critics of the Judicial Committee of the Privy Council who he forcefully criticized thirty years ago, Cairns is "effective at the task of demolition and weak at telling [us] what [we] should do."²⁵⁰ In his conclusion to *Citizens Plus* Cairns approvingly quotes Adeno Addis' ideal of a "pluralistic solidarity," the process of "imagining institutions and vocabularies that will affirm multiplicity while cultivating solidarity."²⁵¹ Unfortunately, the overall pattern of his work is one that resists genuine pluralism because Cairns is preoccupied with stability and conventional institutions; he prioritizes "oneness," and he mistakes supplicancy for solidarity.

²⁴⁹ For example, in *Reconfigurations* at 327–28 he argues:

Apart from that 1982 achievement, our record is bleak. We have greatly enlarged the constitutional agenda, increased the number of constitutional actors and hence of vetoes in law or practice, reduced constitutional flexibility by distributing rights to all Canadians, added to the number of nations within Canada, stimulated ethnocultural particularisms, and defined our fundamental characteristics as a fragmented hodgepodge.

The cumulative consequence of our almost obsessive devotion to constitutional reform as the instrument of our salvation has been to stimulate and multiply our diversities and virtually paralyse our ability to achieve major constitutional change by means of the formal amending process. Who and where we now are is the result of a constitutional juggernaut we can neither control nor stop, which transforms us without taking us to our constitutional destinations. We have learned, perhaps too late, that there are limits to what the constitution can do for us, and that some constitutional issues are better left in darkness than subjected to partisan controversy that never attains closure.

Our own view is that while there are problems to be resolved, in many ways Canada is a vibrant political community and is so precisely because of the space that has been claimed by the diverse communities that make up Canadian society. This should be praised rather than be a reason for despair.

²⁵⁰ A Cairns, "The Judicial Committee and its Critics" (1971) 4 Can. J. Poli. Sci. 301 at 343.

²⁵¹ *Plus*, *supra* note 3 at 212.

OBSÈQUES PRÉMATURÉES: LA DISPARITION DES MINORITÉS FRANCOPHONES ET AUTRES ILLUSIONS NATIONALISTES

Edmund A. Aunger*

The survival of the French-speaking communities outside Quebec is another question that has provoked considerable debate among scholars from both official-language groups. Many observers have confidently predicted the imminent extinction of these communities, however Edmund Aunger suggests that such dire predictions are premature and, frequently, self-serving. While recognizing the continuing vulnerability of the French-speaking minorities, he demonstrates nevertheless that they have experienced steady and largely uninterrupted growth since 1871. In addition, he refutes the oft-heard claims that they are socially impoverished and politically insignificant.

La question de la survie des communautés francophones hors Québec soulève, elle aussi, bien des débats, autant auprès de spécialistes francophones qu'anglophones. Certains, chiffres à l'appui, vont jusqu'à prêcher la disparition de ces minorités. Cependant, pour Edmund Aunger, les « obsèques sont prématurées ». Quoiqu'il ne remette pas en question leur fragilité et leur vulnérabilité, il montre que la réalité est beaucoup plus complexe qu'elle en a l'air. En outre, il réfute deux autres idées reçues : que la condition sociale des minorités francophones est appauvrie et que le rôle politique des minorités francophones est insignifiant.

Afin d'éviter tout malentendu, il faut souligner dès le départ un fait fondamental: pendant longtemps, les minorités francophones du Canada ont été durement éprouvées et aujourd'hui encore leur santé reste très fragile. Des instances politiques, notamment celles du palier provincial, ont souvent milité en vue de leur disparition et ce, par l'imposition de la langue anglaise ainsi que la destruction des institutions francophones. Au Manitoba, en Saskatchewan, en Alberta et en Ontario, surtout, les francophones ont dû composer avec des dispositions législatives qui supprimaient leurs écoles homogènes et qui empêchaient la transmission de leur langue.¹ Les coups infligés touchaient les jeunes avant tout et, pour cette raison, ont laissé des marques durables. À chaque génération de francophones succède une génération encore plus anglicisée. Dans l'Ouest, par exemple, 3,2 p. cent de la population née entre 1956 et 1961 est

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L'auteur tient à remercier Donald Ipperciel pour ses commentaires et suggestions.

¹ E. A. Aunger, « Dispersed Minorities and Segmental Autonomy: French-language School Boards in Canada » (1996) 2 Nationalism and Ethnic Politics 191.

francophone, contre seulement 1,3 p. cent de la population née entre 1986 et 1991.²

Les mouvements de population, et surtout l'influx de non-francophones, ont également contribué à cette fragilité. Nous remarquons par exemple que la proportion de francophones à l'extérieur du Québec ne cesse de diminuer, chutant de 7,3 p. cent en 1951, 6,0 p. cent en 1971 et 4,5 p. cent en 1996.³ Cet affaiblissement démolinguistique se trouve accompagné de confusion identitaire. La fragmentation croissante de l'ancienne identité canadienne-française se manifeste de nos jours dans les expressions d'appartenance régionale: les Franco-Colombiens, les Franco-Albertains, les Fransaskois, les Franco-Manitobains et les Franco-Ontariens. Cette mosaïque est enrichie et complexifiée par la superposition d'autres communautés francophones originaires des autres provinces ou d'autres pays. Les Acadiens, enracinés surtout dans les provinces maritimes, connaissent leur propre fragmentation identitaire, évidente dans la mise en place d'organismes provinciaux tels la Société des Acadiens du Nouveau-Brunswick, la Société Saint-Thomas d'Aquin ou la Fédération des Acadiens de la Nouvelle-Écosse, et dans la survie des variantes dialectales du français acadien tels le chiac et le brayon.

Cette fragilité est sans doute la principale source d'inspiration des innombrables nécrologies qui apparaissent depuis déjà plus d'un siècle, mais surtout depuis l'avènement de la Révolution tranquille. A l'occasion, les nationalistes québécois sont parmi les premiers à réciter les rites funèbres, y voyant une confirmation de la justesse de leur option indépendantiste. Déjà en 1961, Marcel Chaput arrivait à la triste conclusion que les minorités francophones, largement assimilées, «travaillent en faveur du fait anglais», d'où son cri: «Confédération, tombeau des minorités».⁴ René Lévesque, au cours d'une entrevue accordée en 1967, affirmait sa «conviction profonde que pour la nation canadienne-française, l'indépendance est une question de vie ou de mort».⁵ En disant cela, il exprimait «une vérité de science politique»: si le Québec reste dans la fédération canadienne, «la nation s'en va d'une façon

² E. A. Auger, «Les communautés francophones de l'Ouest: la survivance d'une minorité dispersée» dans J. Yvon Thériault, dir., *Francophonies minoritaires au Canada: l'état des lieux*, Moncton, Éditions d'Acadie, 1999, 285 [ci-après Communautés francophones].

³ L. Marmen et J.-P. Corbeil, *Les langues au Canada: Recensement de 1996*, Ottawa, Ministre des Travaux publics et Services gouvernementaux Canada, 1999 à la p. 19 [ci-après *Langues au Canada*].

⁴ M. Chaput, *Pourquoi je suis séparatiste*, Montréal, Éditions du Jour, 1961 à la p. 116.

⁵ R. Lévesque, *Option Québec*, Montréal, Éditions de l'homme, 1968 à la p. 158.

certaine vers la mort douce de l'assimilation progressive et la noyade dans l'océan de l'anglophonie ». De toute façon, comme il le déclarait dans une tournure de phrase mémorable, les francophones à l'extérieur du Québec étaient déjà des « dead ducks ». S'il y restait encore quelques survivants, leur seul espoir était d'immigrer dans un Québec bientôt indépendant.⁶ Yves Beauchemin, l'auteur à succès de *Le Matou et Juliette Pomerleau*, abonde dans le même sens. Les minorités francophones sont des « cadavres encore chauds » et leur disparition devrait servir de leçon salutaire aux Québécois. « Qu'on pense aux Louisianais, aux Franco-Américains, aux Franco-Canadiens, disparus (ou en train de disparaître) parce que sans prise politique sur leur destin. Nous formons le dernier carré. Le Canada ne peut être pour nous qu'une maladie chronique à issue fatale. »⁷ En ce qui concerne le sort des Canadiens francophones, une chose semble donc certaine: hors du Québec, point de salut.

Cette conviction n'est pas unique aux nationalistes québécois. Nombre de savants et scientifiques, tant anglophones que francophones, sont convaincus de la disparition des minorités francophones. L'historien distingué Donald Creighton était le porte-parole de sa génération quand il a brossé un tableau d'un Canada composé de neuf provinces anglophones et d'une seule province bilingue. Les minorités francophones étaient à son avis disparues depuis longtemps. Il racontait, par exemple, que les affres de la mort des francophones de l'Ouest ont commencé vers 1890, pour se terminer, un quart de siècle plus tard avec « the virtual extinction of biculturalism ».⁸ Richard Joy, le pionnier des recherches démolinguistiques au Canada, a proclamé la disparition immanente des minorités francophones en 1967, en soulignant de façon particulière que « the French-speaking population of the West appears well on the way toward final disappearance ».⁹ En 1974, Charles Castonguay, mathématicien et démographe, est venu appuyer cette prévision en déclarant que « les minorités francophones hors du Québec et de sa périphérie immédiate s'effacent, ainsi que

⁶ S'adressant aux Franco-Manitobains, Lévesque les exhortait: « Continuez, maudit !!! parce que quand viendra le moment, pis ça peut prendre encore quelques années, où on sera prêts j'espère qu'il restera des candidats pour notre immigration qui seront encore conscients d'être Canadiens français. Bâtissez-vous en maudit ». P. Perrault *et al.*, *Un pays sans bon sens*, Montréal, Éditions Lidec, 1972 à la p. 157.

⁷ Y. Beauchemin, « Comment mon âme canadienne est morte » (août 1992) *L'actualité* à la p. 77.

⁸ D. Creighton, *Towards the Discovery of Canada*, Toronto, Macmillan of Canada, 1972 à la p. 241.

⁹ R. Joy, *Languages in Conflict*, Toronto, McClelland and Stewart, 1972 à la p. 21 [ci-après *Languages in Conflict*]. Une première édition de ce livre est parue en 1967 à compte d'auteur.

prévu par M. Joy ».¹⁰ Il a conclu, plus précisément, qu'à moins de constituer une majorité régionale de 88 p. cent, les francophones étaient partout voués à la disparition. Vingt-cinq ans plus tard, il relance le même refrain, qualifiant la situation minoritaire de désastreuse et signalant « the demographic collapse of francophone populations since 1961 ».¹¹

Néanmoins, nous affirmons ici que la disparition des minorités francophones est une illusion et que, par conséquent, leurs obsèques sont prématurées. Comme disait Mark Twain en 1897 en apprenant la nouvelle de son propre décès: « The reports of my death are greatly exaggerated ». De plus, une conviction connexe selon laquelle le sort fatal des minorités francophones est irrémédiable, nous apparaît également erronée et illusoire. Dans le même ordre d'idée, nous contestons deux autres idées reçues: que la condition sociale des minorités francophones est appauvrie et que le rôle politique des minorités francophones est insignifiant. La diffusion de ces illusions est grandement facilitée par les nationalistes canadiens et québécois, dont les intellectuels sont aussi captifs que leurs concitoyens. Dans la guerre froide entre le Québec français et le Canada anglais, les minorités francophones occupent une terre inconnue, un *no man's land* qui ne paraît plus sur nos cartes nationales. S'agit-il d'un oubli inconscient ou d'une exclusion voulue? Peu importe, les résultats sont très similaires.

PREMIÈRE ILLUSION: LA DISPARITION DES MINORITÉS FRANCOPHONES

La notion selon laquelle les minorités francophones sont sur le point de disparaître ou qu'elles sont déjà disparues peut s'appuyer sur de nombreuses recherches en démolinguistique. Déjà en 1967, dans *Languages in Conflict*, suite à son étude des recensements de 1931 à 1961, Richard Joy formulait la thèse classique de la ceinture bilingue.¹² Il anticipait la polarisation linguistique au Canada, la création de deux régions unilingues, le Canada français et le Canada anglais, séparés par une zone tampon: la ceinture bilingue. La région du Canada français se trouverait ainsi au Québec, plus précisément, occuperait une zone au

¹⁰ C. Castonguay et J. Marion, « L'anglicisation du Canada! » (1974) 63 *L'Action nationale* à la p. 746.

¹¹ C. Castonguay, « Getting the facts straight on French: Reflections following the 1996 Census » (1999) 8 *Inroads* 57 [ci-après Getting the facts straight].

¹² R. Joy, *Les minorités des langues officielles au Canada*, Montréal, Institut de recherches C.D. Howe, 1978 [ci-après *Minorités des langues officielles*]. Voir aussi R. Joy, *Canada's Official Languages: The Progress of Bilingualism*, Toronto, University of Toronto Press, 1992.

nord de Sherbrooke et à l'est de Montréal. Elle serait entourée d'une ceinture bilingue allant du nord-est de l'Ontario à la ville de Montréal et à la côte nord du Nouveau-Brunswick. La région du Canada anglais se trouverait évidemment à l'extérieur de cette ceinture. Selon lui, l'évolution des frontières linguistiques, en marche depuis deux siècles, arrivait à son point culminant: « [à] l'heure actuelle, on assiste à une phase de consolidation. L'anglais est en effet de moins en moins parlé au Québec, et les minorités francophones du Canada anglais sont sur le point de disparaître ».¹³ Il observait que près d'un quart de la population francophone du Canada se trouvait hors du Québec en 1921, tandis que quarante ans plus tard « the French language [is] hardly ever heard outside an area bounded [by the bilingual belt] ».¹⁴ De nos jours, l'analyste Scott Reid le félicite pour sa prévoyance etalue la réalisation de ses prévisions: « In the quarter-century since Joy wrote his book, the assimilation of the French minorities outside Québec and a few border regions of Ontario and New Brunswick has virtually been completed ».¹⁵

Dans son étude des recensements de 1961 à 1996, le mathématicien Claude Castonguay proclame également la disparition imminente des minorités francophones mais, contrairement à Joy, il insiste aussi sur la vulnérabilité de la majorité francophone au Québec.¹⁶ À son avis, « All of Canada's francophone populations are at bay. The prospects are disquieting in Quebec and New Brunswick, and disastrous in the remaining provinces ».¹⁷ Et plus loin: « Already clearly under way by the time of the 1981 census, the demographic collapse is now thoroughly established in all regions ».¹⁸ L'effondrement de la francophonie est visible, selon Castonguay, dans un taux de reproduction linguistique très inférieur à 100 p. cent. En effet, le nombre d'enfants francophones (âgés de 0 à 9 ans) est nettement en dessous du nombre d'adultes francophones (âgés de 25 à 34 ans). En 1996, ce taux était de 86 p. cent pour les Québécois francophones et 58 p. cent pour les minorités francophones. Castonguay attribue ce déficit intergénérationnel à la sous-fécondité et à l'anglicisation.¹⁹

¹³ *Minorités des langues officielles*, *ibid.* à la p. 6.

¹⁴ *Languages in conflict*, *supra* note 9 à la p. 4.

¹⁵ S. Reid, *Lament for a Notion: The Life and Death of Canada's Bilingual Dream*, Vancouver, Arsenal Pulp Press, 1993 à la p. 101 [ci-après *Lament for a Notion*].

¹⁶ Getting the facts straight, *supra* note 11 à la p. 12. Voir aussi C. Castonguay, « French is on the ropes. Why won't Ottawa admit it? » (Octobre 1999) 20 *Policy Options* 39.

¹⁷ Getting the facts straight, *ibid.* à la p. 59.

¹⁸ *Ibid.* à la p. 61.

¹⁹ Voir par ex. C. Castonguay, « Évolution de l'assimilation linguistique au Québec et au Canada entre 1971 et 1991 » (1997) 38 *Recherches sociographiques* 469.

Ces recherches soulignent clairement la fragilité des minorités francophones au Canada. Toutefois, elles ne nous amènent pas forcément à la conclusion que les francophones sont sur le point de disparaître. Il est tout à fait exact que la proportion des francophones au Canada est en baisse, et que son taux de reproduction linguistique est maintenant inférieur à 100 p. cent. Cela ne veut pas dire pour autant que *le nombre absolu* des francophones est également en décroissance. En fait, depuis 1871, la tendance est tout à fait à l'inverse. Dans chacune des trois régions à l'extérieur du Québec, les Maritimes, l'Ontario et dans l'Ouest, le nombre de francophones est à la hausse (voir Figure 1).²⁰ Qui plus est, l'accroissement de la population francophone semble être relativement constant au cours des décennies, s'élevant de 225 100 en 1881, à 449 600 en 1911, 721 800 en 1951 et 976 400 en 1991 (le nombre de francophones remonte même à 1 052 000 en 1991 si on y ajoute ceux qui ont deux langues maternelles, le français et une autre langue, plutôt que de les répartir également entre les langues déclarées comme le fait Statistique Canada). A trois reprises seulement une baisse a été enregistrée et, dans chaque cas, elles peuvent être attribuées à des caprices méthodologiques. En 1891, par exemple, le recensement ne faisait état spécifiquement et uniquement que des « Canadiens français ». Ce biais, sans doute non-intentionnel, mais combien révélateur, a eu pour effet de sous-estimer l'importance de plusieurs communautés francophones dont celles des Acadiens, des Métis, des Français et des Belges. En 1931, par contre, le recensement rapportait pour la première fois la langue maternelle et permettait une mesure plus précise de la population francophone. Jusqu'à cette date, l'origine ethnique était considérée le meilleur indice disponible. En 1981, Statistique Canada a modifié les procédures d'ajustement utilisées pour résoudre les cas de réponses multiples. Les ajustements et substitutions à cet égard ont eu pour effet le sous-dénombrement des minorités francophones.²¹ Ce troisième cas néanmoins, ne

²⁰ Les données utilisées pour ce schéma proviennent des divers recensements du Canada et de ses provinces et territoires. Notons, toutefois, certaines lacunes dans ces recensements. La population d'origine française ou francophone n'a pas été recensée à l'Île-du-Prince-Édouard, au Manitoba, en Colombie-Britannique et aux Territoires du Nord-Ouest avant 1881, ni en Terre-Neuve avant 1945. Nous avons donc estimé ces données pour le Manitoba en 1871, nous inspirant de « Abstract statement of the census for the Province of Manitoba, enumerated during the Month of November, 1870 » dans *House of Commons Sessional Papers* (1870) vol. 20 à la p. 92; et pour les Territoires du Nord-Ouest en 1871 à partir de D.N. Sprague, B. Kaye et D. W. Moodie, « Dispersion des Métis du Manitoba et Rébellion du Nord-Ouest, 1870-1885 » dans R. L. Gentilcore, dir., *L'Atlas historique du Canada*, t. 2: *La transformation du territoire 1800-1891*, Montréal, Presses de l'Université de Montréal, 1993, 35.

²¹ Voir par ex. R. Lachapelle et J. Henripin, *La situation démolinguistique au Canada*, Montréal, Institut de recherches politiques, 1980 à la p. 189.

nous permet pas conclure sans équivoque que cet effet a été la cause de la baisse observée de 1971 à 1981. Statistique Canada a introduit plusieurs changements de méthodologie entre 1971 et 1991, pour tenir compte du nombre croissant de réponses multiples. Ce n'est qu'en 1986, toutefois, que le questionnaire de recensement invitait explicitement les répondants à indiquer une deuxième langue maternelle, si deux langues avaient été apprises simultanément à la maison.

La croissance en nombre absolu, accompagnée d'une baisse proportionnelle, s'explique principalement par les mouvements de population. Les nouveaux arrivants, surtout dans l'Ouest canadien, comptent souvent des francophones originaires du Québec ou de l'étranger. Par exemple, de 1971 à 1991, le solde migratoire de la Colombie-Britannique enregistrait un gain net de 14 800 francophones et l'Alberta un gain net de 12 900.²² En fait, une grande partie des francophones de l'Ouest, soit 38 p. cent, sont nés ailleurs que dans l'Ouest, principalement au Québec.²³ Néanmoins, les migrants se composent surtout de non-francophones, ce qui explique en partie la croissance plus rapide de cette partie de la population.

Il n'est pas certain que cette croissance des minorités francophones continue à l'avenir, il n'est donc pas impossible que les prophètes du malheur finissent par avoir raison. En fait, les résultats du recensement de 1996 ne sont guère encourageants. De 1991 à 1996, le nombre de francophones plafonne et connaît même un léger recul, passant de 976 400 à 970 200 (ou, si l'on tient compte des réponses multiples, de 1 052 000 à 1 005 000). Des neuf provinces à majorité anglophone, seule la Colombie-Britannique a enregistré un gain de son effectif de langue française.²⁴

DEUXIÈME ILLUSION: LA DISPARITION DES FRANCOPHONES EST IRRÉMÉDIABLE

Selon de nombreux observateurs, ce sont surtout les lois démographiques qui sont la cause de la disparition inévitable et irrémédiable des minorités francophones. Ces lois, semble-t-il, sont omnipotentes, leur force irrésistible et leur exécution sans appel. Le politologue Nelson Wiseman, par exemple, nous explique que ce sont des facteurs démographiques, non pas des décisions

²² C. Castonguay, « Le déclin des populations francophones de l'Ouest canadien » (1993) 5 Cahiers franco-canadiens de l'Ouest 147.

²³ Communautés francophones, *supra* note 2 à la p. 286.

²⁴ *Langues au Canada*, *supra* note 3 aux pp. 19 et 73.

politiques, qui ont déterminé le caractère linguistique du Manitoba. À son avis, la décision du gouvernement du Manitoba en 1890 de supprimer les garanties constitutionnelles de la langue française, pour faire de l'anglais la seule langue officielle et la seule langue d'instruction, n'ont aucunement influencé le destin de la minorité francophone. « The abrogation of French language rights in the legislature and courts was repugnant to the constitution, but it was not material to the linguistic welfare and survival of Franco-Manitobans. »²⁵ L'imposition de l'anglais dans les écoles était plus lourde de conséquences, d'après Wiseman, mais elle était inévitable à cause de l'évolution démographique de la province. Il cite le travail de Kenneth McRoberts, y voyant un appui pour sa thèse: « [t]o a very real degree, these assimilationist pressures on the Francophone minorities are simply beyond the range of governmental action, however comprehensive and coordinated it may be ». ²⁶

Scott Reid abonde dans le même sens, affirmant « the unstoppable decline and inevitable disappearance »²⁷ des minorités francophones au Canada. Il attribue cette disparition aux pressions démographiques et socio-économiques et en conclut, sur un ton provocateur, que ces minorités « are not dying out because they are being forced to assimilate. They are dying out because they choose to do so ». ²⁸ Devant une telle volonté, il est évident que toute intervention politique s'avère inutile. Reid met donc les instances politiques en garde contre tout « meddling with the natural flow of linguistic trends » et insiste, plus particulièrement, que le gouvernement devra cesser de verser des fonds dans les poches des minorités francophones.²⁹ Avec une belle fleur de rhétorique, il déclare: « it would have been easier for the Canadian government to legislatively move the Rocky Mountains to Quebec than to save the isolated French-language communities scattered in their shadow ». ³⁰

²⁵ N. Wiseman, « The questionable relevance of the Constitution in advancing minority cultural rights in Manitoba » (1992) 25 Can. J. Pol. Sci. 697 à la p. 701.

²⁶ *Ibid.* à la p. 702. Voir K. McRoberts, « Making Canada bilingual: Illusions and delusions of federal language policy » dans D. P. Shugarman et R. Whitaker, dir., *Federalism and political community*, Peterborough, Ontario, Broadview Press, 1989, 141 à la p. 155.

²⁷ *Lament for a Notion*, *supra* note 15 à la p. 100.

²⁸ *Ibid.* à la p. 116.

²⁹ *Ibid.* à la p. 99.

³⁰ *Ibid.* à la p. 101.

Castonguay réitère ces mêmes conclusions, et ce, depuis déjà deux décennies. En 1980, par exemple, il déclarait: « Les principales causes de l'effondrement des minorités sont des phénomènes démographiques et culturels aussi irréversibles que fondamentaux. Sur ce plan la loi fédérale des langues officielles et les meilleures années de l'ère Trudeau n'ont eu aucun effet perceptible et vraisemblablement aucun autre sursaut législatif, voir constitutionnel ne pourrait modifier cet état des choses [...] [D]e cinq ans en cinq ans il ressort toujours plus clairement que les minorités canadiennes-françaises ont déjà fait leur lit ».³¹

L'affirmation selon laquelle les minorités francophones constituent une cause perdue se lie fréquemment à un agenda politique, parfois caché, parfois évident. L'implication est claire: on peut difficilement justifier des services en français à des communautés qui n'existent plus. En fait, le Parti réformiste, qui prétend tenir compte des réalités régionales du pays, c'est-à-dire l'existence d'une seule province francophone et de neuf provinces anglophones, conclut qu'il n'y a pas de demande réelle pour des services en français au Canada, sauf dans les régions du Québec et de la capitale nationale.³² Il propose d'y mettre fin et de transférer aux provinces les compétences législatives en matière de langue. Le parti a par conséquent tout intérêt à promouvoir la notion de disparition inévitable, en vue de justifier son opposition au statut officiel de la langue française.

A l'encontre, par crainte des implications pour leur minorité anglophone, certains nationalistes québécois s'opposent à toute législation favorable aux minorités francophones. Il faut y voir l'origine de leur motivation à condamner les interventions du fédéral dans ce domaine, les traitant d'inutiles et d'oiseuses. Ce qui explique, par exemple, l'opposition québécoise aux dispositions constitutionnelles visant à garantir les services dans leur langue maternelle aux minorités de langues officielles. En 1980, le juriste Daniel Proulx a fustigé les « promoteurs du bilinguisme institutionnel au Canada » en déclarant que « l'inclusion dans la constitution d'un droit à l'instruction dans la langue de la minorité n'aidera juridiquement en rien les minorités francophones hors Québec à se sortir de la situation pitoyable dans laquelle elles se trouvent actuellement ».³³ Selon lui, « le seul effet tangible, palpable et vérifiable » de cette inclusion serait « l'assurance, pour tout anglophone résidant au Québec,

³¹ C. Castonguay, « La position des minorités francophones en 1976 » (1980) 69 *L'Action nationale* 825 à la p. 829.

³² Reform Party of Canada, « What is the Reform Party's position on official languages? » *Caucus Issue Statement* (November 20, 1991) n° 16, Ottawa, Reform Party of Canada.

³³ D. Proulx, « L'enchâssement des droits linguistiques: Un leurre pour les francophones hors-Québec » (17 octobre 1980) *Le Devoir* 10.

d'avoir libre accès à tout le réseau d'écoles anglaises qui existe au Québec par la dépossession unilatérale d'une importante portion de la souveraineté québécoise en matière de langue d'enseignement ». Dans son livre *Autopsie du Lac Meech*, le politologue Pierre Fournier est essentiellement du même avis, attaquant la *Charte canadienne des droits et libertés* dans laquelle il voit une ingérence provocatrice dans les affaires du Québec, tout en lamentant que la charte n'est « d'aucun secours pour les minorités francophones en voie d'assimilation ».³⁴ D'où, également, le cri d'indignation de l'historien Michael Behiels dans sa recension du même livre: « Most separatists would rather see the wholesale assimilation of the francophone minorities so that they would no longer feel morally obliged to support them via a united Canada ».³⁵

Néanmoins, il serait erroné de prétendre que la disparition des minorités est inévitable et que les décisions des gouvernements n'y sont pour rien. D'une part, les tendances démolinguistiques ne sont ni irrévocables ni immuables, au contraire. Ces tendances prennent souvent des virages imprévus et nous trompent régulièrement. À titre d'exemple, notons qu'au cours des années 1930 et 1940, de nombreux démographes prévoyaient que la surfécondité des francophones finirait par faire de ceux-ci la majorité de la population canadienne.³⁶ Ils n'avaient pas anticipé les changements subséquents, dont surtout la baisse de la fécondité et la hausse dans l'immigration.

D'autre part, un moteur politique se cache souvent derrière les forces démolinguistiques. L'étude d'une région de l'Alberta, connue au début du siècle comme « la petite province du Québec », est éloquente. La région de Saint-Paul a enregistré une baisse de sa proportion francophone, de l'ordre de 95 p. cent en 1909 à 31 p. cent en 1989, due principalement à l'arrivée de nouveaux résidents non-francophones et à l'assimilation des anciens résidents francophones.³⁷ Il faut voir là un premier moteur politique: deux tiers de ceux qui déménageaient dans la région, durant la période de 1984 à 1985, oeuvraient dans le secteur public, généralement à l'emploi du gouvernement provincial. Or, seulement 19 p. cent

³⁴ P. Fournier, *Autopsie du Lac Meech: La souveraineté est-elle inévitable?*, Outremont (Qc.), VLB Éditeur, 1990 à la p. 27.

³⁵ M. D. Behiels, Recension de *A Meech Lake Post-Mortem: Is Québec Sovereignty Inevitable?* de Pierre Fournier (1992) 25 Can. J. Pol. Sci. 156 à la p. 157.

³⁶ Voir à ce sujet, R. Lachapelle, « Évolution des groupes linguistiques et situation des langues officielles au Canada » dans *Tendances démolinguistiques et évolution des institutions canadiennes*, Montréal, Association d'études canadiennes, 1990, 11.

³⁷ E. A. Aunger, « The decline of a French-speaking enclave: A case study of social contact and language shift in Alberta » (1993) 25 Canadian Ethnic Studies 65.

de ces fonctionnaires immigrants étaient francophones. Ajoutons à cela un deuxième moteur politique: les francophones qui adoptaient l'anglais comme langue usuelle avaient suivi toutes leurs études en anglais et avaient rencontré leur future épouse dans un milieu anglophone. Par contre, les francophones qui employaient toujours leur langue maternelle avaient fait des études en français et avaient rencontré leur future épouse dans un milieu francophone. Notons ici que, jusqu'en 1968, la loi scolaire en Alberta interdisait l'instruction en français. Ce qui nous amenait à conclure à l'égard du déclin de cette enclave francophone: « This trend should not be seen as simply the result of an immutable demographic law. It has been highly influenced by public policies designed to discourage, if not suppress, all languages other than English. Such policies have affected migration patterns, social integration and language use ».³⁸

Peut-on renverser ce déclin en adoptant d'autres politiques linguistiques, ou est-il déjà trop tard? Il est évident que, jusqu'ici, la *Loi sur les langues officielles* et les politiques subséquentes ne semblent pas avoir grandement remédié à la situation minoritaire. Il faut bien reconnaître que ces mesures ne vont pas tellement loin et qu'elles paraissent même très timides comparées aux politiques adoptées il n'y a pas si longtemps pour supprimer le français.³⁹ Par contre, la *Charte des droits et libertés* qui garantit l'instruction en français depuis 1982, et ce, dans les écoles gérées par la minorité francophone, offre la possibilité de redresser certains torts du passé. En 1984, à Edmonton et à Calgary en Alberta, la minorité francophone a obtenu ses premières écoles francophones et son premier conseil scolaire dix ans plus tard (la ville de Saint-Paul a dû attendre 1990 pour obtenir son école francophone). Depuis, le nombre d'écoles francophones est passé de deux à 18, et le nombre d'étudiants inscrits de 367 à 2 920 (voir Figure 2).⁴⁰ Il n'en demeure pas moins que dans l'ensemble des neuf provinces à majorité anglophone, mais pour une période plus restreinte, de 1986 à 1994, le nombre d'écoles francophones n'a augmenté que de 499 à 554, et le

³⁸ *Ibid.* à la p. 81.

³⁹ E. A. Aunger, « Language Legislation and Official Bilingualism: The Uneasy Coexistence of Canada's Language Communities » CD-ROM: *Canada: Confederation to Present*, Edmonton, Chinook Multimedia, 2001.

⁴⁰ Ces données pour la période 1984 à 1998 proviennent de la Fédération des parents francophones de l'Alberta (FPFA).

nombre d'étudiants inscrits que de 123 027 à 129 648⁴¹ (malheureusement, aucune donnée n'est encore disponible pour la période depuis 1994).⁴²

Quels seront les effets de l'école francophone sur la minorité et sa survie? Une enquête menée par Rodrigue Landry et Réal Allard sur les écoles francophones en Nouvelle-Écosse démontre clairement que plus la scolarisation en français est forte, plus les compétences à l'écrit et à l'oral sont élevées et plus le désir de s'intégrer à la communauté francophone est grand.⁴³ Une autre enquête menée cette fois par Denise Moulun-Pasek sur les écoles francophones en Alberta confirme ces résultats. Cette dernière trouve, par exemple, chez les étudiants de l'école francophone à Saint-Paul, une vitalité linguistique accrue et une compétence langagière améliorée.⁴⁴ La volonté politique, manifestée dans la *Charte canadienne des droits et libertés* en 1982 par l'enchâssement des garanties pour les écoles francophones en milieu minoritaire, commence donc à porter ses fruits. Il est évident qu'à elle seule l'école francophone ne peut pas assurer la relève. Il faut encore d'autres institutions et organisations de langue française. Néanmoins, l'école peut, de diverses façons, contribuer à l'établissement de ces institutions, à une vie communautaire en français et donc à la vitalité des minorités francophones.

TROISIÈME ILLUSION: L'APPAUVRISSEMENT DES MINORITÉS FRANCOPHONES

Selon plusieurs observateurs de la francophonie canadienne, là où il reste encore des traces de la minorité, il s'agit surtout de quelques habitants rustiques dans de petits villages isolés où on continue à vivre une existence folklorique, employé comme cultivateur, bûcheron ou pêcheur. Richard Joy, par exemple, évoque l'image du francophone type en milieu minoritaire: pauvre, peu instruit,

⁴¹ A. Martel, « L'Article 23 de la Charte canadienne et les effectifs scolaires des minorités francophones 1982-1995 » (1995) 24 Revista de Llengua i Dret 165.

⁴² Statistique Canada enregistre les effectifs dans les différents programmes de langue, sans distinguer entre les écoles homogènes et les autres. Voir par ex. la revue *Éducation au Canada*. Pour cette raison, Angéline Martel (ci-dessus) a du compiler ses données à partir d'informations provenant des différents ministères de l'éducation.

⁴³ R. Landry et R. Allard, « Langue de scolarisation et développement bilingue: le cas des acadiens et francophones de la Nouvelle-Écosse, Canada » (2000) 5 DiversCité Langues 1. Disponible à www.teluq.quebec.ca/diverscite.

⁴⁴ D. Moulun-Pasek, *La vitalité ethnique des 11e et des 12e années des écoles homogènes en Alberta*, thèse de maîtrise en éducation, Faculté Saint-Jean, University of Alberta, 2001 [non publiée].

campagnard, dépourvu de ressources, sans technologie.⁴⁵ Le francophone qui s'instruit en anglais quitte la paroisse rurale et s'assimile dans la ville anglaise; le francophone qui s'instruit en français quitte la province natale et s'installe dans la mère-patrie, le Québec. La modernisation, l'industrialisation et l'urbanisation signalent, dit-on, la mort de la francophonie. Cette image n'est pas sans rappeler le stéréotype des Québécois d'autrefois: un peuple né pour un petit pain, des porteurs d'eau et des scieurs de bois, analphabètes et ignorants.

En effet, les minorités francophones de nos jours sont perçues comme « les héritiers de Lord Durham », les descendants de ceux que Durham a caractérisés comme « destitute of all that can invigorate and elevate a people » et plus spécifiquement, « a people with no history, and no literature ». ⁴⁶ Leur littérature et leur culture, contes, romans, poésie, théâtre, films, peinture, chansons, sont largement inconnues, invisibles et même selon certains, inexistantes. Aux dires de la littéraire Pamela Sing, cette « non existence » des minorités francophones « n'est nulle part aussi frappante que dans le secteur culturel de la production littéraire ». ⁴⁷ Elle l'attribue largement à la fragmentation de la francophonie canadienne en entités régionales et à l'exclusion des minorités de ce peuple naissant qu'est la nation québécoise. Par conséquent, le francophone minoritaire n'est reconnu ni par le Canada anglais ni par le Québec français. Si les Québécois sont portés à dévaluer leur propre diaspora, « ces dévalorisations révèlent plus l'ignorance de leurs auteurs au sujet de la vitalité de la culture francophone en milieu minoritaire qu'elles ne correspondent à une réalité socioculturelle ».

Cette image d'une culture chimérique et folklorique s'explique surtout par deux conditions. D'abord, l'ignorance du produit culturel, tout au moins à l'extérieur de la communauté minoritaire, d'où son état de non existence. Ensuite, l'appropriation fréquente du produit culturel par la communauté québécoise elle-même, d'où son état d'invisibilité. Un nouveau dictionnaire, récemment paru dans l'Ouest canadien, met en évidence la richesse de la culture minoritaire et la fausseté de son image d'appauvrissement en présentant pas moins de 431 auteurs francophones, dont 123 artistes visuels, 163 gens de lettres,

⁴⁵ *Languages in conflict*, supra note 9 à la p. 36.

⁴⁶ Lord Durham, *Lord Durham's Report*, G.M. Craig, dir., *An abridgement of "Report on the Affairs of British North America"* Toronto, McClelland and Stewart, 1963 à la p. 150.

⁴⁷ P. Sing, « Une solitude du troisième type: l'écriture d'expression française dans le Far-Ouest canadien », Colloque sur la troisième solitude: l'écriture minoritaire canadienne, Montréal, Université de Montréal, mars 1998 à la p. 3.

38 artistes de la scène, 242 critiques et essayistes, 90 gens des médias.⁴⁸ Retenons dans cette liste les écrivains Marguerite-A. Primeau (prix Champlain, 1986), Nancy Huston (prix du Gouverneur général, 1993), Gabrielle Roy (prix du Gouverneur général, 1947, 1955, 1977) et Ronald Lavallée (prix Jules-Verne, 1988); les peintres Alex Janvier et Francine Gravel; le sculpteur Joe Fafard (médaille de bronze, Jeux de la francophonie, Madagascar, 1997); les dramaturges France Levasseur-Ouimet et Laurier Gareau; les musiciens Gérald Laroche (prix Juno, 1991) et Marcien Ferland; les compositeurs-interprètes Paul Lamoureux, Daniel Lavoie et Crystal Plamondon; le groupe musical Hart Rouge; la cinéaste Sylvie Van Brabant (prix de l'Association québécoise des critiques de cinéma, 1988).

En Ontario, les francophones peuvent également se vanter d'une richesse d'auteurs et d'artistes dont, par exemple, les écrivains Patrice Desbiens, Jean-Louis Trudel et Jean Éthier-Blais (prix Athanase-David, 1989); les dramaturges André Paiement, Pol Pelletier (prix de l'Association québécoise des critiques de théâtre, 1993), Robert Marinier et Jean Marc Dalpé (prix du Gouverneur général, 1989); le compositeur-interprète Robert Paquette; le musicien Daniel Lanois (prix Grammy 1987); les groupes musicaux CANO, Garolou et Brasse-Camarade et le cinéaste Jean Marc Larivière. En Acadie et surtout au Nouveau-Brunswick, les francophones comptent pour plus de 400 titres de littérature, dont au moins 150 recueils de poésie et 90 romans, et ceci durant la période de 1970 à 1995.⁴⁹ Parmi les auteurs acadiens, signalons les écrivains Antonine Maillet (prix Goncourt, 1979), Claude LeBouthillier, Jacques Savoie et Simone Rainville et les poètes Serge Patrice Thibodeau (prix du Gouverneur général, 1996), Gérald Leblanc, Herménégilde Chiasson et Raymond Guy LeBlanc. Chez les nombreux artistes de la scène retenons: Édith Butler, Roch Voisine (prix Félix, 1989), Isabelle Roy, Angèle Arsenault, Marie-jo Thériot, Natasha St-Pierre et Donat Lacroix.

Du point de vue socio-économique, le stéréotype d'une minorité rurale, illettrée et démunie apparaît également faux. Dans l'Ouest, par exemple, le

⁴⁸ G. Morcos, *Dictionnaire des artistes et des auteurs francophones de l'Ouest canadien*, Sainte-Foy (Qc.), Presses de l'Université Laval et Edmonton, Faculté Saint-Jean, 1998. Voir J. de Finney, Recension du *Dictionnaire des artistes et des auteurs francophones de l'Ouest canadien* de G. Morcos (1999) 9 *Francophonies d'Amérique* 157.

⁴⁹ D. Lonergan, « La culture au quotidien: un petit portrait des arts dans l'Acadie d'aujourd'hui » dans J. Y. Thériault, dir., *Francophonies minoritaires au Canada: L'état des lieux*, Moncton, Éditions d'Acadie, 1999 aux pp. 516 et 519.

francophone type est urbanisé, instruit et salarié.⁵⁰ Il habite un grand centre métropolitain plutôt qu'une région rurale: 58 p. cent des francophones de l'Ouest (comme 63 p. cent de la population en général) habitent les 13 régions métropolitaines, surtout à Winnipeg, à Vancouver, à Edmonton et à Calgary. Ce même francophone type occupe un emploi dans le secteur tertiaire où il gagne le même salaire que son collègue anglophone. De nos jours, 11 p. cent des francophones sont employés dans le secteur primaire, 17 p. cent dans le secteur secondaire et 72 p. cent dans le secteur tertiaire. Dans la catégorie des emplois exigeant le plus haut niveau de compétences, celle des cadres et des professionnels, on retrouve 21 p. cent des francophones, comparé à 22 p. cent des anglophones. Le francophone type est également relativement bien instruit et il a terminé avec succès le cours secondaire. De plus, 10 p. cent des francophones et 11 p. cent des anglophones, détiennent un diplôme universitaire.

Si on en croit les premiers résultats du recensement de 1996, cette équité socio-économique se retrouve dans d'autres régions au Canada, mais à moindre degré. Les minoritaires francophones, semble-t-il, jouissent de conditions au moins égales à celles des Québécois francophones, mais parfois inférieures à la moyenne canadienne. Dans la plus haute catégorie d'emploi, celle des cadres et professionnels, nous trouvons 23 p. cent des minoritaires francophones et 22 p. cent des Québécois francophones, comparé à 23 p. cent des anglophones. Le revenu moyen des minoritaires francophones est de 23 000\$, celui des Québécois francophones de 21 100\$, et celui des anglophones de 24 600\$. Une comparaison des différentes tranches de revenu démontre que la répartition des francophones minoritaires est quelque peu plus égalitaire que celle des Québécois francophones (voir Figure 3). Chez les minoritaires, il y a proportionnellement moins de pauvres, mais il y a également moins de riches. En ce qui concerne le niveau de scolarité atteint, 45 p. cent des minoritaires et 46 p. cent des Québécois francophones ont poursuivi des études post-secondaires, comparé à 51 p. cent des canadiens, toutes langues confondues.

QUATRIÈME ILLUSION: LES MINORITÉS FRANCOPHONES SONT INSIGNIFIANTES

De toutes les illusions, celle de l'insignifiance sème le plus souvent les graines de sa propre réalisation. La perception et la réalité sont inséparables. La perception de non-existence aboutit directement à la réalité d'insignifiance. Les minorités francophones se trouvent souvent oubliées, marginalisées, absentes des récits de l'histoire du Canada, des négociations sur la réforme constitutionnelle,

⁵⁰ Communautés francophones de l'Ouest, *supra* note 2 à la p. 302.

des débats touchant l'avenir du pays. De fait, le nationalisme québécois s'approprie tout ce qui est principalement français au Canada et établit un nouveau paradigme identitaire. Le fait français devient québécois, d'où la définition simpliste: le francophone est québécois, l'anglophone est canadien. Cette prémissse constitue une profession de foi plutôt qu'une hypothèse scientifique et, comme tout bon stéréotype, elle paraît résumer une certaine vérité. Toutefois, c'est une vérité déformatrice et elle nous amène à des conclusions parfois absurdes. En 1977, par exemple, lors d'un spectacle présenté à Edmonton, la chanteuse québécoise Pauline Julien s'est adressée à son auditoire francophone presque exclusivement en anglais, une langue qu'elle ne maîtrisait pas tellement bien. En guise d'explication, elle a fait part de sa foi nationaliste: « Québec is French and Canada is English; when I cross the border into Canada, I speak English ».

Cette simplification déformatrice se retrouve également chez les Canadiens anglophones, même ceux qui semblent accorder un rôle important à la langue française dans l'histoire et la politique du Canada. David Bercuson, historien, et Barry Cooper, politologue, nous livrent, par exemple, une histoire révisionniste où la langue et la culture sont vues comme les facteurs déterminants dans l'évolution du pays.⁵¹ En fait, ils y voient la source de tous nos maux économiques et politiques. Selon eux, le français, et plus spécifiquement le Québec français, a toujours constitué une barrière au développement économique et aux droits politiques, en un mot à la réalisation de la démocratie libérale. Pourtant, ils ne sifflent pas un mot sur l'existence des minorités francophones et, pour appuyer le désir d'indépendance du Québec, ils envisagent avec satisfaction un nouveau Canada, libéral, démocratique et, bien entendu, anglophone. Philip Reznick, politologue et social-démocrate, conteste cette vision néo-libérale et propose à sa place un nouveau partenariat Canada-Québec, entre deux nations unilingues: le Canada anglais et le Québec français, qui risque lui aussi de bouder les minorités francophones: « We will have to get on with working out our own national and linguistic priorities, in which French will not have a significant place ».⁵² Reznick n'est pas hostile à ces minorités, au contraire, mais il est pessimiste quant à leur survie: « If nationalism speaks to the concerns of a collectivity with common bonds of language, culture, history, and

⁵¹ D. J. Bercuson et B. Cooper, *Deconfederation: Canada without Quebec*, Toronto, Key Porter Books, 1991.

⁵² P. Reznick, *Toward a Canada-Quebec Union*, Montréal, McGill-Queen's University Press, 1991 à la p.42. Voir également P. Reznick, Recension de *Deconfederation: Canada without Quebec* de D. J. Bercuson et B. Cooper (1992) 25 Can. J. Pol. Sci. 155.

territory, why should one expect its adherents to show particular tolerance toward minorities? ».⁵³

Le mythe national de notre fondation en tant que pays semble exclure d'emblée les minorités francophones et les peuples autochtones. En 1867, les deux peuples fondateurs étaient, dit-on, les Canadiens francophones de la future province du Québec et les Britanniques anglophones des futures provinces de l'Ontario, du Nouveau-Brunswick et de la Nouvelle-Écosse. C'étaient ces deux peuples de l'Amérique du Nord britannique, ou plus précisément leurs représentants, qui avaient négocié le pacte fédératif et qui ont ainsi donné naissance au Dominion du Canada. Les Acadiens, par exemple, étaient absents des négociations sur l'union des colonies en 1864, et à Charlottetown et à Québec. Dans son projet de loi, adopté en 1995, sur l'avenir du Québec, le gouvernement du Québec résume bien cette interprétation de la nature du pays et de ses origines: le Canada se voulait un partenariat égal entre deux peuples fondateurs, les Québécois et les Canadiens; malheureusement ces derniers n'ont pas respecté leurs engagements.

Nous affirmons ici que cette insignifiance n'est ni justifiée ni réaliste. En premier lieu, les minorités francophones peuvent revendiquer légitimement un plus grand rôle politique, et cela pour des raisons morales. Explorateurs, colonisateurs, pionniers, fondateurs, par la suite, les communautés francophones se sont trouvées cependant dépossédées de leurs terres et déchues de leurs droits. Les Acadiens, par exemple, ont bâti une communauté prospère et égalitaire aux XVII^e et XVIII^e siècles mais le « grand dérangement » de 1755 à 1763 les a exilés et dispersés dans des pays lointains: Massachusetts, Maryland, Pennsylvanie, Louisiane, Santo-Domingo, Guyane, France, Angleterre⁵⁴. Ainsi, à l'époque de la Confédération, ils ne représentaient que 16 p. cent de la population du Nouveau-Brunswick, habitant les régions les plus isolées et les plus stériles de la côte nord. Les francophones ont également exploré l'Ouest canadien et ont donné naissance, sur les rives de la Rivière Rouge, à une nouvelle nation: les Métis. Fondateurs de la province du Manitoba, ils ont su négocier une entente constitutionnelle pour protéger leur vie, leur culture et leur langue. Le tout tombe à l'eau, toutefois, et ils se retrouvent eux aussi chassés encore plus loin vers l'Ouest, où ils perdent successivement leurs terres, leurs écoles et leurs droits linguistiques.

⁵³ *Ibid.* à la p. 107.

⁵⁴ Voir par ex. R. Leblanc, « Les migrations acadiennes » dans D. Louder et E. Waddell, dir., *Du continent perdu à l'archipel retrouvé: Le Québec et l'Amérique française*, Québec, Presses de l'Université Laval, 1983, 137.

En deuxième lieu, les minorités francophones peuvent réclamer à juste titre un plus grand rôle politique à cause de leur poids démographique. Il va de soi que, dans un Canada sans le Québec, la présence et l'influence francophones se trouveraient énormément réduites. Cette influence ne serait toutefois pas insignifiante comme on le laisse souvent entendre: les francophones resteraient quand même la minorité linguistique la plus importante au pays (voir Figure 4). Ils comptent actuellement pour 5 p. cent de la population des neuf provinces à majorité anglophone, dépassant d'une marge importante les sinophones (3 p. cent) et les germanophones (2 p. cent). Ils dépassent également les Autochtones qui, selon le recensement de 1996, ne représentent que 3 p. cent de la population hors-Québec.

Malheureusement, certains observateurs sont convaincus que ce poids ne serait pas suffisant pour garantir le respect des droits acquis. Selon le politologue Roger Gibbons: « The francophone population, stripped of the political protection afforded by Quebec, would be too small to warrant constitutional protection [...] In all probability, the official-languages sections of the Charter of Rights and Freedoms would be repealed at the first opportunity ».⁵⁵ Nous ne pouvons pas réfuter cette prévision mais notons toutefois que d'autres États démocratiques ont déjà fait preuve d'une plus grande générosité d'esprit. La Suisse, par exemple, a reconnu la langue italienne comme une langue nationale en 1874, et comme une langue officielle en 1938. Pourtant, seul un quart de million de ses citoyens, comptant pour 5 p. cent de la population, parlent italien. L'Estonie a reconnu en 1925 le droit de sa minorité germanophone à élire un conseil culturel chargé de la gestion de ses institutions scolaires et culturelles. Pourtant, les germanophones ne représentaient que 2 p. cent de la population et étaient dispersés à travers le pays.

Déjà au Canada, les Autochtones, beaucoup moins nombreux que les minorités francophones, commencent à prendre leur juste place dans les négociations politiques. Ils étaient représentés à la table des négociations en 1993, par exemple, lors de la recherche d'un accord sur la crise constitutionnelle, une recherche qui devait aboutir à l'entente de Charlottetown.

⁵⁵ R. Gibbins, « Speculations on a Canada without Quebec » dans K. McRoberts et P. Monahan, dir., *The Charlottetown Accord, the Referendum and the Future of Canada*, Toronto, University of Toronto Press, 1993, 264 à la p. 271.

CONCLUSION

Personne ne peut contester ni la fragilité ni la vulnérabilité des minorités francophones. Prétendre que tout est bien dans le meilleur des mondes serait la plus grande illusion de toutes. Néanmoins, bien qu''affaiblies, les minorités sont toujours vivantes. Les nécrologies sont trompeuses; les obsèques sont prématurées. Les croire serait abandonner une communauté blessée et empêcher pour toujours son rétablissement.

Trop souvent, les nationalistes canadiens et québécois font avancer leurs propres agendas sur le dos des minorités francophones. Soit qu'ils nient l'existence même de ces minorités, soit qu'ils s'en servent contre leurs adversaires. Dans cette guerre de mots, chacun accuse l'autre de vouloir la disparition des minorités, mais personne ne leur reconnaît une existence viable. À cet égard, les conseils de Linda Cardinal sont très pertinents: « Les francophones hors-Québec devront redéfinir leur rapport aux nations qui coexistent au Canada [et] les nationalistes québécois devraient, pour leur part, cesser de parler de la disparition des francophones hors-Québec ».⁵⁶ Sur ce premier point, il nous semble évident que les minorités francophones n'auront pas d'avenir viable si elles ne réussissent pas à renforcer leurs liens avec le Québec. Les recherches en sociolinguistique sont univoques: il n'y aura pas d'individus bilingues s'il n'y a pas de sociétés unilingues.⁵⁷ Plus spécifiquement, il n'y aura pas de minorités francophones hors-Québec s'il n'y a pas de société francophone au Québec. Les minorités ont intérêt à appuyer la construction d'un Québec où le français est la langue commune; les nationalistes québécois n'ont aucunement besoin de diminuer les minorités pour justifier leur propre projet de société. Enfin, ceux qui croient que les minorités francophones ne sont qu'une carte à jouer, n'agissent dans l'intérêt ni des Canadiens, ni des Québécois, ni des minoritaires eux-mêmes.

Fernand Harvey abonde dans le même sens, nous indiquant le chemin à parcourir pour mettre fin à certaines perceptions illusoires:⁵⁸

⁵⁶ L. Cardinal, « Les minorités nationales ou linguistiques dans un nouveau rapport Québec-Canada » dans J. Trent, R. Young et G. Lachapelle, dir., *Québec-Canada: What is the path ahead?*, Ottawa, University of Ottawa Press, 1996, 235 à la p. 239.

⁵⁷ Voir J. Laponce, *Langue et territoire*, Québec, Presses de l'Université Laval, 1984.

⁵⁸ F. Harvey, « Le Québec et le Canada français: histoire d'une déchirure » dans S. Langlois, dir., *Identité et cultures nationales: L'Amérique française en mutation*, Sainte-Foy, Québec, Presses de l'Université Laval, 1995, 49 à la p. 62.

Mais pour changer la perception des communautés francophones hors Québec au sein de l'opinion publique québécoise, laquelle influence à son tour le milieu politique, il faut d'abord tenter de jeter des ponts au sein même de la société civile. Les médias ont un rôle à jouer dans ce sens, mais il appartient aussi aux intellectuels de montrer que la vie française hors Québec n'est pas uniquement synonyme de pertes démographiques et de luttes scolaires sans fins, mais qu'il existe des communautés francophones qui ont la capacité de se penser par leurs élites intellectuelles, de créer par leurs écrivains et leurs artistes et aussi, dans une certaine mesure, de produire par leurs coopératives et leurs gens d'affaires.

Tout cela suppose à la fois de la bonne volonté et une ouverture d'esprit. Malheureusement, ceux qui caressent des illusions les préfèrent souvent à la réalité, d'où la difficulté de les dissiper. Dans ce sens, la situation des minorités francophones n'est pas sans rappeler l'histoire d'un accident de voiture qui a coûté la vie à plusieurs députés albertain, dans une région très isolée de la province. Un fermier qui se trouvait peu après sur la scène de la tragédie, a décidé d'enterrer les corps dans son champ. Le lendemain, un policier qui faisait enquête sur l'accident a demandé si toutes les victimes avaient été tuées sur le coup. D'où la réponse du fermier: « Some said that they were still alive, but you know how politicians lie ».

Figure 1: Minorités francophones au Canada, Population, 1871-1991

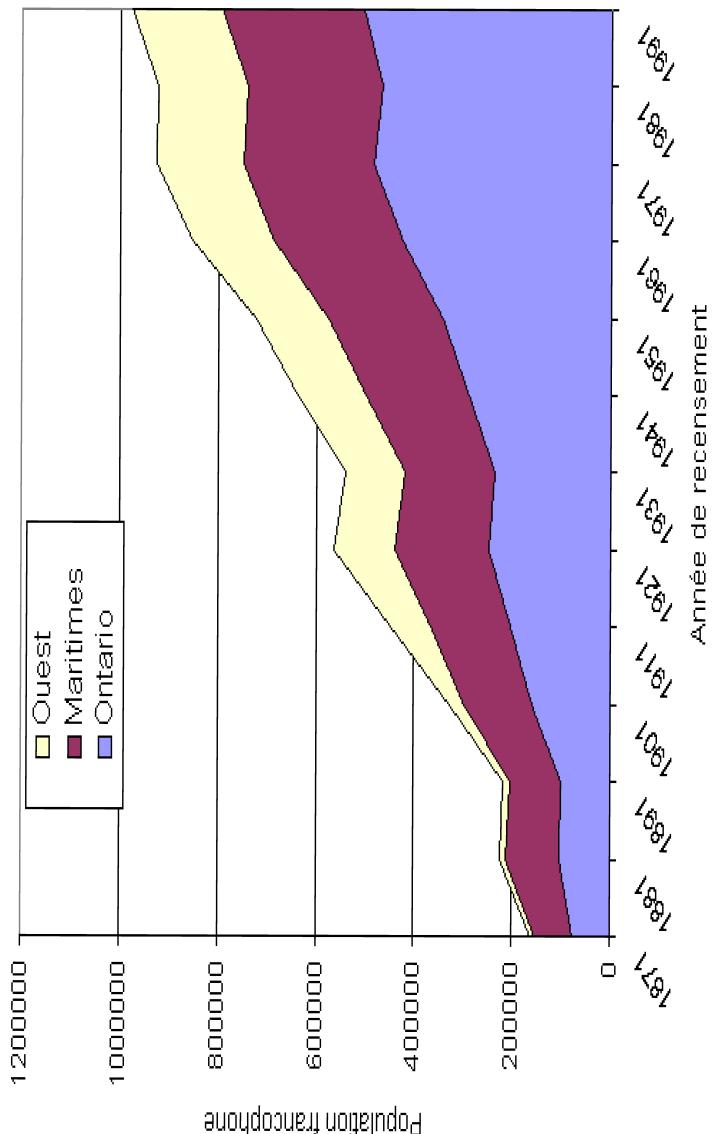
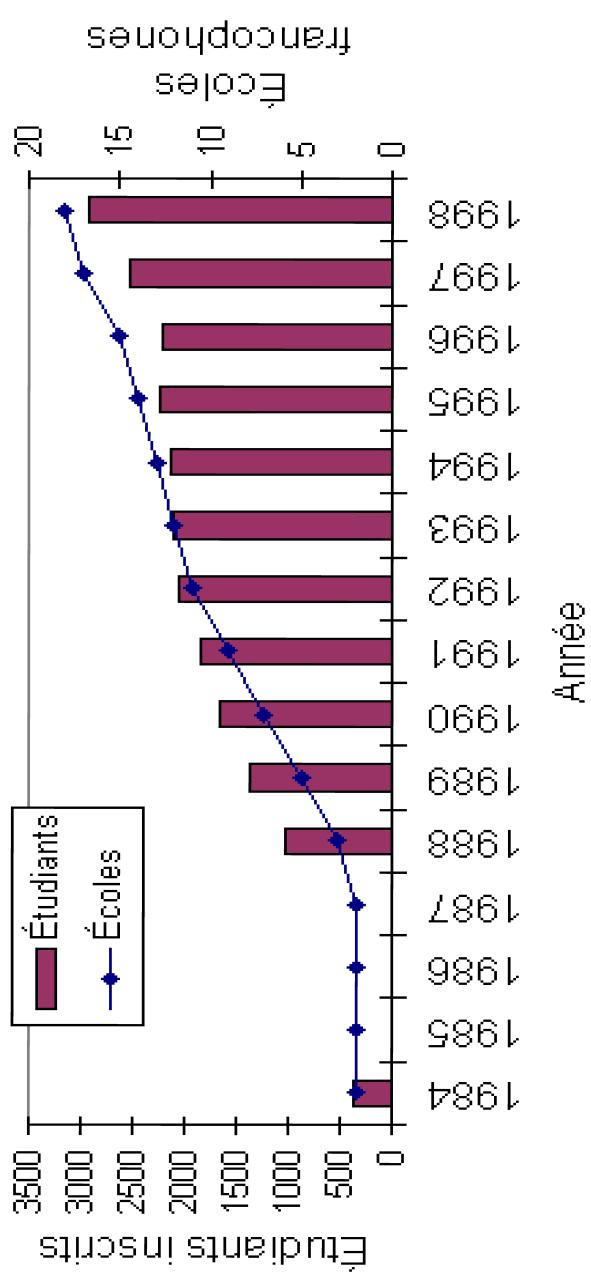
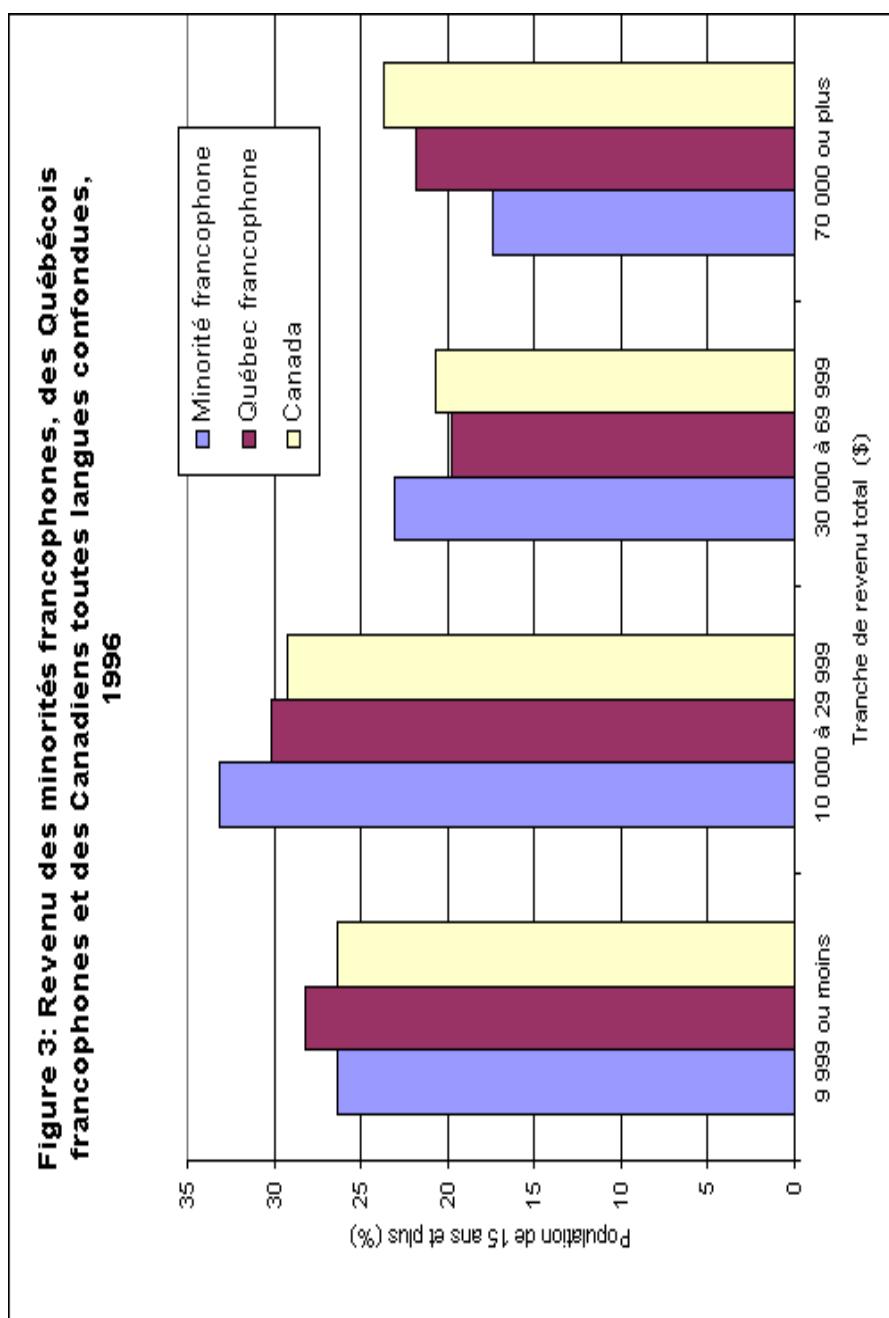


Figure 2: Inscriptions aux écoles francophones en Alberta,
1984-1998





LA NATION QUÉBÉCOISE ET LA MINORITÉ NATIONALE CANADIENNE-FRANÇAISE

Michel Seymour*

According to Michel Seymour, the dynamism and the expansion of the Francophone communities is not enough to bridge the rift that has been dug between Quebecers and the Francophone minorities. It is around the theme of the French-Canadian nation that the fissure began. For Quebecers, it no longer exists, while for the majority of Francophones living elsewhere in Canada, it still exists. These two visions of identities are, at first glance, irreconcilable. In order to put an end to this mutual incomprehension, Michel Seymour advocates the depoliticization of the relationships that national minorities maintain with their respective national majorities.

Le dynamisme et l'épanouissement des communautés francophones ne suffisent pas, selon Michel Seymour, à combler le fossé qui s'est creusé entre les Québécois et les minorités francophones. C'est autour du thème de la nation canadienne-française que la fissure s'est amorcée. Pour les Québécois, elle n'existe plus, alors que pour la majorité des francophones vivant ailleurs au Canada, elle existe encore. Ces deux visions identitaires sont à première vue irréconciliables. Afin d'en finir avec les incompréhensions mutuelles, Michel Seymour préconise la dépolitisisation des rapports que les minorités nationales entretiennent avec leurs majorités nationales respectives.

L'incompréhension persiste entre les Québécois et les francophones vivant ailleurs au Canada. Je propose dans ce texte de rechercher des pistes de solutions en vue d'une meilleure compréhension mutuelle en portant attention à la question de l'identité des deux groupes concernés et, dans la mesure du possible, sans aborder les enjeux politiques, en particulier celui de la souveraineté du Québec. Le problème central est le suivant: pour une majorité écrasante de Québécois, la nation canadienne-française n'existe plus. La plupart des Québécois se représentent désormais comme Québécois, Canadiens ou encore comme Québécois et Canadiens. Seule une faible proportion de Québécois s'identifie encore à la vieille nation canadienne-française. Or, la majorité des francophones vivant ailleurs au Canada se représentent encore comme des membres de la nation canadienne-française. Nous sommes donc en présence de deux visions identitaires opposées qui semblent à première vue irréconciliables.

Il n'est pas question de proposer ici une liste de mesures concrètes visant à faciliter les échanges entre la nation québécoise et les communautés francophones du Canada. De telles mesures sont sans doute indispensables mais

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elles ont de toute façon déjà été avancées par le gouvernement du Québec.¹ À mon sens, le rapprochement doit d'abord et avant tout donner lieu à une compréhension mutuelle qui tienne compte des différentes auto-représentations identitaires. C'est dans cette perspective que je tâcherai de proposer des pistes de réflexion pouvant mener à la résolution de nos différences identitaires, dans le but avoué d'en finir avec nos incompréhensions mutuelles. Un tel déblocage rendrait plus facile l'élaboration et la mise en place de politiques concrètes et d'échanges fructueux menant à un authentique partenariat entre nos deux communautés.

Les Québécois soutiennent que la nation canadienne-française n'existe plus alors que les membres des communautés francophones du Canada disent le contraire. On est tout d'abord tenté de se demander qui a raison. Nous sommes, en effet, enclins à nous tourner vers les faits objectifs, au-delà des perceptions, pour appréhender les choses telles qu'elles sont. Ne faut-il pas regarder la situation de plus près et avec impartialité? Ne pouvons-nous pas poser le problème de l'existence objective d'une nation québécoise ou d'une nation canadienne-française indépendamment des perceptions, et n'est-ce pas la seule façon de trancher le débat? Malheureusement, les nations n'existent pas en dehors de la conscience nationale des gens. Elles sont fonction de l'auto-représentation de la population. Certes, il ne suffit pas de se représenter comme une nation pour en être une, mais c'est à tout le moins une condition nécessaire. L'existence d'une nation est largement tributaire de la conception qu'une population se fait d'elle-même. Autrement dit, il y a une dimension partiellement subjective à l'existence d'une nation et il convient de départager les différents éléments subjectifs présents dans l'identité nationale.

Il y a tout d'abord le vouloir-vivre collectif, ou si l'on veut, le plébiscite quotidien d'Ernest Renan. Il y a aussi ce qu'on appelle l'auto-représentation identitaire, c'est-à-dire le fait de se concevoir soi-même comme appartenant à tel ou tel groupe, défini de telle ou telle façon. Il ne suffit pas de choisir de vivre sur un territoire spécifique pour appartenir à une nation. La volonté de s'établir sur un territoire donné est déjà un indice important, mais l'auto-représentation devient un autre élément incontournable, surtout lorsque plusieurs groupes coexistent sur un territoire national. L'auto-représentation vient alors renforcer l'appartenance à tel groupe plutôt qu'à tel autre.

¹ Québec, Conseil exécutif, Secrétariat aux affaires intergouvernementales canadiennes, *Politique du Québec à l'égard des communautés francophones et acadiennes du Canada*, Québec, Gouvernement du Québec, 1995.

Un troisième critère subjectif pourrait être introduit, le sentiment d'appartenance à la nation. Celui-ci consiste en un lien affectif qui se mesure aussi par la préférence de l'agent à l'égard de ses affiliations aux groupes. Quelle est la place du groupe national dans l'ensemble des allégeances de l'agent?

Certains prétendent que l'affiliation nationale n'est authentique pour un individu donné que si le groupe national occupe la première place au palmarès de ses allégeances. On suppose alors que la nation doit être le groupe suscitant la plus grande loyauté. Mais je crois au contraire que les liens affectifs à l'égard d'une nation peuvent varier d'un individu à l'autre et se transformer au fil du temps pour un seul et même individu. Le palmarès des allégeances est variable et la nation ne suscite pas toujours une loyauté privilégiée de la part de la population. Et pourtant, même si les individus vivent différemment leurs rapports à la nation, cela ne doit pas pour autant conduire à nier l'existence d'une identité nationale. Je ne retiendrais donc comme critères subjectifs pertinents que le vouloir-vivre collectif et l'auto-représentation. On peut se représenter comme Québécois ou comme Canadien sans accorder trop d'importance à ces allégeances et sans entretenir un sentiment national particulier. Les sentiments qui nous rattachent à un groupe national peuvent être mitigés. On peut admettre qu'on est Québécois ou Canadien sans entretenir de liens affectifs particuliers à l'égard de l'un ou l'autre groupe. Je rejette donc le critère fondé sur le sentiment d'appartenance ou sur la préférence des allégeances.

Quoi qu'il en soit, le problème initial demeure entier, les Québécois ne se considèrent plus comme des Canadiens français, alors que les francophones ailleurs au Canada entretiennent toujours cette auto-représentation. Si l'identité nationale est une affaire partiellement subjective liée à l'auto-représentation, il semble qu'on ne puisse pas trancher la question en regardant tout simplement les faits, tels qu'ils sont, et en tentant de déterminer qui a raison. Comment dénouer ce nœud gordien? Comment sortir de cette impasse?

Les récents sondages d'opinion confirment que le facteur identitaire canadien-français est de moins en moins populaire au Québec; seul un faible pourcentage de la population se dit encore canadien-français. Cette proportion oscille autour de 23 p. cent de la population entière du Québec, alors que 54 p. cent se disent Québécois, 19 p. cent se disent Canadiens et 2 p. cent se disent Canadiens anglais.² Du côté des francophones vivant ailleurs au Canada, on sait

² G. Lachapelle, « L'américanité des Québécois ou l'émergence d'une identité supranationale » dans M. Seymour, dir., *Nationalité, citoyenneté et solidarité*, Montréal, Liber, 1999, 97 [ci-après *Nationalité, citoyenneté et solidarité*].

que la théorie des peuples fondateurs a été discutée à l'occasion du trentième anniversaire des États généraux du Canada français. On a envisagé pendant un certain temps de remettre la théorie en question, mais le débat s'est soldé à l'avantage de ceux qui veulent maintenir cette façon de voir les choses. Il faut bien voir que le débat débordait largement la question historique liée à l'origine de l'ordre constitutionnel de 1867. Poser la question des deux peuples fondateurs, c'est aussi s'interroger sur sa pertinence de nos jours. Alors qu'au Québec, on soulève la difficulté posée par l'utilisation de ces anciennes catégories pour rendre compte de la situation actuelle, on tire une toute autre conclusion au Canada français. Les communautés francophones hors Québec semblent majoritairement appuyer l'idée que la nation canadienne-française, à savoir l'un des deux peuples fondateurs, rend toujours fidèlement compte de la réalité actuelle, alors que les Québécois ne se représentent plus les choses de cette façon. Comment harmoniser des auto-représentations en apparence contradictoires?

En commençant par le Québec, le problème est beaucoup plus complexe qu'on ne le croit. Il faut parvenir à développer un concept de nation adapté à l'auto-représentation de l'ensemble des gens vivant sur le territoire québécois. C'est-à-dire admettre pour commencer l'existence d'une nation québécoise généreuse et inclusive, correspondant à la conception de la majorité des Québécois. En même temps, il faut tenir compte de l'auto-représentation des francophones qui se perçoivent toujours comme membres de la nation canadienne-française et, pour compliquer davantage les choses, satisfaire la conscience nationale des francophones du Québec se disant Canadiens, ainsi que des Québécois anglophones, des peuples autochtones et des immigrants ou des résidents appartenant à d'autres communautés culturelles. Comment concilier toutes ces consciences nationales sur le territoire du Québec?

Le concept de nation sociopolitique me semble fécond à cet égard³. Il peut rendre compte de la conscience nationale entretenue par des populations différentes à l'échelle internationale, mais il peut aussi s'appliquer à la conscience nationale québécoise. La nation sociopolitique québécoise est une communauté politique inclusive qui rassemble sur le plan sociologique la majorité nationale des francophones du Québec (de souche ou assimilés), la

³ J'ai défendu cette conception dans un certain nombre d'articles récents. Voir « Une conception sociopolitique de la nation » (1998) 37 *Dialogue* 435; « Plaidoyer pour la nation sociopolitique » dans *Nationalité, citoyenneté et solidarité, supra* note 2, 153; « On Redefining the Nation » (1999) 82 *The Monist* 411; « Quebec and Canada at the Crossroads: A Nation within a Nation » (2000) 6 *Nations and Nationalism* 227.

minorité nationale des anglophones du Québec et les groupes de diverses origines nationales.

La conception sociopolitique de la nation québécoise tient compte de deux traditions incontournables. Elle tient compte de la conception culturelle de la nation, qui est l'héritage de Fernand Dumont, et elle tient compte de la conception civique plus récente. Elle propose une nouvelle conception civique qui offre l'occasion de réaliser, une fois pour toutes, le passage obligé de la nation canadienne-française à la nation québécoise, sans pourtant renoncer à l'essentiel de ce qu'a été le Québec. Dans l'esprit d'une majorité de Québécois et Québécoises, il n'y aurait pas de nation québécoise s'il n'existant pas sur le territoire du Québec une majorité nationale francophone de souche ou assimilée, d'où l'importance du rôle joué par ce groupe culturel au sein de l'identité nationale québécoise. La nation canadienne-française n'existe plus, mais sans la présence d'une majorité nationale québécoise de francophones, la communauté politique québécoise ne serait pas une communauté nationale. En même temps, les autres individus qui vivent sur le territoire du Québec et qui se représentent comme Québécois et Québécoises doivent non seulement être reconnus comme des citoyens à part entière du Québec; ils doivent être reconnus comme des membres à part entière de la nation québécoise.

Les expressions « assemblée nationale », « archives nationales », « histoire nationale », « fête nationale », « bibliothèque nationale », « capitale nationale », sont entrées dans l'usage courant et démontrent que la nation québécoise est de plus en plus inclusive de l'ensemble des Québécois. Mais il est clair que la nation québécoise s'inscrit dans une histoire et qu'elle est le résultat de la transformation de l'identité canadienne-française. Il est donc inutile de tenter d'enfermer la nation québécoise dans une identité purement civique qui inclurait sans précisions additionnelles l'ensemble des Québécois, sans tenir compte de l'histoire et de la conscience nationale canadienne-française dont elle est issue. Le concept de nation sociopolitique tient compte de tout cela parce que même s'il inclut l'ensemble des Québécois se représentant comme Québécois au sein de la communauté politique québécoise et donc au sein de la nation québécoise, cette communauté politique ne serait pas une communauté nationale sans la présence de la majorité francophone.

Dans l'état actuel des choses, les peuples autochtones ne se représentent pas comme membres de la nation québécoise, même si, en principe, rien ne les empêche d'entretenir une telle auto-représentation. Les peuples autochtones sont sans doute des citoyens du Québec au sens juridique et ils partagent sans doute la volonté collective minimale de vivre sur le territoire du Québec. Néanmoins,

ils sont encore très minoritaires à se représenter comme des citoyens québécois. Voilà pourquoi je dis qu'ils ne sont pas pour le moment des membres de la nation québécoise. Les nations autochtones font partie de l'État québécois, et ce dernier est donc un État multinational, mais elles ne font pas en ce moment partie de la nation québécoise.

Les membres de la communauté anglophone du Québec peuvent être considérés comme des membres à part entière de la nation québécoise. Ils se disent pour la plupart « Québécois » et veulent être reconnus comme des citoyens à part entière du Québec. Certains d'entre eux rejettentraient sans doute l'idée qu'ils appartiennent à la nation québécoise, mais les raisons de cette auto-exclusion proviennent bien souvent de l'incapacité de reconnaître l'auto-représentation des autres Québécois. Il faut sans doute tenir compte de l'auto-représentation des anglo-Québécois pour déterminer s'ils font partie de la nation québécoise, mais pas au point où l'on devrait accepter les verdicts des anglo-Québécois qui s'appuient sur une vision ethniciste de la nation québécoise. Car dans ce cas, accepter leur auto-représentation équivaut à accepter leur définition de la nation québécoise et cela viole l'auto-représentation de la majorité des Québécois qui veulent penser les conditions d'une identité nationale civique et inclusive. Puisque la grande majorité des Québécois conçoit la nation québécoise comme une communauté politique inclusive, on doit inclure dans la nation québécoise tous ceux qui participent pleinement à la vie civique, qui se décrivent comme Québécois et qui veulent être considérés comme des citoyens à part entière. On ne fait donc pas violence à leur auto-représentation lorsqu'on inclut les anglo-Québécois dans la nation québécoise.

Je prétends que lorsqu'ils répondent autrement dans les enquêtes d'opinion, c'est parce que des idées fausses, incohérentes ou intolérantes viennent s'immiscer pour influencer leur façon de se représenter eux-mêmes. Les concitoyens anglophones du Québec qui s'excluent de la nation québécoise le font souvent parce qu'ils croient, à tort, devoir choisir entre le fait d'être Canadiens et le fait d'être Québécois. Ils s'excluent aussi de la nation québécoise parce qu'ils ne réalisent pas que leur comportement de citoyen à part entière suffit pour confirmer qu'ils entretiennent une telle auto-représentation (ce qui est incohérent). Ou ils s'excluent de la nation québécoise parce qu'ils se font une idée caricaturale de l'appartenance à la nation québécoise (ce qui est intolérant). Autrement dit, si les anglo-Québécois prennent en considération l'auto-représentation civique de la majorité québécoise, et s'ils constatent qu'ils sont eux-mêmes par leur propre comportement des citoyens à part entière du Québec, ils accepteront leur affiliation nationale québécoise, pourvu qu'ils acceptent aussi de se débarrasser de certaines idées fausses concernant l'identité nationale

(par exemple, le fait que cela requiert un sentiment d'allégeance particulier qui de surcroît doit être exclusif). S'ils refusent toujours après cela de se considérer comme des membres de la nation québécoise, on peut être en droit de questionner leur auto-représentation identitaire.

On peut être d'autant plus à l'aise en incluant les anglo-Québécois dans la nation québécoise, si cette conception les reconnaît comme ayant le statut d'une « minorité nationale ».⁴ C'est là une autre façon de tenir compte de leur auto-représentation. Je reviendrai plus tard sur ce concept important de minorité nationale. Pour le moment, disons seulement que ce statut ouvre la voie au maintien de leurs droits acquis. On tient compte de cette manière de la représentation qu'ils se font d'eux-mêmes en tant que groupe partageant la même langue, la même culture et la même histoire que la majorité canadienne-anglaise au Canada. Qui plus est, cette conception est compatible avec le fait que la plupart d'entre eux se conçoivent en même temps membres de la nation canadienne. Les anglophones du Québec peuvent en effet faire partie de la nation canadienne, tout comme c'est le cas en principe pour l'ensemble des Québécois. Ils peuvent même accorder une priorité aux liens qu'ils entretiennent avec la nation canadienne. Tout cela est compatible avec leur appartenance à la nation québécoise au même titre que les autres Québécois.

Plusieurs Québécois francophones conçoivent la nation québécoise comme étant composée exclusivement de francophones, mais leurs raisons doivent là aussi être examinées de près avant de conclure qu'il s'agit d'une auto-représentation définitive:

- i) Certains excluent les anglo-Québécois parce qu'ils se croient obligés de se fier à ce qu'ils croient être l'auto-représentation des anglophones eux-mêmes. Ils les excluent, parce qu'ils se croient obligés d'accepter ce qu'ils perçoivent comme une auto-exclusion. Ici, il y a un désir d'inclusion, et c'est tout ce qui compte.
- ii) D'autres excluent les anglo-Québécois de la nation québécoise, parce qu'ils croient qu'on doit choisir entre les allégeances canadienne et québécoise. Ils ne conçoivent pas que l'on puisse avoir plusieurs allégeances. C'est une erreur fondée sur l'incapacité à penser plusieurs concepts de nation, plusieurs sortes de consciences

⁴ Les Anglo-Québécois auraient le droit de ne pas se représenter comme membres de la nation québécoise si les Québécois dans l'ensemble refusaient de reconnaître leur statut de minorité nationale.

nationales. Cette incapacité trahit déjà un échec à appliquer un principe de tolérance et nous n'avons pas à tolérer une position qui présuppose un manquement au principe de tolérance.

- iii) D'autres encore conçoivent la nation québécoise comme étant composée exclusivement de francophones. Mais ces gens là peuvent en même temps adopter une attitude inclusive, car ils peuvent vouloir que tous les citoyens du Québec soient traités sur un pied d'égalité au sein de la communauté politique québécoise. On ne saurait dans ce cas parler d'un manquement au principe de tolérance. La nation québécoise est pour eux une nation purement culturelle même si elle s'inscrit dans une communauté politique inclusive de l'ensemble des Québécois. Là encore, il faut voir un désir d'inclusion, mais il est vrai que nous ne serions pas autorisés à inclure les anglo-Québécois dans la nation québécoise si la plupart des francophones endossaient cette conception de Fernand Dumont.

Je crois cependant que la majorité des Québécois et Québécoises hésitent entre la position de Dumont et un nationalisme civique inclusif. S'ils hésitent à embrasser une conception civique, c'est parce qu'ils ne veulent pas diluer la spécificité de la nation québécoise dans un grand tout civique aseptisé. Ils savent que la nation est toujours en partie culturelle et non seulement politique. Si plusieurs s'accrochent encore à la conception de Fernand Dumont, c'est parce qu'ils croient que la seule alternative est un nationalisme civique dans le genre de celui pratiqué par Pierre Elliott Trudeau. Leur véritable position est saisissable dans cette hésitation, et c'est une ambivalence que la conception sociopolitique prend en considération. La nation québécoise est une communauté politique inclusive, mais elle tient compte en même temps de la présence d'une majorité nationale québécoise, en plus d'inclure une minorité nationale anglo-québécoise et des groupes ayant d'autres origines nationales.

Tout cela permet de conclure que les Québécois anglophones font partie de la nation québécoise. Cette inclusion est possible même en tenant compte de leur auto-représentation, car ne veulent-ils pas être traités comme des Québécois à part entière? Ne veulent-ils pas être reconnus comme une minorité nationale? Et ne peuvent-ils pas continuer à se concevoir en même temps comme des Canadiens? Je prends pour acquis que oui. Je crois que la plupart d'entre eux se représentent comme des citoyens du Québec devant être traités comme égaux face aux autres citoyens du Québec.

Si je me suis penché assez longuement sur le cas des anglo-Québécois, c'est parce que la relation qu'ils entretiennent avec la majorité nationale du canada-anglais est semblable à celle que les communautés francophones du Canada entretiennent avec la majorité nationale québécoise. Les communautés francophones du Canada forment une minorité nationale, c'est-à-dire qu'ils se représentent comme une extension de la majorité nationale francophone du Québec. Avant d'expliquer ce point de vue, je voudrais clarifier quelque peu le vocabulaire utilisé. Je viens d'employer les expressions « majorité nationale » et « minorité nationale » et il convient de définir ce vocabulaire.

Nous avons l'habitude de distinguer les nations et les minorités issues de l'immigration. Ces deux sortes de communautés peuvent donner lieu respectivement à la reconnaissance de droits nationaux et de droits polyethniques. Mais nous ne sommes pas encore suffisamment habitués à distinguer les nations minoritaires et les minorités nationales. Ces dernières étant entendues au sens d'être des extensions de majorités nationales voisines. Le concept de majorité nationale renvoie à un groupe majoritaire, sur un territoire juridiquement reconnu et en même temps, à l'échelle de la planète, à une concentration absolument majoritaire de gens partageant la même langue, la même culture et la même histoire. Le concept de minorité nationale est ensuite défini comme un groupe partageant la langue, la culture et l'histoire d'une majorité nationale se trouvant sur un territoire voisin. Ainsi, les pays baltes contiennent des majorités nationales lithuanienne, estonienne et lettonienne en plus de contenir des minorités nationales russes. Israël contient une majorité nationale juive et une minorité nationale palestinienne. La Serbie contient une majorité nationale serbe et une minorité nationale albanaise de Kosovars. La Catalogne contient une majorité nationale catalane et une minorité nationale castillane, etc.

Si l'on tente de les appliquer au Canada, ces notions permettent d'identifier l'existence d'une majorité nationale québécoise francophone et d'une majorité nationale canadienne anglaise; ainsi que des minorités nationales angloquébécoise et canadienne française. (Je n'inclus pas dans ce groupe les Acadiens qui forment plutôt, à eux seuls, une nation acadienne.)

Or, pour en arriver à reconnaître l'existence d'une minorité nationale francophone au Canada, il n'est pas nécessaire que soit maintenue la croyance en une nation canadienne-française. De la même manière, pour reconnaître une minorité nationale anglo-québécoise, il n'est pas nécessaire de postuler une nation canadienne-anglaise. La majorité des Québécois se représentent désormais comme formant une nation québécoise au sens sociopolitique de l'expression;

et la plupart des Canadiens se représentent comme formant une nation canadienne au sens de l'appartenance à un pays. On doit constater l'inadéquation de la théorie des deux peuples fondateurs pour rendre compte de la population anglophone au Canada. La vaste majorité des Canadiens anglais ne se conçoivent pas comme membres de la nation canadienne-anglaise, mais comme Canadiens. Leur nation est le Canada conçu comme pays. S'il faut tenir compte de l'auto-représentation des Canadiens anglais pour statuer sur l'existence d'une nation canadienne-anglaise conçue comme l'un des deux peuples fondateurs, il faut alors conclure que la nation canadienne-anglaise n'existe plus dans l'esprit de la vaste majorité des Canadiens anglophones. Par conséquent, lorsque les communautés francophones du Canada se servent de la théorie des deux peuples fondateurs pour représenter la conscience nationale entretenue actuellement par les Canadiens, ils ne prennent pas suffisamment en considération la conscience nationale des Canadiens anglais et la conscience nationale des Québécois. S'ils choisissent au contraire de tenir compte de la conscience nationale des Canadiens anglais, les francophones du Canada hors Québec seront alors disposés à admettre qu'ils font partie de la nation canadienne tout comme les autres Canadiens d'ailleurs. Cette chose ne paraît choquante que si on échoue à penser la nation canadienne au sens de pays. La majorité des Canadiens conçoivent leur nation comme étant le pays du Canada. Puisque la vaste majorité des francophones hors Québec se conçoivent comme Canadiens au sens de l'appartenance au pays du Canada, ils font donc partie de la nation canadienne.⁵

Même si l'existence de la nation canadienne-française peut être remise en cause, la minorité francophone du Canada hors Québec est plus qu'un ensemble de minorités provinciales. À l'exception des Acadiens qui doivent être reconnus comme constituant un peuple, les francophones du Canada hors Québec peuvent être considérés comme constituant une minorité nationale, c'est-à-dire une extension de la majorité nationale francophone du Québec, et ce, bien que la nation canadienne-française n'existe plus. Si tant de francophones canadiens continuent d'entretenir cette appartenance à la nation canadienne-française, c'est en grande partie parce qu'ils ne veulent pas être relégués au statut de minorité provinciale. Or, leur statut de minorité nationale canadienne-française a justement pour effet d'éviter cette conséquence et ne devrait pas se traduire par une diminution de leurs droits.

⁵ Il importe de signaler que les membres de la nation québécoise sont en droit de ne pas se représenter comme des membres de la nation canadienne étant donné l'incapacité des Canadiens de reconnaître l'existence d'une nation québécoise.

Il semble que cette façon de voir les choses tienne compte de l'auto-représentation entretenue par les francophones de l'Ouest. Elle tient compte du fait qu'ils se représentent comme ayant des liens privilégiés avec les francophones vivant au Québec. Du point de vue de la perception des francophones vivant dans les autres provinces, il n'y a pas beaucoup de différences entre le fait de se concevoir comme une minorité nationale et le fait de se concevoir comme membres d'une nation canadienne-française. La seule différence réside dans le fait que la première tient compte de l'auto-représentation par la majorité des Québécois. La véritable inquiétude des francophones de l'Ouest est donc probablement d'ordre politique. Les francophones canadiens craignent d'endosser le concept de nation québécoise pour des raisons politiques. Ils croient qu'en acceptant cette idée, ils favoriseront l'avènement d'un Québec indépendant. À cela on peut répondre que c'est bien au contraire le refus de reconnaître la nation québécoise qui risque de se traduire par l'accession à l'indépendance de l'État québécois.

Inversement, les Québécois doivent être sensibles aux inquiétudes exprimées par les francophones du Canada. Il leur appartient de comprendre le sentiment de ceux qui craignent de se retrouver encore plus minoritaires dans un Canada sans Québec. Dans cet esprit, les Québécois et les francophones du Canada hors Québec doivent défendre la dépolitisation de la question identitaire. Les Québécois doivent défendre l'idée que le Québec a l'obligation de reconnaître et de protéger les droits de sa minorité nationale anglo-québécoise, qu'il devienne souverain ou non. De la même manière, le Canada a l'obligation de reconnaître et de protéger les droits de sa minorité nationale francophone, que le Québec devienne souverain ou non. Les manquements à ces obligations doivent être condamnés et le chantage politique doit être dénoncé. Le fait est que l'on peut admettre une nation québécoise, que l'on soit d'accord ou non avec le projet souverainiste. En admettant l'existence d'une telle nation, les francophones de l'Ouest ne posent pas un geste politique qui les compromet à l'égard du projet souverainiste. Ils ne font que reconnaître une réalité qui existe indépendamment de la politique partisane.

Si les francophones du Canada choisissaient eux aussi cette avenue de la dépolitisation des rapports que les minorités nationales entretiennent avec leurs majorités nationales respectives, ils seraient alors peut-être moins tentés d'ajuster leur discours à celui tenu par les autorités fédérales canadiennes. Ces dernières voient un avantage politique à ethniciser le Québec et à attacher irrémédiablement le destin de la majorité nationale des francophones du Québec à celui de la minorité nationale des francophones du Canada. Cette façon de voir les choses permet de maintenir de force le Québec dans l'ordre constitutionnel

canadien. Si les minorités francophones au Canada choisissaient la dépolitisation, elles verraient fort probablement renaître au Québec un sentiment de sympathie profonde à leur égard; elles verraient aussi croître rapidement la volonté québécoise de multiplier les partenariats avec les francophones vivant ailleurs au Canada.

AN ELUSIVE SEARCH FOR COMMUNITY: GLOBALIZATION AND THE CANADIAN NATIONAL IDENTITY

Dr. Janine Brodie*

For over thirty years, the welfare state and liberalism have marked the political geography of Canada. The welfare state was perceived at the time as a sign of maturity, a necessary precondition to political stability and to a certain degree of social cohesion, while putting an end to "ideology." However, this postbellum consensus was brought back into question, starting in the 1980s, giving way to what the author calls "the neo-liberal globalization" which includes notions such as privatization, deregulation, free markets and the erosion of the public sector. The author examines the elusive search for the Canadian identity in an era of liberal globalization. She proposes that the State has always been a central actor in the creation of the perceptions of self and of the collective and tries to determine if the Canadian national identity can be preserved and how it can be done in such a framework.

Pendant plus de trente ans, l'État providence et le libéralisme ont marqué la géographie politique du Canada. L'État providence était perçu à l'époque comme un signe de maturité, une précondition nécessaire à la stabilité politique et à une certaine cohésion sociale, mettant ainsi fin à « l'idéologie ». Toutefois, ce consensus de l'après-guerre a été remis en question, à partir des années 80, laissant place à ce que l'auteure appelle « la mondialisation néolibérale », qui inclut des notions telles que la privatisation, la déréglementation, le libre marché et l'érosion du secteur public. L'auteure examine l'insaisissable recherche de l'identité canadienne dans une ère de mondialisation libérale. Elle avance que l'État a toujours été un acteur central dans la création des perceptions de soi et de la collectivité et tente de déterminer si l'identité nationale canadienne peut être préservée et comment elle peut l'être dans un tel cadre.

INTRODUCTION

A dull people,
but the rivers of this country
are wide and beautiful¹

For almost a generation now, Canadians have been mired in a complex and multi-faceted process of fundamental change which has recast the role and nature of the state, the public sphere, and the post-war philosophy which guided government. In the midst of this flux, social scientists and policy-makers alike have rediscovered the conceptual utility of the term "governance." This term is

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¹ I. Layton, "From Colony to Nation," in D. Morton & M. Weinfeld, *Who Speaks for Canada? Words that Shape a Country* (Toronto: McClelland & Stewart, 1998) 161.

meant to capture the historically shifting and politically negotiated (and enforced) relationships among the three principal domains of a liberal democratic polity — the state, civil society, and the economy — as well as the ways in which citizens and groups articulate their interests, exercise their rights and obligations, and mediate their differences.² Successful systems of governance tend to have long shelf-lives. For example, the consensus underlying the post-World War II system of governance, variously described as “the post-war compromise,” “embedded liberalism,” and “the welfare state,” shaped the Canadian political geography for more than three decades. Moreover, this philosophy was so deeply held and widespread that it was rarely considered as only one prescription for the governance of modern societies among many. Indeed, most considered the welfare state as a mark of national maturity, a necessary precondition for sustaining political stability and social cohesion, and a state form which ensured the “end of ideology.” Political vocabularies were punctuated by the term “government” instead of “governance” because the post-war system quickly achieved the status of a “hard discourse,” that is, a type of discourse that is “almost impossible to combat and whose realism is difficult to question.”³

The post-war consensus, nevertheless, did break down in the 1980s in the face of a rapidly restructuring international political economy. This consensus gradually but surely ceded ground to the still-unfolding neo-liberal paradigm of governance or what I prefer to call “neo-liberal globalism”— an amalgam of policy postures including privatization, deregulation, open markets, and the erosion of the public sector. The current consensus among the policy elite is that neo-liberal globalism is a necessary, indeed the only realistic, governing response to the imperatives of the globalization of production and finance. Globalization is indicted for eroding the meaning and content of many of the organizing signposts of the twentieth century, among them notions of planning and progress, state sovereignty, democratic rights, and national identity.⁴ Globalization is credited with disrupting the multiple forms of modernist representation, among them political representation, representations of national communities, and representations of self and of other.

² United Nations Development Program, *Reconceptualizing Governance* (New York: U.N.D.P., 1997) at 9.

³ Z. Bauman, *In Search of Politics* (Stanford: Stanford University Press, 1999) at 28.

⁴ For a detailed discussion of the multiple meanings of globalization see M. Smith, “Globalization and International Relations Theory” in J. Brodie, ed., *Critical Concepts: An Introduction to Politics* (Toronto: Prentice-Hall, 1999).

This paper examines the elusive search for a Canadian identity during the current phase of neo-liberal globalism. The paper first reviews the relationship between modernity, the modern nation-state, and the generation of national identity. Next, we explore how social theorists have problematized the very idea of national identity in an era of globalization. This paper emphasizes the close and critical relationship between the historical generation of particular narratives of Canadian identity and state development strategies, arguing that the state has been a central actor in creating perceptions of self and of collectivity. Finally, the paper explores the difficult question of whether and how a Canadian national identity can be sustained under the rubric of neo-liberal globalism and the neo-liberal state.

GEOGRAPHIES OF POWER

Much of the current literature on globalization and representation has focussed on the apparent erosion of state sovereignty and its implications for formal political representation both of national interests in the international system and of democratic consensus within the domestic sphere. Globalization, Held and McGrew argue, "has disrupted the neat correspondence between national territory, sovereignty, political space, and democratic political community."⁵ The familiar liberal-democratic geography of power has shifted away from the sovereign state, national territory, and the liberal-democratic citizen in three distinct directions:

- **Upward** to the international and transnational International Financial Institutions (IFIs) such as the International Monetary Fund (IMF) and to regional entities such as the European Union and NAFTA.
- **Downward** to subnational and local formal and informal political structures such as the city, regional authorities, and the voluntary sector.
- **Outward** to the market and civil society through privatization, government downsizing, and the contracting out of the public sector at the international, national and local levels.

Combined, these shifts in the geography of power have displaced the time-worn symmetries of political representation and accountability. Indeed,

⁵ D. Held et al., "Globalization" (1999) 5 Glob. Governance 483 at 495.

globalization is rapidly dissolving the essential structures of modern statehood, specifically the state's *competence*, *form*, and *legitimacy*. State competence has been eroded by the globalization of production and finance and by the emergence of supra-national policy issues. As Held and McGrew put it, “[d]rug smugglers, capital flows, acid rain, and the activities of paedophiles, terrorists, and illegal immigrants do not recognize borders.”⁶ These and other transborder problems potentially have profound consequences for national communities but they are largely immune from the policy interventions of any single state. Globalization also has subtly altered the form of the post-war state, especially as power shifts up to international institutions and agreements which now assume *de facto*, if not *de jure*, power over the national state and democratic electorates. This “new constitutionalism,” as Gill terms it, mandates “the insulation of key aspects of the economy from the influence of politicians or the mass of citizens by imposing, internally and externally, binding constraints on the conduct of fiscal, monetary, trade and investment policies.”⁷ Combined, these forces break the link between geography and political power, feed a growing democratic deficit and, ultimately, threaten state legitimacy and political stability.

Alder describes the shifting matrix of the power of the modern liberal democratic state in a different but complementary way.⁸

Historically, economic, political and cultural space has been highly overlapped. All three have traditionally been defined by the boundaries of the nation-state. Political leaders could therefore control all three domains simultaneously. Today, political economists observe that the three are no longer coincident. Economic space has enlarged to become global. Political space has remained defined by the political borders of the nation-state. And the space defining cultural identity — answering the question “Who am I?” — has shrunk to smaller, more homogeneously defined ethnic communities.

Alder alludes to a less obvious but nonetheless critical relationship between the shifting geographies of state power in an era of globalization and political representation — notably the push inward on state legitimacy through the erosion of familiar cultural representations of national identity. Alder argues that national identities, and the legitimacy they provide to the modern nation-state, are giving away deep identities — a sense of self, belonging and community which is rooted in the localized, particularistic and pre-modern. Deep identity

⁶ Ibid. at 488-89.

⁷ S. Gill, “The Global Panopticon? The Neoliberal State, Economic Life, and Democratic Surveillance” (1995) 2 Alternatives 1 at 405.

⁸ N. Alder, “Globalization, Government, and Competitiveness” (Ottawa: Canadian Centre for Management Development, 1994) at 4 [footnotes omitted].

conveys the idea that religious and ethnic identities have always lurked behind and below the national identities that have propped up the modern nation-state. Moreover, it is assumed that deep identities are both immutable and inherently conflict-ridden. In consequence, it is argued that current pressures on state sovereignty and nation identity threaten to unleash the primal forces of ascriptive differences which are immune from “rational” political mediation and thus imperil state legitimacy and social cohesion. Popular accounts of the devastation of the former Yugoslavia reflect this ontology of deep identity. As the following section explains, however, the impacts of globalization on national identity are far more complex and indeterminate, especially in Canada, a country which perhaps better than any other best embodies Renan’s famous dictum that the “existence of a nation is ... a daily plebiscite.”⁹ The foundations of nationalism — the idea of a single community of fate, of a national “us” versus “them” — has never been firmly entrenched in the Canadian imagination.

GLOBALIZATION AND IDENTITY

The increasingly blurred boundaries of the international state system, the emergence of transnational policy problems and issue publics and the erosion of state capacity all raise questions about the meaning and continued viability of national identities in an era of globalization. Social theorists, from Durkheim onward, have identified the erosion of “deep identities” such as ethnicity and religion and the emergence of national cultures and identities as a defining feature of modernity and the modern state system.¹⁰ These deep identities were seen as the totalizing products of traditional societies. The “tribe,” as Bauman explains, provided the fullest embodiment of the idea of belonging and total knowledge of the world and one’s place in it. Any alternative identities were rendered invisible.¹¹ The birth of the modern state, however, saw the creation of national cultures as the principal source of cultural identification and as a good in its own right, indeed, for some, the most supreme good.¹² The ability to transcend and privatize particularisms in order to advance the collective good was the defining mark of a democratic polity and citizen. In the process, nationalism provided political legitimacy to the modern nation-state. As Gellner describes it, “the idea of a man without a nation seems to impose a far greater strain on the modern imagination.... A man must have a nationality as he must

⁹ Quoted in J. Habermas, “Citizenship and National Identity” in O. Dahbour & M. Ishay, eds., *The Nationalism Reader* (New York: Humanities Press, 1995) at 334.

¹⁰ See P. Cerny, “Globalization and Other Stories: The Search for a New Paradigm for International Relations” (1996) 51 Int’l J. 617 at 628.

¹¹ Bauman, *supra* note 3 at 161–62.

¹² *Ibid.* at 163.

have a nose and two ears.”¹³ Globalization, however, threatens the very idea of a discreet national identity.

Hall has mapped at least three possible impacts of globalization on national identities.¹⁴

1. National identities are being *eroded* as a result of the growth of global cultural homogenization and “the global post-modern.”
2. National and other “local” or particularistic identities are being *strengthened* by the resistance to globalization.
3. National identities are [being *replaced* by] *new* identities of hybridity...

Although Hall somewhat underplays the historically shifting construction of particular national identities, he does, nonetheless, take issue with cultural theorists who tend to view national identities (and deep identities) as essential, as something that we are born with, as fixed entities with common properties which stand outside of history, and the ongoing dramas of cultural production. Hall disagrees with the popular notion “that national identities were once centred, coherent, and whole, but are now being dislocated by the processes of globalization.”¹⁵ Instead, Hall embraces the proposition, first advanced by Renan and later by Anderson, that national cultures are historical and political creations. As such, they offer a historically shifting set of symbols, representations, and discourses, “a way of constructing meanings which influences and organizes both our actions and our conceptions of ourselves.”¹⁶ Anderson defined the nation as an imagined community and nationalism, not as the awakening of nations to self-consciousness, but, instead, as the invention of nations where they do not exist. To repeat Anderson’s often cited observation, “Communities are to be distinguished, not by their falsity/genuineness, but by the style in which they are imagined.”¹⁷

¹³ E. Gellner, *Nations and Nationalism* (Oxford: Basil Blackwell, 1983) at 6; also quoted in S. Hall, “The Question of Cultural Identity,” in S. Hall et al., eds., *Modernity: An Introduction to Modern Societies* (London: Blackwell, 1996) 595 at 612.

¹⁴ Hall, *ibid.* at 619.

¹⁵ *Ibid.* at 613.

¹⁶ *Ibid.*

¹⁷ B. Anderson, *Imagined Communities* (London: Verso, 1983) at 15.

The implications of this perspective on nationalism are apparent: notably, if identities are not immutable or transparent then our analysis must shift to various historical constructions of national identity as well as to current discourses which attempt to reconstruct the very idea of nation, of a shared community of fate, and of shared purpose and allegiance, in an era of globalization. The goal of such an inquiry is not simply to demonstrate that identities are the product of historical and discursive construction. Instead, as Castells argues, the appropriate questions are: How are national identities constructed and reconstructed? From what kinds of representations? By whom? And, why?¹⁸

Answers to the questions of the “what” and the “by whom” of national identity vary by theoretical approach, national context, and across time. From the perspective of the state and of governance, however, the question of “why” is fundamental. The very survival of the state depends on achieving and maintaining some level of social stability and legitimacy. Nationalism, rightly or wrongly, has provided the glue that holds diverse and unequal polities together, especially during periods of political crisis, structural strain, and external threat. In this respect, the state has a large stake in promoting and maintaining national identity, what Castell’s calls a “legitimizing identity,” both as a mechanism to hold institutions of domination and exploitation in place and to maintain allegiance and social control.¹⁹

Hall argues that these goals are pursued through a narrative of national culture, a discourse, which, he suggests, is comprised of five main elements.²⁰

- *The narrative of the nation* — “a set of stories, images, landscapes,” symbols, etc. “which stand for, or represent, [and] give meaning to the nation.”
- An “emphasis on *origins, continuity, tradition, and timelessness*” — the idea that “the national character remains unchanged through all the vicissitudes of history.”
- *The invention of tradition* — where recent practices or symbols are claimed as part of origin and continuity.

¹⁸ M. Castells, *The Power of Identity* (London: Blackwell, 1997) at 7.

¹⁹ Ibid. at 8.

²⁰ Hall, *supra* note 13 at 613–15.

- A *foundational myth* – “a story which locates the origin of the nation, the people and their national character.”
- “*The idea of a pure, original people or ‘folk.’*”

These categories draw heavily on Ernest Renan’s remarkable lecture to the Sorbonne in 1882 in which he asks “What is a Nation?” For Renan, the idea of a nation rests on an agreement to remember certain things from the past and to forget others. “To forget,” Renan writes, “and I would even say historical error, are an essential factor in the creation of a nation.”²¹

More recently Bauman has sharpened this point by arguing that “nationalism prescribes that all the things not agreed to be remembered should be forgotten.”²² This said, these acts of remembering and forgetting are never final nor universal. The national imagination is marked by relapses, partial recall, and, indeed, catharsis and rebirth.

CONSTRUCTING AND RECONSTRUCTING THE CANADIAN NATIONAL NARRATIVE

Perhaps it is part of the very condition of being a Canadian that the narratives of other countries ring more loudly through Hall’s categories than do our own. There is, for example, the American myth of being born out of revolution, democracy, and individual liberty which contrasts with the historical reality of slavery. Or, there is Britain’s story of the pomp and pageantry of the monarchy, replete with its messages of superior civility, continuity, and tradition rather than a legacy of colonialism and imperialism. The Canadian national narrative(s) is similarly punctuated by omissions and inclusions. There is, of course, the myth, especially robust in Anglophone Canada, of who we are not. We are not Americans, which is to say we are not loud, rude, nationally and criminally immoral, violent, trigger-happy individualists, or blindly patriotic. Instead, Canada is understood as a peaceful kingdom, an orderly society, and a cultural mosaic which values accommodation, diversity, and collectivity. These are some of the things that the Canadian national narrative chooses to remember. But in telling these stories, it also chooses to forget, for example: the story of Aboriginal peoples as founding cultures; the struggle of generations for political rights and economic justice; the stifling of the Métis and their vision of an alternative development strategy for Western Canada; and institutionalized

²¹ Quoted in J.R. Saul, *Reflections of a Siamese Twin: Canada at the End of the Twentieth Century* (Toronto: Penguin, 1977) at 30.

²² Bauman, *supra* note 3 at 164.

racism embedded in, among other things, immigration policy. If the Canadian national narrative has been uncertain about what should be remembered, it is often less so about what should be forgot.

Such admissions, omissions, and contradictions are endemic to all national narratives but are perhaps more pronounced in Canada for two reasons. First, there is the inescapable fact that the Canadian story was and will always be an amalgam of at least three national stories, of narratives generated by what John Ralston Saul calls the “triangular foundations” of Canada native, francophone and anglophone. As Saul rightly concludes, “No matter how much each may deny the others at various times, each of their existences is dependent on the other two.”²³ As important, the forgetting in the story of one strand often is the remembering of the other. At the very least, the idea of a pan-Canadian nationalism does not displace “*Je me souviens!*” Yet, even here, the remembering of some is the forgetting of others, especially the waves of immigration which multiplied the strands of Canadian heritage, thus making the Canadian narrative more complex, if not multicultural. As the Royal Commission on Bilingualism and Biculturalism pointed out in the 1960s:²⁴

If it is not always easy for Canadians of the two traditional cultures to come to grips with the meaning of their own heritage, what shall we say of the Canadian of a different origin for whom integration has been sometimes a dramatic experience?

Second, and somewhat relatedly, the Canadian state has played an inordinate role in shaping Canada’s national narrative and identity both to accommodate difference and to legitimize historically shifting philosophies of governance and developmental strategies. Gwyn argues that Canada is not a nation-state in the conventional understanding of the term. Instead, Gwyn invents the term “state-nation” in order to convey the idea that the Canadian state has actively and variously attempted to shape Canadian nationalism and identity.²⁵ Moreover, according to Cairns, this process of state-directed identity construction has intensified rather than diminished over time.²⁶

The definition of who we are as a people has been a moving target for the last half century. The federal state and Canadian society have been caught up in a vortex of pressures between new identities emerging from below and struggling for recognition, and ... governmental

²³ Saul, *supra* note 21 at 81.

²⁴ Quoted in Morton & Weinfeld, *supra* note 1 at 180.

²⁵ R. Gwyn, *Nationalism Without Walls: The Unbearable Lightness of Being Canadian* (Toronto: McClelland & Stewart, 1995).

²⁶ Quoted in Policy Research Initiative, “Rekindling Hope and Investing in the Future,” Report prepared by the Social Cohesion Network (Ottawa: Privy Council Office, 1998) at 5.

attempts from above to refashion collectivities in the light of state purposes. The transformation in political identity and conceptions of community since the Second World War have already been immense, but the end is not yet in sight.

GOVERNANCE AND IDENTITY

Elsewhere I have argued that the Canadian experience can be fruitfully read through a lens of meso-discourses or philosophies of governance which provide the foundations for a particular state form, and configuration of, among other things, nation and national identity. Meso-discourses embody a historical consensus about what is understood to be the proper relationship between the state, the home, and the economy as well as the role and identity of the citizen. These discourses act as historically-defined templates which shape the content and delivery of public goods, identity formation, and forms of political contestation.²⁷ Meso-discourses are an example of a strong discourse, one that becomes institutionalized in governmental structures and practices, in how citizens view “the way things are” and “the way things should be done.”²⁸ Conceptions of self, of other, and of nation are obviously part of this process of institutionalization and thus are subject to instability, conflict, and redefinition when the dominant governing philosophy fundamentally shifts. Since Confederation, three meso-discourses of governance and three corresponding state forms have prevailed over the Canadian landscape: the philosophy of separate spheres and the *laissez-faire* state; of liberal progressivism and the welfare state; and of neo-liberal globalism and the neo-liberal state. In what follows, I will provide a necessarily schematic account of the relationships between the first two governing philosophies and national identity before exploring the idea of a Canadian shared community in an era of neo-liberal globalism. I do not pretend to account for the nuances and serendipity that elaborate national narratives. Instead, I want to point to broad underlying discursive themes.

The *laissez-faire* state (1867–1920s)

The governance of Canada in its early years was firmly grounded in the meso-discourse of separate spheres and embodied in the Canadian variant of the *laissez-faire* state. This governing philosophy rested on the claim that the public, the market, and the private spheres were separate and distinct and that the state

²⁷ J. Brodie, “Meso-Discourses, State Forms and the Gendering of Liberal-Democratic Citizenship” (1997) 1 *Citizenship Stud.* 223.

²⁸ R.W. Scott, “The Adolescence of Institutional Theory” (1987) 32 *Admin. Sci. Q.* 493 at 496.

should not interfere in matters naturally governed by the invisible hand of the market, or the rule of the church in the civil society and men in the home. The idea of separate spheres also extended to the exercise of Canadian Federalism — so called “mirror image” Federalism — where both the federal government and the provinces, particularly Ontario and Québec, jealously guarded their respective political jurisdictions.

Many commentators have noted that the Canadian state during this period was far less *laissez-faire* than its British or American counterparts of the period. There is plenty of evidence to support this view but this does not mean that the governance of Canada was qualitatively different from other liberal democracies of the period as some insist. For example, Saul argues that “Canada was built from its very beginnings on the belief that public leadership in the economy and on social issues would be as effective and cheap as anything done by the private sector.” He goes on to suggest that the railroad, the National Policy, and the settlement of the west are examples of how Canada imagined itself in the nineteenth century — “the practical metaphysics of the national imagination.”²⁹

Well, maybe. Nation-building was part of the rhetoric of the period but we should be careful not to fall into a foundational myth of the collective caring Canadian. Saul, for example, appears to want to “invent a tradition” when he argues that “Canada [is] a coalition of ideas based on an assumption of the public good.”³⁰ It is probably more appropriate to say that Canada, informed by the logic of separate spheres, undertook public works and nation building projects for the same reasons as did other *laissez-faire* states during the period. The provision of so-called “public goods” was limited to cases either where the provision of certain goods was judged to be incompatible with market principles (*e.g.* police, defence) or where the provision of other goods was deemed so essential that the possibility of market failure could not be risked (*e.g.* postal services, the railroad). As the history of Canada’s early canals and railroads attest, state intervention and ownership was very much a product of market failures. If the Canadian *laissez-faire* state was more interventionist than its American counterpart of the period, it is perhaps because it was more often called upon to be so. The central point, however, is that the activities of the federal state were and are viewed as manifestations of the national character.

²⁹ Saul, *supra* note 21 at 173–83.

³⁰ *Ibid.* at 499.

If anything, dominant conceptions of nation and national community during the immediate post-Confederation period were very compatible with the idea of separate spheres. Women were confined to the home, churches were responsible for charity and health care, Aboriginal peoples were progressively contained in reservations where they became wards of the federal government, immigration policy was decidedly segregationist, virtually excluding non-whites, most anglophones romanticized their roots in Imperial England, and francophones, after a series of provincial muscle-flexing over education, were either assimilated or pushed back into the province of Québec. There *les canadiens* were largely excluded from the business and financial sectors, administered to by the Church, regulated by a separate legal code, and governed by an inward looking élite which both jealously guarded its jurisdiction and acted as an intermediary between the two solitudes. The Canadian community was indeed a world of walls which only federal Liberal regional lieutenants were permitted to transcend.

Most historians signal the end of World War I as the time when Canada tentatively moved from the status of colony to nation and when a separate sense of a Canadian nationalism began to take shape. Detachment from Imperial Great Britain is an important marker in anglophone Canadian nationalism. Clearly, however, the idea of a distinctive Canadian identity had earlier roots among *les canadiens* and federal francophone leaders such as Wilfrid Laurier. His 1904 proclamation of “Canada first, Canada last, and Canada always” obviously was a dramatic departure from John A. Macdonald’s idea of Canadians as a “loyal band of British subjects.”³¹ Early Canadian nationalism followed a different course among the francophone and anglophone communities but both developed within the broader context of the governing philosophy of separate spheres.

It was not until the 1930s that Canadians began to explore new philosophies of governance and new conceptions of the Canadian community. The doctrine of separate spheres could no longer be sustained in the face of economic collapse, staggering levels of unemployment, and desperate social need. New governing philosophies, such as the Fabian socialism advanced by the prairie-based Cooperative Commonwealth Federation (CCF), and right wing populism as expressed through Québec nationalism and Alberta’s Social Credit were tried, but it was only after the World War II that one governing formula, the Keynesian welfare state, gained the status of a strong discourse.

³¹ Quoted in Morton & Weinfeld, *supra* note 1 at 56, 46.

The Keynesian welfare state (1940s–1980s)

The emergence of the Keynesian welfare state was a second instance of a paradigmatic shift in the philosophy of governance in Canada during which the boundaries of the state, the economy and civil society were fundamentally realigned. The welfare state realized a radical expansion of state capacity and competence through direct intervention in the economy, mixed market mechanisms, and new forms of social assistance. The pre-war idea of privately-provided or a means-tested welfare was gradually replaced with the concepts of social insurance, and of universality. The welfare state infused new content, again largely state-generated, into the meaning of nation and nationalism, and engendered widespread public expectations that the Canadian state — the collective — was responsible for meeting the needs of the individual citizen. In other words, the welfare state gave tangibility to the idea of Canada as a shared community of fate.

The meso-discourse of the Keynesian state — liberal-progressivism — rested on a number of key pillars which had the effect of blurring spheres and levelling walls rather than reinforcing them. Principal among these were the claims that the state should regulate the economy in order to maximize collective welfare, provide a minimum level of security for all citizens, and invent new state practices that would be guided by a commitment to planning, progress, formal equality, and impersonal procedures.³² Canadian identity no longer rested solely on the symbolic and metaphoric — on the ideas of two founding peoples, of a railway from sea to sea, and of the peaceable kingdom. Instead, a more elaborate national identity was fused through social policy, especially with the introduction of universal publicly funded Medicare in 1966, which more than anything concretized the myth of the caring Canadian and of the fundamental differences between Canada and the United States. The implicit and often explicit assumptions was that, Medicare, like the Imperial link of the earlier period, was a demonstrable measure of the moral and political superiority of Canada *vis-à-vis* our southern neighbour and big brother.

Medicare was only one of the federal state's interventions in these years which advanced and reinforced the idea of Canada as a state-nation. The sixties and seventies saw the Royal Commission on Bilingualism and Biculturalism,³³

³² See A. Lipietz, "Post-Fordism and Democracy" in A. Amin, ed., Post-Fordism: A Reader (Oxford: Blackwell, 1994); and I.M. Young, *Throwing Like a Girl and Other Essays in Feminist Philosophy and Social Theory* (Bloomington: Indiana University Press, 1990).

³³ Canada, Report of the Royal Commission on Bilingualism and Biculturalism (Ottawa: Queen's Printer, 1970).

a new Canadian flag, Centennial Year (1967), the launching of the Company of Young Canadians, the adoption of formally impersonal and deracialized immigration policy, the enfranchisement of Treaty Indians, the *Official Languages Act*,³⁴ Indian Affairs' so-called *White Paper* (which called for the full scale integration (erasure) of Aboriginal Peoples into the mainstream of Canadian society),³⁵ the creation of state-enterprises such as Petro-Canada and the Canadian Development Corporation, and official Multiculturalism. The ultimate symbol of federal state directed pan-Canadian nationalism in 1982 came with the patriation of the *British North America Act* in 1982 and the entrenchment of a *Charter of Rights and Freedoms*.³⁶ At last Canada was the *de jure* master of its own house. However, for Pierre Trudeau, a central player in these pan-Canadian nationalist projects, the federal government was not promoting a singular nationalism in the conventional sense of the term. Trudeau argued that "we must separate once and for all the concepts of state and of nation, and make Canada a truly pluralistic and polyethnic society."³⁷

One of anglophone Canada's nationalist icons, Pierre Burton, published a historical retrospective in 1997 called *1967, The Last Good Year*.³⁸ Its final chapter is worth quoting at some length because it reflects much of liberal progressivist discourse and the invention of tradition which characterized the period.³⁹

In 1967, a better world seemed to beckon — a world no longer uptight, where marriage ceased to be slavery, where birth control was everybody's right, where social services were expanding and universal medicare was just around the corner — a more tolerant world that treated women and minorities with respect. ... In 1967 we looked forward with anticipation. In 1997 we look backward with regret to the "good old days" when nobody talked about the deficit or "downsizing." ... We were all high in 1967 ... In those days we felt secure as Canadians, confident enough to push for a better, freer life. Nineteen-sixty-seven was a ... revolutionary year ... the greatest revolution was the revelation that we had created a world-class, forward-looking nation.

Thus goes the myth of the caring, progressive, and tolerant pan-Canadian but, as with all national narratives, liberal-progressivism remembered and forgot. It was largely the narrative of only one corner of the Canadian triangle —

³⁴ R.S.C. 1985 (4th Supp.), c. 31.

³⁵ Canada, The Department of Indian Affairs and Northern Development, Statement of the Government of Canada on Indian Policy, 1969 (Ottawa: Queen's Printer, 1969).

³⁶ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

³⁷ Quoted in Morton & Weinfield, *supra* note 1 at 215.

³⁸ P. Burton, 1967, *The Last Good Year* (Toronto: Doubleday, 1997).

³⁹ *Ibid.* at 365–67.

anglophone Canada. This narrative spoke little of the continuing marginalization, poverty, and assimilation of Aboriginal peoples and it could not comprehend growing Québécois nationalism which, although similarly informed by liberal-progressivism, focussed on province and not on country. As Keating argues, “the slogan of the Quiet Revolution, *maîtres chez nous*, (masters in our own house) signalled the desire of the repressed ethnic group to improve its socio-economic status.” In Québec of the 1960s, francophone identity “was updated and recast and used [by the provincial state] as an instrument of modernization.” *Les canadiens* of the nineteenth century came to see themselves as *Québécois* rather than one component of the emerging polyethnic community of Canadians.⁴⁰ Throughout this period, the nation-building projects of Québec and the rest of Canada came into increasing conflict as evinced by the subsequent elections of the Parti Québécois, Québec’s exclusion from both the creation and the endorsement of the Charter, and the failed Meech and Charlottetown Accords. Throughout this period, federal leaders watched with alarm the growing proportion of Quebecers identifying themselves first as *Québécois* and second as Canadians, if at all.

Yet, if there was a growing rift in the narratives of francophone, anglophone, and increasingly Aboriginal Canadians, there were a few strands in federal policy that linked these communities together through the policy instruments of liberal progressivism. In April 1996, for example, the Environics polling firm asked a representative sample of Canadians to indicate which among fifteen national symbols were “very important” to them as markers of Canadian identity. The results, displayed in Table 1, show the stark difference between Quebecers and the rest of Canada with respect to their assessment of the symbolic order underlying the Canadian national identity. The first thing to note from this Table is that these symbols have far greater resonance for Canadians outside Québec than those inside Québec. (The overall importance score for Quebecers was thirty-six compared to fifty-two among the rest of Canada.) The differences between the two groups is quite striking especially with respect to the RCMP, Canadian flag, the national anthem, and bilingualism. Two more points should be gleaned from the Table. First, the five most important national symbols for Québec (in order of importance, the health care system, the *Charter*, bilingualism, national parks, and historic sites) all fall within the purview of the federal government and all largely gained their importance under the governing arch of liberal-progressivism. Second, health care is by far the most important symbol of Canadian identity among both Quebecers and the rest of Canada.

⁴⁰ M. Keating, “Canada and Quebec: Two Nationalism in the Global Age” in M. Gulbenkian & J. Rex, eds., *The Ethnicity Reader: Nationalism, Multiculturalism and Migration* (London: Polity Press, 1997) at 173.

This consonance among post-war public policy and Canadian identity provides some empirical support for Gwyn's notion of a state-nation. Recent research by the federal government's Policy Research Initiative (PRI) also points to the coincidence between governing philosophies and national identity. Reporting on another poll, the PRI explains that:⁴¹

When asked to rate their preferred values for society against their preferred values for the federal government, Canadians generally see these values as almost identical. With core societal values inextricably connected to the federal state, these findings suggest that the impact of federal retrenchment may be affecting not only programs but also Canadians' perception of their national identity and character.

This observation leads directly to the central concern of this paper — notably, whether and how a Canadian national identity can be sustained under the rubric of neo-liberal globalism and the neo-liberal state.

NEO-LIBERALISM AND NATIONAL IDENTITY

As already discussed, the 1980s saw a concerted and contested transformation governing philosophies from liberal-progressivism to neo-liberal globalism as embodied in the neo-liberal state. Neo-liberal globalism valorizes the market and market relations both *over* the state and the public sector and increasingly *within* the neo-liberal state. It increasingly fashions itself as a market facilitator rather than as the purveyor of public goods or as the instrument of the collective will. The neo-liberal state has progressively rejected the idea that the provision of certain goods and services defies the logic of the market. Instead, the state measures its performance by its capacity to empower market relations and limit the sphere of the public and the collective.⁴² This theory of governance obviously atrophies the idea of a shared community of fate, closes political spaces and further marginalizes the already marginalized.⁴³ As Bauman rightly concludes, the foundational act of the market is to dissolve the bonds of sociality and reciprocity⁴⁴—two necessary ingredients for building and maintaining the very idea of a national public.

Neo-liberal globalism rests on a number of foundations and symbolic forms which have been only tentatively embraced by the national imagination. Principal among these are: 1) decentralization; 2) privatization and; 3)

⁴¹ Policy Research Initiative, *Sustaining Growth, Human Development, and Social Cohesion in a Global World* (Ottawa: Privy Council Office, 1999) at 32 [hereinafter PRI].

⁴² A. Yeatman, *Postmodern Revisionings of the Political* (New York: Routledge, 1994).

⁴³ Brodie, *supra* note 27 at 234–35.

⁴⁴ Bauman, *supra* note 3 at 30.

individualization. In its simplest terms, decentralization transfers government power downward from a single centre to smaller and multiple units, either to lower levels of government, quasi-autonomous government agencies, the community, or the home. In its idealized form, decentralization is also associated with democratization, participation, accountability from below, and the building of the whole by strengthening its component parts. In the late 1970s, decentralization (*i.e.* province-building) was tied to a new vision of Canada, largely promoted by the leadership of the have-provinces and the federal Progressive Conservative Party, as a “community of communities.” The opposite view was that Canada was more than the sum of its (provincial) parts.

The reality of decentralization in the late 1990s, however, has little to do with either democratization or community-building. The federal government, for example, recovered its fiscal bottom line largely by off-loading the costs of social programs on the provinces which, in turn, cut-back and off-loaded on to municipalities and they to the voluntary sector, the family, and the individual. The result has been the erosion rather than the enhancement of democratic political space. In fact, as Bauman laments, there is little left of the old-style spaces where citizens can fashion common interests into the “public good.” Such places have been “recycled into theme parks while powerful forces conspire with political apathy to refuse building permits for new ones.”⁴⁵

Decentralization often goes hand-in-hand with privatization which, by definition, atrophies a sense of public, shared purpose and identity. Privatization means that things previously considered to be public, collective, and a symbol of nationhood (such as, for example, Petro-Canada, Medicare, CBC, or Air Canada) become the purview of the market and, as such, they become differently encoded, regulated, and understood. Privatization turns citizens into consumers and public spaces into commodities. In the process, a sense of shared identity and purpose is lost. Privatization, in other words, atrophies both the space and the language necessary to generate a new national narrative or, indeed, to retell old ones. The “good life,” as measured by the quantity and quality of consumption, supersedes the idea of a “good society” which informs national identity.⁴⁶

Perhaps the largest impediment within neo-liberal globalism to the imagination of community, however, is its prescribed tidal shift away from collective values and identity to the enforcement of individual responsibility.

⁴⁵ Ibid. at 4.

⁴⁶ Ibid. at 7.

The central operating principle of individualism is that it is up to individuals to look after themselves and their families, and it is up to government to make sure that they do. This is a profound shift in the symbolic order, especially as it relates to social policy and the idea of the caring-sharing Canadian. As Nikolas Rose argues, the terrain of the social and social policy has been tied to an enclosed national territory — *e.g.* social citizenship rights were granted to members of national community, and were part of the institutionalized order defining citizen, nation, and community. As Rose points out, however, individualization de-territorializes and denationalizes the idea of community. Instead, community increasingly is used as a reference for subgroups, and to descriptive and administrative categories such as the women's community, the gay community, the francophone community, the immigrant community, and so on.⁴⁷ Paradoxically, this discursive gesture precludes the invention of the common Canadian and the very idea of a shared community of fate. The ordinary Canadian (and none of us are ordinary) is shoe-horned into a sub-group identification — a special as opposed to a common interest — which, in turn, is assumed to be antagonistic to the common good.⁴⁸

These pillars of neo-liberal governance are, in many ways, counterintuitive to the very idea of a national narrative, especially in Canada where previous narratives have found their rationale and legitimacy in the policies and practices of the federal state. Instead, neo-liberal governance has been linked to a growing malaise among Canadians everywhere. As Saul explains, “the citizenry seem to be withdrawing into a state of sullen non-cooperation ... [b]ecause they are repeatedly told that the mythologies, and indeed the realities, by which they built the country can no longer function.”⁴⁹

THE SOCIAL COHESION AGENDA

In 1996, a year after the near miss on the referendum on Québec sovereignty, the federal government once again embraced the task of binding together Canadians, not under the umbrella of a new constitutional order or vision of nationhood but, instead, by pursuing what has been termed “the social cohesion agenda.” Concerns about social cohesion tend to coincide with eras of profound

⁴⁷ N. Rose, “The Death of the Social? Refiguring the Territory of Government” (1996) 25 *Economy & Soc.* 327. Groups representing, for example, women, Aboriginals and the poor all have been characterized as having “special” interests, as opposed to interests shared by the broader political community.

⁴⁸ See J. Brodie, *Politics on the Margins: Restructuring and the Canadian Women’s Movement* (Halifax: Fernwood Publishing, 1995).

⁴⁹ Saul, *supra* note 21 at 227.

economic and social change such as the Industrial Revolution of the mid-1800s, the Great Depression of the 1930s, and currently global restructuring.⁵⁰ International venues, ranging for the Davos World Forum, the World Bank, and the United Nations Development Program (UNDP), have become increasingly apprehensive about the downside of globalization, especially growing levels of poverty, un- and under-employment, income polarization, and ethnic hostility. But as Kothari explains, if there is one consistent social indicator characterizing the present era of globalization, it is “the growth of inequality ... Poverty has now come to characterize a whole epoch, with the market being in full play and the state withdrawing from its mediatory role.”⁵¹ The UNDP warns that, without state intervention and capacity building, the negative side of neo-liberal globalism, especially in transitional societies, risks two kinds of negative consequences: *anomic reaction*, whereby people become apathetic, connive against authority, and evade laws and regulation, and *populist reaction*, whereby citizens mobilize behind leaders who are charismatic demagogues, and engage in ugly confrontational behaviour.⁵²

According to federal government policy circles, the social cohesion project begins with the proposition that “values and culture are at the heart of a national identity” and that, in recent years, Canadians appear to be losing a sense of a “shared community of fate.”⁵³ The pronounced political and cultural gulf among Quebecers, the rest of Canada, and Aboriginal peoples is not the primary concern here. Federal documents only allude to these tensions with an occasional and generic reference to “ethnic and linguistic” differences.⁵⁴ In fact, the idea of deep identities is explicitly downplayed in discussions of social cohesion. For example, the PRI notes that “Canadian identity — bilingual, multicultural, and including Aboriginal communities — is another constant, as is the important contribution to be made by gender-based, regional, and environmental sustainability perspectives ... issues of national unity are not directly addressed in the research, but form part of the backdrop.”⁵⁵ And, indeed, one of the research questions posed by the Social Cohesion Working Group is

⁵⁰ For an overview of the concept see J. Jenson, *Mapping Social Cohesion: The State of Canadian Research* (Ottawa: Canadian Policy Research Network, 1998).

⁵¹ R. Kothari, “Globalization: A World Adrift” (1997) 22 Alternatives 227 at 229–30.

⁵² United Nations Development Program, *The Shrinking State: Governance and Sustainable Human Development* (New York: UNDP, 1997).

⁵³ “Rekindling Hope and Investing in the Future” Report prepared for the Policy Research Initiative by the Social Cohesion Network, Ottawa, Privy Council Office, November, 1998 at ii.

⁵⁴ Ibid. at 6

⁵⁵ PRI, *supra* note 41 at 4.

precisely whether a collective sense of national identity is necessary for social cohesion.

Nevertheless, the federal government's working definition of social cohesion looks very much like a proxy for national identity. Social cohesion is defined as "the ongoing process of developing a community of shared values, shared challenges, and equal opportunity within Canada, based on trust, hope, and reciprocity among all Canadians."⁵⁶ According to the PRI, social cohesion is premised on the idea that "we are all in this together." Moreover, the PRI predicts that, "Canada's success in the next millennium will hinge largely on the degree to which it can nurture, over the long term, a set of shared values and symbols" and "communities of interpretation."⁵⁷

Social cohesion is both a straightforward and elusive concept. It draws attention to: 1) the centrality of shared norms and values without specifying what they are, where they come from, or how they are eroded; 2) to notions of sameness, community, and membership without interrogating how these are mediated by philosophies of governance; and 3) is largely silent about the process of generating and nurturing values such as hope and trust in an era of growing inequality and uncertainty. Moreover, it is not clear "what" is being "cohered to" or how to determine whether social cohesion is robust or eroding. Federal researchers, however, point to a number of trends which suggest that social cohesion in Canada is currently under stress. They point out that:⁵⁸

- attachment to Canada is waning among youth, particularly francophone youth;
- ties among Canadians are weakening, especially as measured by charitable and voluntary activities;
- a cleavage is growing between the haves and have nots ... "with possibly negative implications for a continuing sense of Canada as a sharing and caring community";

⁵⁶ For a more comprehensive discussion of this and other definitions of social cohesion See J. Brodie & M. Smith, "Globalization, Social Cohesion and Governance" Project on Trends, online: <policyresearch.schoolnet.ca> (date accessed: 9 March 2002).

⁵⁷ See PRI, supra note 53.

⁵⁸ *Ibid.* at ii–iv.

- evidence of striking differences between decision-makers and the general public with decision-makers tending to view social programs as less important to the well-being of Canadian society;
- a rapid and widespread loss of trust, confidence and respect for political leaders, public institutions, and the political process;
- a decline in civility with civil society becoming less civil and uncertainty about the future, the danger of economic polarization, and declining confidence in government causing widespread anxiety among Canadians.

These apparent tears in the Canadian social fabric are hardly surprising, even to the most casual observer of the political scene. Each can be linked both to the manner in which neo-liberalism was implemented in Canada and to the growing social costs of this governing philosophy. When Canadians demonstrate a sense of shared values and solidarity, they cohere to post-war social policies, especially to public education and health care. Yet, even though voters were assured at the onset of the neo-liberal experiment that these and other social policies were a “sacred trust,” these are precisely the public goods that have been eroded and abandoned through cut-backs, decentralization, privatization and individualization. Moreover, these paradigmatic shifts were often exacted through the politics of stealth, through the budget and deficit talk, and through the rampant fatalism which lies at the heart of neo-liberal globalism. There is a certain dissonance between the assertion that “there is no alternative” and “we are all in this together.” If Canadians appear to be losing their sense of collectivity and cohesion, it is perhaps because it is not clear to many what “this” is or whether “this” is worthy of their support.

There are some lessons to be learned from the past twenty years of change even if the solutions are not obvious. First, as I think is becoming increasingly obvious, fundamental structural change does not mandate a specific philosophy of governance. The latter, as Lipietz reminds us, “are chance discoveries made in the course of human struggles” and “within individual nations.”⁵⁹ As such, these philosophies can and do fail and exact unintended consequences, including social and cultural decay. Polanyi suggests that this is especially the case when economic thinking prevails.⁶⁰

⁵⁹ A. Lipietz, “Reflections on a Tale: The Marxist Foundations of Contemporary Concepts of Regulation and Accumulation” (1988) 27 Stud. In Pol. Economy 18 at 18.

⁶⁰ K. Polanyi, *The Great Transformation* (Boston: Beacon Press, 1943). Quoted in R. Salutin, “National Cultures in the Age of Globalization” (1999) 106 Queen’s Q. 206 at 209.

Actually of course a social calamity is primarily a cultural not an economic phenomenon ... The economic process may, naturally, supply the vehicle of destruction ... but the immediate cause ... lies in the lethal injury to the institutions in which ... social existence is embodied ... Nothing obscures our social vision as effectively as the economicistic prejudice ... Yet it is precisely this emphasis put on exploitation which tends to hide from our view the even greater issue of cultural degeneration.

Second, philosophies of governance are not esoteric things, aimed at efficient public management, and understood by only a handful of national and international elites. Governance is filtered through and acted out in our everyday lives — in how we see ourselves, others, community, and nation. By definition, governing philosophies can either open or close options for states to generate and sustain a sense of shared fate. Thus, to the extent that neo-liberalism saturates both the federal government, and, indeed, the government of Québec, the room to create a national solidarity is severely constrained. As Keating explains,⁶¹

Canadian and Quebec nationalism face very similar problems in the new global age.... as the state retreats in the face of neo-liberalism ... it is less able to sustain this role. More of the burden falls on civil society to maintain national identity.

But can civil society assume this burden and to what end? As already noted, the spaces for public debate and democratic engagement have been increasingly constrained by neo-liberal globalism, being supplanted by individualism, commodification, and consumerism. Moreover, the Canadian community is increasingly variegated. There is no simple national narrative to tell. More to the point, as inequalities grow, particularly among identifiable groups such as Aboriginals and recent immigrants, the very idea of a cultural mosaic loses its innocence. As life chances become increasingly polarized, the notion of difference takes on new and potentially explosive meanings, giving rise to racism, religious and ethnic intolerance, and hate crimes of every variety. In other words, civil society can throw up a system of shared values but these values may be very ugly indeed. National identity is not a privatized commodity, bubbling up through the everyday lives of citizens. It is a public good. So we end where we began. States play an inordinate role in the construction and reproduction of national identities which, in turn, provide legitimacy for the state. As the PRI tentatively concludes from its research on social cohesion, “it would also appear that the federal government’s role as an instrument of Canadian values may have played a stronger role than previously thought in reinforcing identity and belonging.”⁶²

⁶¹ Keating, *supra* note 40 at 184.

⁶² PRI, *supra* note 41 at iv.

CONCLUSION

As the title of this paper signals, the search for a national identity in an era of globalization is elusive, complicated by shifting boundaries, and confounded by neo-liberal governance. Yet, the stark fact remains that Canadians do share common values. Public opinion polls consistently show that health care and education rather than debt reduction and tax cuts are their chief legislative priorities in this post-deficit environment. Unlike the post-war consensus, political and business elites, blinded by the utopian economics, implemented neo-liberal governance without first building a broad-based public consensus, and quite often deceptively. As Saul explains, “Our future was debated and decided as if we had no past.”⁶³ Of course, the post-war consensus cannot be recuperated. Neither should it be. The difficult task of building a new governing consensus based on the values with which Canadians continue to identify and to share remains.⁶⁴ National identity and social cohesion are the product of the successful negotiation of a broad-based social consensus about governance. As I have tried to argue in this paper, the internal logic of neo-liberal globalism precludes the very idea of the collective and of a shared community of fate. I thus end this paper as I began it by quoting Irving Layton’s “From Colony to Nation” because it speaks eloquently to the possibilities for national identity in an era of neo-liberal governance.

Deferring to beadle and censor;
not ashamed for this,
but given over to horseplay,
the making of money

A dull people, without charm or ideas,
settling into the clean empty look
of a Mountie or dairy farmer
as into a legacy⁶⁵

⁶³ Saul, *supra* note 21 at 11.

⁶⁴ For an excellent entry into this discussion see M. Hurtig, *Pay the Rent or Feed the Kids* (Toronto: McClelland & Stewart, 1999).

⁶⁵ Layton, *supra* note 1.

Table 1 — Symbols of Canadian Identity
 (April 1999)⁶⁶

	Québec	Rest of Canada	Difference
Health care system	70	86	16
Charter of Rights	56	70	14
Bilingualism	54	28	-26
National parks	46	68	22
Historic sites	43	63	20
Olympic athletes	38	48	10
Canadian flag	36	73	37
Literature and Music	36	49	13
National anthem	34	70	27
Theatre and film	29	39	10
CBC	28	32	4
Multiculturalism	26	40	14
RCMP	23	63	40
Hockey	17	34	17
The Queen	4	18	16
AVERAGE	36	52	16

⁶⁶ Environics Research. Reported in Policy Research Committee, Canadian Identity, Culture and Values: Building a Cohesive Society (Ottawa: Privy Council Office, 1996) at 9.

MONDIALISATION, DÉMOCRATIE ET QUESTIONS NATIONALES CANADIENNES

Gilles Bourque*

In this new millennium, the longevity of the Canada/Quebec debate has had a tendency to overshadow two most important phenomena: the Neoliberal State and globalization. The author maintains that it is in reference to this new context that we must ponder the questions of federalism, identity and national issues in Canada. He adds that the sharing of sovereignty within a confederal union or a multinational state could eventually serve as the model for the formation of supranational democratic institutions.

Au Canada, ni la défense du fédéralisme canadien, ni la promotion intransigeante de la souveraineté québécoise ne paraissent satisfaisantes en ce nouveau millénaire. Toutefois, la pérennité du débat Canada/Québec a eu tendance à occulter deux phénomènes des plus importants : l'État néolibéral et la mondialisation. L'auteur soutient que c'est en référence à ce nouveau contexte qu'il faut réfléchir aux questions du fédéralisme, des identités et des questions nationales au Canada. Il ajoute que le partage de la souveraineté au sein d'une Union confédérale ou d'un État multinational pourrait éventuellement servir de modèle à la formation d'institutions démocratiques supranationales.

Comme en témoignent les manifestations lors de la réunion de l'*Organisation mondiale du commerce* à Seattle à la fin de l'année 1999, les problèmes suscités par la mondialisation se situent au cœur des débats publics. Dans la sphère des sciences sociales, il est dorénavant peu de domaines de réflexion qui échappent à l'analyse des impacts de l'affirmation du capitalisme financiarisé à l'échelle mondiale. Ce phénomène bouleverse les conditions mêmes de la production et de la reproduction de nos sociétés. Les thèmes de l'érosion des pouvoirs de l'État-nation, du déficit démocratique ou de la démocratie d'exécutif renvoient à une mutation profonde du processus d'institutionnalisation des rapports sociaux qui a caractérisé la modernité politique dans les sociétés occidentales. De même, l'analyse de la question nationale ne peut ignorer la réalité de la mondialisation puisque cette dernière sape les bases sur lesquelles avait été édifiée la communauté politique.

Voilà pourquoi les questions nationales canadiennes ne peuvent plus être pensées comme on le faisait durant les années 60 et 70. A la défense de cette thèse, il faut voir comment les mutations sociales actuelles sont le résultat de la rupture des rapports entre le capitalisme, la démocratie et la nation; ceux-là

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mêmes qui avaient façonné les sociétés modernes. Mais aussi comment cette rupture transforme les réalités nationales au Canada et force la réinvention du régime politique.

Jusqu'à la crise économique mondiale des années 70, le capitalisme, la démocratie et la nation constituaient trois processus autonomes jouant un rôle à la fois complémentaire et contradictoire dans la production de la société moderne. Même si on peut soutenir que la mondialisation représente une loi tendancielle du capitalisme, jusqu'aux dernières années du XXe siècle, le développement de ce mode de production s'est largement appuyé sur l'État. Il a d'abord été lié, au XVIe siècle, à l'État absolutiste et à la formation des blocs coloniaux favorisée par le mercantilisme.¹ Par la suite, le capitalisme a largement profité du soutien actif de l'État démocratique qui, d'une part, a permis la constitution de bases nationales d'accumulation à l'abri de la concurrence étrangère et, d'autre part, a accompagné l'expansion impérialiste.² Jusqu'à tout récemment donc, le développement du capitalisme s'est fait en symbiose avec l'État.

De la même manière, on peut soutenir que dans l'État démocratique, aussi bien le capitalisme que la démocratie ont été liés à l'affirmation de la nation. La société moderne et démocratique s'est développée comme une société nationale. En effet, les processus d'institutionnalisation économique, politique et culturelle qui ont produit la modernité ont convergé dans l'espace national.³ Le cadre national a ainsi constitué le lieu d'exercice par excellence d'une régulation politique des rapports sociaux, caractérisée par la discussion démocratique dans l'assemblée législative des règles d'organisation de la société. La nation est en même temps devenue la communauté politique, c'est-à-dire la communauté des citoyens au nom desquels s'exerce le pouvoir et sont définis le droit et la loi.⁴ Démocratie et nation ont constitué les vecteurs de la modernité politique.

Il importe cependant de ne pas penser la convergence entre le capitalisme, la démocratie et la nation comme un processus homogène. Tout au contraire, c'est la contradiction entre ces phénomènes qui a le plus contribué à la dynamique de

¹ M. Beaud, *Histoire du capitalisme 1500-1980*, Paris, Seuil, 1981.

² E. J. Hobsbawm, *L'ère des empires, 1875-1914*, Paris, Hachette, 1997.

³ G. Bourque et J. Duchastel, « Société, nations et diversité culturelle dans les démocraties » dans M. de Sèves et S. Langlois, dir., *Savoir et responsabilité*, Québec, Édition Nota Bene, 1999.

⁴ D. Schnapper., *La communauté des citoyens. Sur l'idée moderne de nation*, Paris, Gallimard, 1994.

la modernité. On peut, à titre d'exemple, souligner la contradiction entre la propension mondialisante et l'inscription nationale du mode de production capitaliste; ou encore, l'opposition entre la dérive ethniciste et xénophobe possible du nationalisme et l'exercice de la démocratie. Cependant, nous insisterons ici davantage sur ce qui semble la contradiction centrale de la société moderne; c'est-à-dire l'opposition entre le capitalisme et la démocratie ou le hiatus entre la marchandisation et la politisation des rapports sociaux. En même temps que le développement du capitalisme envahissait la vie quotidienne, sous le couvert de l'industrialisation, de l'urbanisation et de la salarisation, l'État démocratique rendait possible la discussion systématique et de plus en plus large des rapports de pouvoir et de domination au sein de la société. Face à la menace grandissante du capitalisme de soumettre les rapports humains au règne de l'argent et du consumérisme, l'État démocratique permettait aux mouvements sociaux de s'emparer de conditions institutionnelles qui nourrissaient l'espoir de la transformation du monde, voire du renversement du capitalisme.⁵

L'histoire de la transformation de l'État moderne peut ainsi être pensée comme une ouverture de plus en plus large à la politisation d'un nombre toujours plus important de rapports de pouvoir. De la mise en place de l'État libéral en Angleterre au milieu du XIXe siècle, à l'apogée de l'État providence durant la deuxième moitié du XXe siècle, la lutte des mouvements sociaux a visé l'élargissement de la citoyenneté. Cette lutte s'est traduite par une demande d'intervention de la sphère publique, des luttes pour le suffrage universel aux batailles pour l'équité salariale et l'autonomie gouvernementale des peuples autochtones.⁶ De la même manière, à l'encontre de la visée spontanément colonialiste et impérialiste du capitalisme, c'est sur la base de la consolidation des espaces nationaux et des États-nations que les peuples ont cherché à promouvoir leur développement et leur destin. On peut ainsi soutenir que dans l'État moderne et démocratique, la progression du capitalisme n'a pu se faire qu'à travers les processus contradictoires de la démocratisation et de la nationalisation des rapports sociaux.

Ce que l'on entend actuellement sous les notions de mondialisation ou de globalisation consiste essentiellement en la rupture des rapports qui avaient caractérisé jusqu'ici la modernité, à savoir, la reproduction élargie du capitalisme

⁵ Polanyi K., *La grande transformation: aux origines politiques et économiques de notre temps*, trad. par C. Malamoud et M. Angeno, Paris, Gallimard, 1983.

⁶ S. Bowles et H. Gintis, *La démocratie post-libérale: essai critique sur le libéralisme et le marxisme*, trad. par W.O. Desmond, Paris, La Découverte, 1988.

et le développement de la démocratie dans le cadre de la nation.⁷ Depuis les années 70, nous assistons à la formation progressive d'un espace économique mondialisé, dominé par le capitalisme financier, qui a échappé aux institutions qui permettent la mise en oeuvre d'une régulation politique et démocratique des rapports sociaux sur le territoire national.⁸ Il importe de bien saisir la nature des conditions qui ont favorisé l'autonomisation de l'espace commercial (le GATT-OMC) et de l'espace financier (le monétarisme, la nouvelle vocation du FMI) et qui préparent l'élargissement de la mondialisation à l'espace productif (le projet de l'AMI). Ce phénomène est le plus souvent décrit de deux manières. Par en haut, on soulignera le déficit démocratique des institutions comme l'ALENA et l'OMC, dont la constitution et le fonctionnement relèvent d'une démocratie d'exécutif sur laquelle les simples citoyens n'ont pas de véritable contrôle.⁹ Par en bas, on évoquera l'érosion des pouvoirs de l'État-nation en montrant comment les gouvernements nationaux doivent dorénavant se soumettre à des règles qui sont définies au-dessus d'eux.¹⁰

Il paraît nécessaire de dépasser ce simple niveau descriptif en s'attachant à la dynamique profonde du phénomène de la mondialisation. Nous sommes témoins à l'heure actuelle d'un processus, certes réversible mais déjà à l'œuvre, de mise en tutelle des institutions démocratiques (assurant la régulation politique de la société dans un cadre national) par des institutions transnationales non-démocratiques (qui impulsent une régulation technojuridique des rapports sociaux dominés par les intérêts du capitalisme financiarisé). Les assemblées législatives de chaque pays, y compris le Parlement européen, sont de plus soumises à des règles prenant la forme de traités et d'accords commerciaux. Des règles sur lesquelles ces assemblées n'exercent aucun contrôle et qui sont définies par des instances technocratiques de nature non-démocratique dans un espace transnational.

La société moderne et démocratique, tout au contraire, s'est développée et a été reproduite sur la base d'une régulation politique des rapports sociaux toujours contradictoires, et traversés de plusieurs dimensions conflictuelles

⁷ M. Beaud, *Le basculement du monde*, Paris, La Découverte, 1997.

⁸ F. Chesnais, *La mondialisation du capital*, Paris, Syros, 1994.

⁹ I. Robinson, « Democratic Critiques of the Institutions and Processes of Neoliberal International Economic Integration: An Assessment » (1995) 24 *Cahiers de recherche sociologique* 161.

¹⁰ S. Strange, « The Retreat of the State » dans *The Diffusion of Power in World Economy*, Cambridge, Cambridge University Press, 1996.

(ouvriers, hommes et femmes, immigration, Premières nations)¹¹. Les règles de l'organisation de la société, et d'abord le droit et la loi, ont été à ce titre soumises aux débats dans le cadre d'institutions législatives au cœur même de l'État démocratique. De telles institutions, fondées sur la discussion des rapports de pouvoir, impliquaient l'idée que les acteurs sociaux pouvaient transformer le monde. Conservateurs, réformistes et révolutionnaires partageaient cette même conviction: qu'il était possible d'œuvrer politiquement à la conservation, à la réforme ou au changement radical des conditions de production de la société. La régulation politique fondait ainsi l'espoir et la possibilité d'influer non seulement sur son propre destin, mais aussi sur la nature des rapports qu'entretiennent entre eux les hommes et les femmes. C'est ce qui a favorisé l'éclosion du mouvement ouvrier, du mouvement féministe et du mouvement pacifiste, pour ne nommer que ceux-là. La régulation politique façonnait la volonté et induisait la conviction.

Au nom du libre-échange, les forces néolibérales travaillent au contraire à miner cette volonté et à tuer l'espoir que l'on peut agir sur les règles fondamentales de l'organisation du monde. Le processus d'institutionnalisation du capitalisme financiarisé doit être pensé comme un rapport social producteur de nouvelles formes d'inégalités à l'échelle mondiale. Plus précisément comme un rapport de pouvoir et de domination susceptible d'imposer un nouveau type de régulation de la société, dont la logique mine les conditions de reproduction de la modernité politique.

Les dimensions constitutionnelles et législatives de la régulation de la société nationale représentaient les caractéristiques principales de l'État moderne.¹² La Constitution (écrite ou non-écrite) déterminait les conditions d'exercice de la citoyenneté et des institutions démocratiques, tandis que l'Assemblée délibérante constituait le lieu fondamental de la discussion du pouvoir et de la définition des règles de fonctionnement des rapports sociaux. Or, ce que l'on décrit comme l'érosion des pouvoirs de l'État-nation n'est que le symptôme d'une dénaturation de la régulation politique typique de la modernité. On assiste, en effet, à la soumission de l'acte législatif à une multiplicité de règles extraparlementaires, le plus souvent a-constitutionnelles, qui balisent et limitent significativement le rôle du législateur dans l'État-nation. On peut à ce titre distinguer deux grands

¹¹ G. Bourque, J. Duchastel et E. Pineault, « L'incorporation de la citoyenneté » (1999) 31 *Sociologie et sociétés* 41 [ci-après *L'incorporation de la citoyenneté*].

¹² M. Freitag, « Dialectique et société » dans *Culture, pouvoir, contrôle, les modes de reproduction formels de la société*, Montréal, Édition Saint-Martin, 1986.

types de règles qui se donnent comme deux aspects d'une seule et même régulation de nature technojuridique.

Des règles de nature supranationale tendent d'abord à s'imposer progressivement aux assemblées délibérantes, y compris le parlement européen. Leurs formes privilégiées sont le traité, l'accord commercial ou les mesures de redressement. Les principales institutions qui les définissent et les mettent en œuvre sont le Tribunal, l'organisation technobureaucratique (FMI, OMC, etc.) et le G-8. Les problèmes associés à ce que certains auteurs qualifient de « déficit démocratique », conséquence de la « démocratie d'exécutif » élitiste, suggèrent que ces règles émanant des pouvoirs exécutifs des États-nations sont le plus souvent définies au-dessus des institutions de la démocratie représentative. Cette perspective n'arrive cependant pas à rendre compte du processus d'autonomisation des instances qui finissent par mettre en tutelle l'exercice de la démocratie. Ce processus est en même temps favorisé par la multiplication de règles intra et infranationales qui réduisent significativement l'importance des assemblées législatives. Retenons à ce titre le développement de la judiciarisation des rapports sociaux et la montée du droit administratif. Notons aussi cette propension au néocorporatisme qui, au nom du partenariat, amène les gouvernements à négocier avec les groupes d'intérêt les règles de fonctionnement de l'organisation sociale, en amont de l'activité des parlements. L'affirmation des pouvoirs judiciaire, administratif et corporatif se réalise ainsi aux dépens des institutions de la démocratie représentative, ces lieux où traditionnellement les citoyens pouvaient intervenir en espérant agir sur leur destinée.

Nous assistons par conséquent à la mutation des conditions de production de la société qui ont caractérisé la société moderne et démocratique. L'émergence et la consolidation d'une régulation technojuridique secondarise l'importance de la démocratie politique dans la production des rapports sociaux. La montée de la gouvernance corporative marginalise la gouverne politique dans la reproduction et la contestation des rapports de pouvoirs.¹³ Les corporations transnationales dominent la production des règles supranationales, caractéristiques de la régulation technojuridique, tandis que sur des bases souvent régionales et locales les groupes d'intérêts corporatifs interviennent de plus en plus sur les règles intra et infranationales, jusque là définies par les assemblées délibérantes.

¹³ *L'incorporation de la citoyenneté*, supra note 11.

Il découle d'une telle analyse du problème que le défi principal du début du XXI^e siècle sera de créer les nouvelles conditions qui permettront de soumettre le développement du capitalisme aux instances démocratiques. Cette exigence implique en même temps que soit repensé le rapport entre démocratie et nation, étant donné que la maîtrise démocratique des réseaux mondiaux dans lesquels se déploie dorénavant le capitalisme ne saurait être réalisée sans que soit repensée la communauté politique. La seule lutte pour la préservation des pouvoirs de l'État-nation ne saurait suffire à cette tâche¹⁴. La mondialisation appelant la formation de communautés politiques supranationales, l'urgence du redéploiement de la démocratie prime sur la seule sauvegarde des cadres nationaux déjà constitués. En conséquence, dans le cas d'États-nations déjà constitués et où subsistent des conflits nationaux, tels que le Canada, le Royaume-Uni et l'Espagne, on ne peut invoquer la seule raison de la lutte contre la mondialisation, ni pour la sauvegarde de l'intégrité du pouvoir central, ni pour la réalisation de la souveraineté de l'une des régions du pays.

LES QUESTIONS NATIONALES CANADIENNES

Comme dans toutes les sociétés démocratiques occidentales, l'histoire canadienne a été décisivement marquée par les rapports entre le capitalisme, la démocratie et la nation. Parmi les caractéristiques générales du développement de la société canadienne, on retient la dépendance économique face à l'Angleterre et aux États-Unis; la dynamique relativement conservatrice de la mise en œuvre de la démocratie, concrétisée par le long inachèvement de l'État national; l'importance des conflits régionaux et nationaux, comme en témoigne son régime politique, le fédéralisme; la difficulté de constituer une communauté politique pan canadienne et enfin, le refus de reconnaître pleinement l'État canadien comme un État multinational.¹⁵

Au moment de la création du Canada Uni, la société canadienne ne représente qu'un projet encore à réaliser. Le marché intérieur n'est pas créé, le développement du capitalisme industriel est à peine amorcé et la réunion des colonies du *British North America* n'en est qu'à sa première étape. De 1840 à la Deuxième Guerre mondiale, la société canadienne se donnera comme une société duale. Cette société sera organisée à partir de l'obtention du « Gouvernement responsable », en 1848, dans le cadre d'un État de forme libérale dont la formation repose en partie sur la volonté d'assimiler les

¹⁴ J. Habermas, *Après l'État nation. Une nouvelle constellation politique*, Paris, Fayard, 2000.

¹⁵ G. Bourque et J. Duchastel, « Démocratie et communauté politique supranationale » (1997) 28 Cahiers de recherche sociologique 149.

francophones.¹⁶ La dualité nationale sur une base ethnique et religieuse, Canadiens anglais et Canadiens français, reproduit la dualité caractéristique d'une société libérale construite sur la base d'une opposition stricte entre la sphère privée et la sphère publique. Elle conjugue en même temps le développement du capitalisme et de l'urbanité à une ruralité encore largement dominée par une agriculture et des institutions non-capitalistes, pré-modernes. La dualité nationale se construit principalement dans la sphère privée ou, à tout le moins, en marge des institutions publiques spécifiquement canadiennes.¹⁷ Dans la sphère privée, l'Église catholique constitue l'instance principale de la définition de la nation canadienne-française, alors que le lien colonial demeure un des traits fondamentaux de l'identité canadienne-anglaise.¹⁸

L'affirmation progressive du « fordisme » et de l'État providence, à partir de la Deuxième Guerre mondiale, minera les conditions de reproduction de la dualité nationale canadienne. L'intervention de plus en plus large des institutions de la sphère publique favorisera l'éclosion de la pluralité nationale. On assistera ainsi à l'affirmation d'une identité nationale canadienne rompant définitivement avec la Mère-patrie, ainsi qu'à la montée des nationalismes autochtone, québécois et acadien. Depuis le début des années soixante, la société canadienne constitue objectivement une société plurinationale.¹⁹

Il n'en reste pas moins que l'État canadien refuse de reconnaître cette réalité. Durant les années soixante, le gouvernement fédéral participera de deux manières à l'extinction de la dualité canadienne. Dans un premier temps, le refus du biculturalisme nie l'existence politique des deux nations, canadienne-française et canadienne-anglaise. Dans un deuxième temps, l'adoption de la Loi sur les langues officielles transforme celles-ci en deux groupes d'appartenance linguistique. En somme, durant les années soixante l'État canadien refuse de se reconnaître comme un État plurinational; comme en 1867 il avait omis de se penser comme un État binational.

¹⁶ B. Curtis, « Révolution gouvernementale et savoir politique au Canada-Uni » (1992) 24
Sociologie et sociétés 169.

¹⁷ G. Bourque, J. Duchastel et J. Beauchemin., *La société libérale duplessiste, 1944-1960*, Montréal, Presses de l'Université de Montréal, 1994.

¹⁸ G. Bourque et J. Duchastel, *L'identité fragmentée: nation et citoyenneté dans les débats constitutionnels canadiens, 1941-1992*, Montréal, Fides, 1996.

¹⁹ G. Bourque et J. Duchastel, « Erosion of the Nation-State and the Transformation of National Identities » dans J.L. Abu-Lughod, *Sociology for the Twenty-First Century: continuities and cutting edges*, Chicago, University of Chicago Press, 1999.

Sans adopter un point de vue déterministe, il n'est pas possible d'analyser l'histoire canadienne depuis le début des années 80 à moins de la mettre en rapport avec trois phénomènes à l'origine du processus de mutation de la modernité politique:

- S l'hégémonie du capitalisme financiarisé dans la mouvance de la mondialisation;
- S le démantèlement de l'État providence et le passage à l'État néolibéral;
- S la victoire des démocraties libérales sur les socialismes réels, laquelle a, paradoxalement, favorisé la régression démocratique en libérant l'espace mondial de toute entrave à la reproduction élargie du capital.

Ce triple phénomène entraîne l'érosion des pouvoirs de l'État canadien. Il induit aussi la soumission des institutions de la démocratie représentative, jusque là au cœur de la régulation politique de la société canadienne, à des institutions technocratiques et juridiques; lesquelles imposent progressivement la dominance d'une régulation technojuridique des rapports sociaux. Un processus dont ne seront invoqués ici que les principaux aspects.

L'émergence d'une régulation technojuridique est d'abord favorisée à l'interne, par l'adoption de la Loi constitutionnelle de 1982. En même temps que cette loi consacre le refus de reconnaître l'État canadien comme un État multinational, sauf dans le cas des peuples autochtones, l'enchâssement de la *Charte des droits et libertés* favorise objectivement la judiciarisation des rapports sociaux et la mise en tutelle des institutions législatives.²⁰ Quel que soit le point de vue adopté, le constat paraît incontournable: la Loi constitutionnelle de 1982 favorise l'État de droit aux dépens des institutions de la démocratie représentative.

La régulation technojuridique ne s'est cependant définitivement affirmée que dans le cadre de l'adoption des accords de libre-échange entre le Canada et les États-Unis, puis de l'ALENA. En dépit du fait que ce processus ait donné lieu à des débats publics dans le cadre d'une campagne électorale, la participation canadienne à la mondialisation résulte d'une démocratie d'exécutif, dont le résultat est de limiter les pouvoirs de l'État canadien sur une base technique et juridique.

²⁰ M. Mandel, *La Charte des droits et libertés et la judiciarisation du politique*, Montréal, Boréal, 1996.

Il en va de même du démantèlement de l'État providence et du passage à l'État néolibéral, auquel s'affairent les gouvernements canadiens depuis Brian Mulroney. Les pratiques de démantèlement qui commençaient à s'affirmer au début des années quatre-vingt, se sont progressivement transformées depuis en un processus de déploiement d'une nouvelle forme de l'État, qu'à défaut d'un meilleur terme il convient d'appeler l'État néolibéral.²¹ Dans des perspectives convergentes et divergentes, d'aucuns utilisent les notions de Workfare State,²², d'*Enabling State* et d'État partenaire.²³ Les modalités de la régulation politique qui inspirent désormais le rôle de l'État, à Ottawa comme à Québec, sont étrangères à la logique du providentialisme. L'État providence, rappelons-le, mettait en oeuvre une régulation centrée sur le régime de la convention collective, le soutien de la demande et de la production dans l'espace national, ainsi qu'une politique sociale d'inspiration universalité. Bien qu'il demeure résolument interventionniste, l'État néolibéral institutionnalise une approche toute différente. Centrées sur la réaffirmation du primat de l'autorégulation du marché dans un espace économique mondialisé, ses interventions économiques ne visent plus prioritairement le soutien de la demande et de l'économie nationale, mais l'insertion de l'entreprise dans les réseaux du marché mondial. Dans le domaine de la régulation du rapport salarial, la politique néolibérale priviliegié bien davantage la formation de la main-d'œuvre que l'extension du régime de la convention collective. La politique sociale, enfin, abandonne la perspective universaliste qui caractérisait le providentialisme, au profit d'une approche particulariste qui cible des populations différenciées.²⁴ Il faut surtout insister ici sur le fait que cette mouvance du providentialisme au néolibéralisme produit bien davantage qu'une transformation du rôle de l'État. Au-delà de la privatisation des grandes institutions publiques de l'histoire canadienne et du démantèlement de la nouvelle politique nationale du gouvernement Trudeau, depuis Brian Mulroney la politique néolibérale peut être pensée comme une soumission active de l'exercice de la souveraineté canadienne aux instances de la mondialisation.

²¹ G. Bourque et J. Duchastel, « Le discours politique néo-libéral et les transformations actuelles de l'État » (1992) 4 Discours social/Social Discourse 3.

²² B. Jessop, « Post-Fordism and the State » dans A. Amin, dir., *Post-Fordism, a Reader*, Oxford, Blackwell, 1994.

²³ A. Noël, « Vers un nouvel État providence. Enjeux démocratiques » (1996) 30 Politique et sociétés 3.

²⁴ J. Beauchemin, G. Bourque et J. Duchastel, « Du providentialisme au néolibéralisme: de Marsh à Axworthy. Un nouveau discours de légitimation de la régulation sociale » (1995) 24 Cahiers de recherche sociologique 15.

Il importe de noter que sans avoir déterminé à eux seuls ce processus, les conflits nationaux au Canada ont largement favorisé cette affirmation de la régulation technojuridique. L'adoption de la Loi constitutionnelle de 1982 résulte en très grande partie d'une dynamique fondée sur le refus de reconnaître au Québec un statut particulier.²⁵ On sait aussi que c'est en s'appuyant habilement sur la mouvance nationaliste québécoise heurtée par la Loi constitutionnelle de 1982, que le Parti conservateur a été porté au pouvoir durant les années 80. De la même manière, la conversion au libre-échangeisme et au néolibéralisme des ténoirs du mouvement souverainiste québécois à la même époque, résultent d'une stratégie qui croit trouver là une conjoncture favorable à l'avènement et à l'exercice de la souveraineté du Québec.²⁶

En provoquant la rupture des rapports qui s'étaient établis entre le capitalisme, la démocratie et la nation dans la modernité politique, la mondialisation impose ainsi de repenser la nature des rapports entre les nations au Canada. À moins d'assumer le risque d'en arriver à provoquer les excès les plus déplorables et de devoir en porter la responsabilité, il importe que soit trouvée une solution légitime à la crise latente du fédéralisme. Cette solution, semble-t-il, doit être pensée dans le cadre des mutations de la modernité politique déjà évoquées. Elle doit aussi être placée sous le primat de la réinvention des conditions d'exercice de la démocratie.

Dans les vieilles démocraties où subsistent des conflits nationaux, comme le Canada, l'Espagne et la Grande-Bretagne, il importe de repenser le modèle classique de l'État-nation. Au Canada, par exemple, ni la défense tous azimuts et inconditionnelle du fédéralisme canadien, ni la promotion intransigeante de la souveraineté du Québec ne paraissent satisfaire pleinement la réalité actuelle de l'évolution des sociétés occidentales. Toute solution devrait, semble-t-il, satisfaire la double exigence de la reconnaissance politique de la nation québécoise et du caractère pleinement démocratique du partenariat souhaitable entre le Québec et le Canada. Il faut à ce titre rappeler qu'au-delà des débats à l'intérieur du mouvement national, les référendums tenus au Québec en 1980 et en 1995 ont porté sur la souveraineté-partenariat. Or, dans les deux cas, la proposition s'inspirait d'une conception technobureaucratique des institutions communes. Dans sa deuxième version, en 1995, le partenariat Québec-Canada

²⁵ G. Bourque et J. Duchastel, « Les identités, la fragmentation de la société canadienne et la constitutionnalisation des enjeux politiques » (1996) 14 International Journal of Canadian Studies/Revue internationale d'études canadiennes 77.

²⁶ G. Bourque, « Entre nations et société » dans M. Venne, dir., *Penser la nation québécoise*, Montréal, Québec-Amérique, 2000.

prenait la forme d'un complexe institutionnel qui restreignait de façon significative l'exercice de la démocratie représentative. Il prévoyait la création d'un Tribunal d'arbitrage des différends, d'un Conseil commun des ministres, qui seul aurait un pouvoir d'initiative, et d'une Chambre d'assemblée dépossédée de toute capacité législative, constituée de députés du Québec et du Canada. Une telle conception du partenariat qui propose, au mieux, la formation d'une démocratie d'exécutif dérivée (ou déléguée) se présente comme un simple calque de la régulation technojuridique qui façonne actuellement l'espace mondial.

Il semble, au contraire, que seul un projet d'union confédérale Québec-Canada reconnaissant l'autonomie gouvernementale des peuples autochtones et centré sur une assemblée législative élue au suffrage universel des membres de l'Union, répondrait aux exigences actuelles de la réinvention de la démocratie canadienne. Un tel projet de partenariat politique reconnaîtrait le caractère plurinational et multiculturel de la société québécoise et respecterait le désir d'une grande partie de la population de maintenir des liens avec le Canada. Il s'inscrirait en même temps dans cette mouvance qui travaille à la formation de communautés politiques supranationales, essentielle à la réinstitutionnalisation des pratiques démocratiques. L'Assemblée législative de l'Union, à partir de laquelle serait formé le Conseil des ministres, répondrait à la condition première de la démocratie, soit celle de l'élection au suffrage universel de la députation.

On pourrait bien sûr imaginer de façon différente la résolution du contentieux Québec-Canada. Il n'en reste pas moins que seule la reconnaissance pleine et entière du caractère plurinational de la société et de l'État canadiens paraisse susceptible d'assurer une sortie durable de la crise latente du fédéralisme. Une telle reconnaissance semble impliquer le partage de la souveraineté au sein d'une Union confédérale ou d'un État multinational. La mise en œuvre d'un tel projet de souveraineté partagée pourrait éventuellement servir de modèle à la formation d'institutions démocratiques supranationales. Celles-ci seraient responsables et redevables devant les citoyens de réguler le libre-échange et le marché à un niveau transnational.

LA POLITIQUE DE LA RECONNAISSANCE ET LES NATIONALISMES AU CANADA

Daniel Jacques*

Despite appearances, Canada remains a society with no political foundation. According to the author, this absence of a foundation is at the origin of the confusion of allegiances that affect this country. To escape the impasse, several projects have been proposed, including the politics of recognition. He believes that the language being used does not allow us to think of a nation and that there exists a considerable risk that the strictly political meaning of the idea of the nation will be obliterated. To achieve a real foundation for this country, it is imperative that minority groups be able to live their cultural differences. To do this, the transformation of the Canadian political space must necessarily go through a restructuring of institutions on the basis of an explicit recognition of the multinational character of the country.

Malgré les apparences, le Canada demeure une société sans fondation politique. Selon Daniel Jacques, cette absence de fondation est à l'origine de la confusion des allégeances qui affectent ce pays. Pour sortir de l'impasse, plusieurs projets ont été avancés, dont la politique de la reconnaissance. Il estime que le langage utilisé ne permet pas de penser la nation et qu'il existe un risque considérable que le sens proprement politique de l'idée de nation soit oblitérée. Pour en arriver à une fondation véritable de ce pays, il est impératif que les francophones et les amérindiens puisse vivre leur appartenance culturelle. Pour ce faire, la transformation de l'espace politique canadien doit nécessairement passer par un réaménagement des institutions sur la base d'une reconnaissance explicite du caractère multinational du pays.

On a beaucoup écrit au cours des dernières années sur ce qu'il faut bien appeler l'impasse canadienne. Plusieurs analystes ont tenté d'expliquer comment nous en sommes arrivés à cette situation.¹ Parmi les motifs invoqués, on retrouve bien sûr le nationalisme québécois ainsi qu'un certain patriotisme canadien inspiré d'une lecture, que certains jugent étroite, des principes de la *Charte des droits et libertés*. Il semble que le Canada souffre d'une certaine confusion des allégeances, confusion qui s'étend, à des degrés divers, à l'ensemble des citoyens.

Il convient tout d'abord de distinguer la confusion des allégeances et de la diversité des identités. La première est un phénomène proprement politique, alors que la seconde, bien qu'elle puisse avoir des incidences sur ce plan, représente avant tout une réalité sociale ou individuelle. L'allégeance politique

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¹ G. Laforest et R. Gibbins, dir., trad. par J. Constantin, *Sortir de l'impasse. Les voies de la réconciliation*, Montréal, IRPP, 1998 [ci-après *Sortir de l'impasse*].

tient ainsi à l'obligation faite au citoyen de se soumettre à l'autorité publique. Par conséquent, la confusion des allégeances prédomine lorsque les citoyens d'un même État se réfèrent à l'autorité de manière ambivalente, voire contradictoire. Il est d'usage à notre époque de reconnaître que les individus composant les sociétés ont des appartenances identitaires multiples. On notera cependant que cette caractéristique n'est pas propre à nos démocraties. Il y a eu dans l'histoire de très nombreuses sociétés qui renfermaient une grande diversité culturelle, sans que ses sujets nourrissent toutefois la moindre confusion quant à leur allégeance à l'égard du pouvoir. Bien qu'il se constitue sur une base pluraliste, à ce jour, l'établissement du projet européen ne laisse pas voir de confusion manifeste dans l'esprit de ses citoyens quant à leur appartenance nationale. En revanche, il règne au Canada un grand désordre sur ce plan qui n'est pas sans influencer le fonctionnement de nos institutions. J'aimerais illustrer cette situation en considérant le cas des francophones du Québec, des anglophones du Canada et des Amérindiens.

Le fait que 60 p. cent des francophones au Québec aient voté en faveur de la souveraineté lors du référendum de 1995 démontre que leur allégeance au pouvoir fédéral pose un problème. Bien sûr, tous n'ont pas la même position quant à l'avenir du Canada, mais il est vrai qu'un nombre considérable de ces citoyens sont devenus des étrangers dans leur propre pays. S'ils n'ont pas cessé d'être Canadiens sur le plan du droit, ils ont cessé de l'être quant à l'esprit. Voilà pourquoi ils vivent dans l'attente d'une décision collective qui leur permettra d'accéder à ce qu'ils considèrent être le pays réel. Cet affaissement général de l'allégeance d'une partie des francophones du Québec à l'égard du Canada est observable dans une multitude d'événements. Prenons un seul exemple, la remise annuelle des prix du gouverneur général, section francophone. Un malaise persiste depuis que Gaston Miron et Fernand Dumont ont reçu ce prix (l'un pour sa poésie et l'autre pour son oeuvre théorique) et que le premier l'a refusé tandis que le second a remis la somme qui l'accompagne au Parti québécois. Aux yeux de plusieurs Québécois, de tels refus paraissent exemplaires. C'est dire à quel point est distendu le lien qui unit ces citoyens au Canada.

La confusion des allégeances n'est pas l'apanage des francophones du Québec, elle affecte aussi les citoyens anglophones du Canada, mais selon un mode fort différent, voire opposé. Vu de l'extérieur, le Canada anglais semble posséder toutes les caractéristiques d'une nation. Les individus qui la composent ont en partage une identité politique et discutent de leur avenir au sein du même espace public. C'est-à-dire qu'ils lisent les mêmes journaux, consultent les mêmes forums et utilisent la même langue pour échanger sur ce qu'ils estiment

être leurs problèmes. On pourrait ajouter à cela le fait que ces citoyens partagent un certain nombre de préoccupations et d'intérêts particuliers. Toutefois, aux yeux des intéressés eux-mêmes une telle nation n'existe pas. Les citoyens anglophones de ce pays estiment généralement être des Canadiens comme tous les autres. Leur allégeance ne va pas à une partie de ce pays, mais à son ensemble. C'est ce que Will Kymlicka nomme le « nationalisme pan canadien ».² Les anglophones du Canada refusent de se définir comme une nation, ce qui serait, selon eux, une manière d'ethniciser leur identité politique. Ce faisant, ils sont conduits à penser que leurs intérêts sont identiques à ceux de tous leurs concitoyens ou, plus exactement, qu'ils n'ont pas d'intérêts particuliers, ce qui bien sûr est inexact. Il est vrai, répondront ici certains critiques de cette vision du pays, que la défense du Canada au nom de principes universels suffit amplement à promouvoir ces intérêts particuliers. Nous serions donc, de ce point de vue, devant une nation qui ne se reconnaît pas comme telle et qui, en raison de cette confusion initiale, en vient à traiter les intérêts des autres comme étant entièrement assimilables aux siens. D'une certaine façon, nous pourrions dire que, dans ce cas de figure, la nation politique dissimule les intérêts de la nation réelle.

En ce qui concerne la question autochtone, la confusion semble évidente. Que ceux-ci aient été ou non les alliés des Britanniques, les peuples autochtones du Canada estiment généralement avoir été trahis par la couronne. Sous l'autorité d'une puissance impériale ayant fondé sa domination par la force, le pays s'est construit sans eux, à l'encontre de leurs aspirations. Ce sentiment d'oppression transparaît dans le langage qu'utilisent certains représentants des Premières Nations pour faire entendre leurs revendications. Il n'est pas nécessaire de reproduire l'argumentaire complet de cette défense des nations amérindiennes pour comprendre qu'elle affecte le lien d'allégeance de ces citoyens aux autorités fédérales et provinciales. Aux yeux de plusieurs d'entre eux, il n'y a pas de légitime d'affirmer que le Canada ou le Québec soit leur véritable pays d'appartenance.

² *Ibid.* à la p. 4.

LE PROBLÈME DE LA FONDATION POLITIQUE AU CANADA

Les causes de ces multiples malentendus qui s'entrecroisent au sein de notre espace politique sont diverses et complexes. Pour une part importante, ils découlent de l'histoire politique de ce pays. Le lien d'allégeance s'est formé au fil des expériences qui ont défini la personnalité historique du Canada. Il s'ensuit que la configuration particulière de ce pays résulte des choix posés par les acteurs politiques et que celui-ci n'existe qu'en tant qu'inscription de ces volontés dans l'histoire. Le Canada s'est constitué par l'entrelacement de violences et de mansuétudes, de clairvoyances et de malentendus. Il demeure, qu'à l'aube du XXI^e siècle, aucune mémoire commune ne s'est formée dans ce pays. De sorte que les citoyens, s'ils ont en partage une certaine éthique démocratique et de nombreuses valeurs sociales, ne possèdent pas d'identité politique commune et se reconnaissent, sur un même territoire, par des histoires nationales parallèles.

Ce qui nous tient lieu d'identité politique se résume à la discussion engendrée par la confusion de nos allégeances; une discussion autrefois menée sous la contrainte de la force mais aujourd'hui abandonnée à sa propre logique, du fait des progrès de la démocratie. Le Canada est donc ce pays qui demeure aujourd'hui sans identité politique véritable, puisque l'identité qu'il s'est donné à la suite du rapatriement de la Constitution est l'objet de perpétuelles controverses. Certains verront dans cette situation un ferment de démocratie, car le propre de ce type de régime est précisément de permettre le dévoilement de l'irréductible multiplicité des intérêts.³ D'autres estiment qu'une telle confusion des allégeances mine le fonctionnement de nos institutions politiques et hypothèque lourdement l'avenir du pays.

Si le Canada connaît un problème de légitimité récurrent, cela résulte d'une absence de fondation symbolique. Jusqu'à ce jour, quoi qu'en pensent les fédéralistes les plus convaincus, le Canada n'a pas connu d'événement pouvant tenir lieu de fondation, à tout le moins de fondation réussie. Une fondation réussie est un événement historique présentant une même signification pour

³ Le dernier ouvrage de John Saul à ce propos est exemplaire: *Réflexions d'un frère siamois*, Montréal, Boréal, 1998 (Traduction de *Reflection of a Siamese Twin*, Toronto, Penguin Books (Viking Books), 1997). Il s'agit d'une tentative de formulation d'une nouvelle mythologie fondatrice pour le Canada au moyen d'une reconstruction largement imaginaire de l'histoire (G. Bouchard, « Un regard critique sur le dernier livre de l'intellectuel: La vision « siamoise » de John Saul » *Le Devoir* (15 janvier 2000) A11 et (17 janvier 2000) A7).

l'ensemble des citoyens concernés et ouvrant, par-devant eux, un avenir partagé.⁴ La fondation d'un État ne détermine pas son avenir, mais elle définit l'horizon de ses possibilités historiques. En ce qui concerne le Canada, ce pays n'a connu que des fondations avortées (pensez à 1867 ou à 1982) puisque ces moments de ce qui aurait pu devenir notre histoire n'ont pas permis l'émergence d'une véritable allégeance commune. Tout au contraire, leur appropriation fait l'objet de multiples interprétations, à commencer par le fameux pacte entre les nations fondatrices.⁵ Voilà pourquoi, malgré les apparences que nourrit la diplomatie et les réussites économiques, le Canada est toujours une société sans fondement politique. Cette absence de fondation est à l'origine de la confusion des allégeances qui affecte ce pays.

Plusieurs projets ont été avancés en vue de sortir de cette impasse. À ce jour, aucun n'a réussi à s'imposer pour des raisons tout à la fois théoriques et pratiques. Je laisse à d'autres le soin d'examiner la possibilité qu'une fondation puisse se réaliser au Canada, compte tenu des forces politiques en présence aujourd'hui et de la rigidité de la formule d'amendement de la constitution actuelle, pour ne porter mon attention que sur l'aspect théorique de la discussion. Il s'agit de réfléchir non pas au possible, mais au souhaitable. Parmi les propositions théoriques permettant d'envisager une sortie de l'impasse, l'une des plus séduisantes fut sans contredit la politique de la reconnaissance. Plusieurs ont proposé ainsi de réformer le projet canadien sur les bases d'une telle politique, en amenant les citoyens de ce pays à reconnaître à travers leurs institutions la diversité de leurs appartenances.⁶

LA POLITIQUE DE LA RECONNAISSANCE

Deux remarques s'imposent en commençant cet examen. Tout d'abord, je ne prétends pas faire un exposé exhaustif de ce qu'il est convenu d'appeler la politique de la reconnaissance. De plus, s'il s'agit bien de soumettre cette philosophie politique à un examen critique propre à cerner ses limites; on ne saurait nier les mérites d'une telle approche. La politique de la reconnaissance a permis de révéler le caractère rationnel de certaines revendications autrefois reléguées par certains critiques socialistes et libéraux dans la sphère de l'arbitraire et de l'irrationnel. J'estime, comme bien d'autres, que la politique de

⁴ H. Arendt, *Essai sur la révolution*, Paris, Gallimard, 1967.

⁵ J. Meisel, G. Rocher et A. Silver, dir., *Si je me souviens bien. As I recall: Regards sur l'histoire*, Montréal, IRPP, 1999.

⁶ J. Tully, *Strange Multiplicity: Constitutionalism in an age of diversity*, Cambridge, Cambridge University Press, 1995.

la reconnaissance a représenté une avancée dans notre compréhension de la modernité et des exigences politiques et morales qu'elle implique. Toutefois, il reste à savoir si cette percée théorique comporte toutes les ressources nécessaires pour sortir de l'impasse canadienne.

De nos jours, le concept d'identité prend une telle importance dans la discussion publique qu'il est difficile d'imaginer qu'il n'y a pas si longtemps il était totalement absent de nos délibérations. La question de l'identité possède un caractère d'évidence qui justifie apparemment son application à l'ensemble du champ politique. Il est vrai que ces considérations sur l'identité sont liées à une réflexion plus large sur la modernité, de sorte que l'approfondissement de cette dernière problématique a largement contribué à promouvoir la question de l'identité. Par opposition à ceux qu'il faut bien appeler les anciens, quelles que soient par ailleurs leurs dissensions, les modernes se refusent à vivre dans un ordre social établi par autorité et soutenu par coutume. Chaque individu, une fois délié de ses semblables, devient pour lui-même un projet singulier. Dans l'espace ouvert par un tel idéal, d'autres diront par un tel désir de liberté, les questions de l'identité et de la reconnaissance acquièrent une acuité et une signification qu'elles ne possédaient pas auparavant.⁷

Dans l'architecture de toute politique de la reconnaissance, la notion d'identité occupe une place centrale. Elle est en somme la clé de voûte de l'ensemble. En effet, il est difficile d'imaginer ce que pourrait signifier une revendication de reconnaissance qui ne fasse appel à la notion d'identité. Le sujet de la reconnaissance est porteur d'une identité singulière au nom de laquelle il réclame l'attention et la considération de ses concitoyens. Toute revendication de reconnaissance procède de la volonté de faire apparaître aux yeux des autres la valeur propre de la singularité que le sujet incarne. Le besoin de reconnaissance manifeste la nécessité dans laquelle nous sommes tous d'entretenir des relations avec d'autres individus que nous espérons équitables, soit tous ces semblables desquels nous sommes séparés par tant de différences. Cette reconnaissance souhaitée de toute singularité s'inscrit dans un horizon universaliste et procède de l'humanisme des modernes: *je suis tenu de reconnaître l'Autre dans son altérité, en raison d'une appartenance initiale à la même humanité*. Voilà pourquoi il est vrai que le principe fondamental de toute politique de la reconnaissance est la réciprocité mutuelle entre égaux.⁸

⁷ C. Taylor, *Sources of the Self. The Making of the Modern Identity*, Cambridge, Harvard University Press, 1989.

⁸ J. Tully, « Liberté et dévoilement dans les sociétés multinationales » (1999) 2 *Globe* 18.

Dans l'horizon interprétatif que déploie cette compréhension de la modernité, le désir de reconnaissance se révèle être le moteur de l'histoire politique. Cette thèse, d'inspiration hégélienne, a connu une fortune théorique diverse. Qu'il suffise, par exemple, de rappeler la position de Kojève selon laquelle, par de nombreuses luttes, le désir de reconnaissance doit conduire l'humanité vers un État universel et homogène.⁹ Dans cette figure de la reconnaissance, ce qui est mis en oeuvre c'est la volonté de tous d'être considérés égaux en droit et en liberté. La reconnaissance se joue ici d'homme à homme. Dans la politique de la reconnaissance, telle que nous la connaissons aujourd'hui, cette dimension d'universalité ne disparaît pas mais elle acquiert un sens nouveau, du fait de la prise en compte de l'inscription de chacun dans une histoire particulière. L'homme dont il est question se fait individu, parce qu'il appartient à un devenir singulier, à des devenirs singuliers devrait-on dire, ceux de sa personne, de sa famille, de sa classe ou de sa nation. Le principe de reconnaissance acquiert ici un tour inédit, car le besoin de reconnaissance s'étend désormais à la singularité de chacun et le politique est requis, en conséquence, pour de nouvelles tâches.¹⁰

On en est venu à penser qu'au moyen de droits et de prérogatives dont l'État a charge d'imposer le respect, les institutions politiques doivent assurer la reconnaissance de tous, sur la base de ces principes généraux. Plus encore, il incombe aux institutions de répondre aux aspirations particulières de chacun en octroyant à tout individu les moyens de préserver et de cultiver sa différence. La politique de la reconnaissance conduit à repenser le rôle dévolu à l'État moderne. Il s'agit de définir un aménagement de l'espace démocratique permettant de répondre aux exigences nées du besoin de reconnaissance. La politique de la reconnaissance représente donc un nouvel aménagement de l'Universel et du Particulier, c'est-à-dire en propre, de l'articulation politique. Par conséquent, loin d'assouvir les aspirations humaines, la création d'un État homogène et uniforme, selon la prophétie de Kojève, représenterait plutôt une menace. Il convient donc de diversifier les lieux politiques au sein même de ce que nous pourrions appeler, avec Tocqueville, la culture démocratique.

LA DÉFENSE DES NATIONS ET LA QUESTION DES IDENTITÉS

Si le Canada est aujourd'hui dans une impasse, c'est en partie du moins parce que s'affrontent des conceptions divergentes de la nation. Il s'agit, par

⁹ A. Kojève, « Tyrannie et Sagesse » dans *De la tyrannie*, Paris, Gallimard, 1954.

¹⁰ C. Taylor, *Multiculturalism and “The politics of recognition”*, Princeton, Princeton University Press, 1992.

conséquent, de chercher à savoir si une politique fondée sur l'identité permet de résorber une partie de cette divergence qui mine le fonctionnement de nos institutions politiques. En valorisant l'inscription de l'individu dans une histoire, la philosophie de l'identité à la base de la politique de la reconnaissance conduit à la défense des nations; surtout lorsque celles-ci sont minoritaires au sein d'un État. Ses promoteurs soulignent notamment le fait que les revendications nationalistes résultent d'un désir de reconnaissance inassouvi, particulièrement en contexte colonial. À ce niveau, la nation apparaît d'abord comme un regroupement au sein duquel, sur la base d'une identité partagée, les citoyens se reconnaissent égaux et dialoguent entre eux et avec les autres quant à la définition de leur avenir. La nation offre ainsi une réponse à la question de savoir qui participe au jeu politique, qui a le droit de prendre la parole dans la discussion publique et qui en est exclu.

Nul doute que les nations historiques se sont formées en raison d'appartenances identitaires, qu'il s'agisse de l'Angleterre, de la France ou encore des États-Unis d'Amérique. Il est aussi vrai que les langues, les religions et autres traits communs ont servi de motifs au rassemblement des citoyens en un corps politique. Au regard de l'histoire, il semble donc vrai que la plupart du temps la communauté nationale a pris forme autour d'une revendication identitaire et qu'elle a trouvé dans ce désir de reconnaissance son motif et sa raison d'être. Cependant, dès lors que la nation est définie uniquement au moyen du principe d'identité, le risque est grand de voir disparaître son caractère proprement politique, si bien qu'il devient alors bien difficile de distinguer la nation des autres formes d'appartenance communautaire.

La nation ayant joui, à tout le moins depuis la Révolution française, d'un statut privilégié lui permettant d'obtenir une reconnaissance considérable, il est tentant d'utiliser la rhétorique nationale dans la défense de toutes les causes. Sur la base d'un tel glissement rhétorique, il paraît justifié de réclamer pour toutes les communautés culturelles un traitement égal à celui octroyé aux nations. Certains en sont ainsi venus à croire qu'il est temps de promouvoir les intérêts de la « nation noire », ceux des « nations amérindiennes » ou encore, et pourquoi pas, de la « nation gaie ». Le fait que les revendications de ces communautés puissent être traduites dans un même langage favorise l'impression qu'il faille accorder une même valeur politique à chacune d'elles. Il n'y aurait plus lieu de départager les revendications de la nation québécoise, des peuples autochtones ou de n'importe quelle autre minorité, puisque toutes ces questions sont politiques et mettent en jeu la reconnaissance d'un groupe de citoyens.

La confusion engendrée par la rhétorique identitaire conduit d'ailleurs à oblitérer une distinction nécessaire à la compréhension du politique. La notion d'identité étant aveugle à la distinction entre le privé et le public, elle conduit à mettre l'un et l'autre sur le même pied. Sans nier que doivent être abordées toutes les questions soulevées par un groupe ou un autre dans la société, il importe que subsiste l'opposition entre le privé et le public pour parvenir à établir une discussion commune claire et efficace. Or, sans les précautions nécessaires, l'utilisation des concepts d'identité et de reconnaissance peut servir à établir une fausse égalité entre toutes les revendications, quelle que soit leur portée dans l'espace public. En s'appuyant sur ces positions, certains pourraient croire à tort que les revendications nationales représentent une intrusion de considérations privées dans la sphère publique.¹¹

Sur la base de cette présumée égalité de toute revendication identitaire, certains critiquent le langage politique fréquemment utilisé dans les débats actuels, considérant celui-ci comme un héritage malheureux de l'époque coloniale. De ce point de vue, la société n'étant plus qu'un ensemble de groupes ayant chacun leur calendrier politique, il en résulte selon ces critiques un affaissement du principe de souveraineté. Autrement dit, refuser d'établir une hiérarchie dans les revendications des communautés nationales, ethniques ou autres, impose le remplacement de la souveraineté politique par un ensemble d'institutions permettant de créer un dialogue permanent entre toutes les composantes de la société. Ces arguments permettent de mettre en question la légitimité même du concept de nation. On voit dès lors que sous certaines de ses formes les plus radicales, la politique de la reconnaissance conduit non seulement à la dissolution de l'idée de nation, mais davantage encore à sa disqualification.¹²

À la différence de toutes les autres communautés identitaires, la nation est un phénomène essentiellement politique et doit être traitée comme telle. De plus, toute politique qui ne permet pas de reconnaître clairement cette spécificité du phénomène national ne peut résoudre les difficultés mentionnées précédemment. S'il est vrai que le phénomène national comporte une dimension identitaire, il serait périlleux de le réduire à ceci pour faire en sorte que disparaîsse son caractère proprement politique. Une telle simplification ne pourrait finalement qu'engendrer une plus grande confusion dans les débats sur l'avenir du pays.

¹¹ A. Lamey, « Mr. Taylor's Politics of misrecognition » *The National Post* (21 août 1999) B6.

¹² T. Alfred, « Sur le rétablissement du respect entre les peuples kanien'kehaka et québécois » (2000) 2 *Argument* 31.

Afin que ces dernières remarques prennent tout leur sens, il faut montrer plus clairement en quoi la nation se distingue des autres formes de communauté: Quelle est l'origine de son caractère politique? Il convient d'abord de noter le rôle historique de la nation à l'époque moderne. Jusqu'à une époque récente, la nation a représenté le cadre d'inscription du projet démocratique dans l'histoire. Autrement dit, la modernité politique a pu se réaliser dans le champ de l'histoire au moyen de la nation¹³. Contrairement à l'Empire ou à la Cité, la nation a permis d'offrir une réponse adéquate au problème de la délimitation de l'espace politique chez les modernes.¹⁴ En tant qu'idéal permettant d'établir la légitimité de l'autorité publique, le principe de la souveraineté populaire ne permet pas de définir quelle sera l'étendue de la communauté; il est à cet égard indéterminé.¹⁵ C'est pourquoi la nation seule a permis à ce jour d'offrir une réponse à ce problème incontournable.

Dès lors qu'on prend la mesure du rôle politique joué par la nation dans l'histoire moderne, il nous est donné de comprendre qu'elle est la seule figure de la communauté permettant la création d'un espace public stable et cohérent, favorable à l'intégration des citoyens. Ce ne sont pas toutes les communautés identitaires qui permettent de délimiter un espace public, bien au contraire; la majorité d'entre elles ne représente pas une base viable à cet égard. La nation au sens propre, naît de la conjoncture de la demande identitaire et de la nécessité politique que représente la délimitation de l'espace public. Voilà pourquoi elle a été appelée à jouer un rôle aussi important dans l'histoire moderne. Prenant appui sur ces remarques, il est possible de saisir, par exemple, qu'il existe bel et bien une nation en formation au Québec et que celle-ci ne saurait être assimilée à une minorité. De la même manière, on peut dire qu'au sens propre il n'y a pas de nation noire aux États-Unis; même si manifestement la présence de cette minorité entraîne des problèmes sociaux qui pèsent lourdement sur l'avenir de la nation américaine.

En tant que phénomène historique, la nation est le fruit du travail de l'État, quoique la nationalité ait servi en retour à délimiter l'espace légitime

¹³ L. Greenfeld, *Nationalism. Five Roads to Modernity*, Cambridge, Harvard University Press, 1992.

¹⁴ Voir sur cette question mon ouvrage *Nationalité et modernité*, Montréal, Boréal, 1998.

¹⁵ J. Habermas, « L'État-nation a-t-il un avenir? » dans J. Habermas, *L'Intégration républicaine*, Paris, Fayard, 1998, 106.

d'intervention de celui-ci.¹⁶ Voilà pourquoi, si on veut comprendre le lien qui unit la nation à l'État, il faut tenir compte de l'influence réciproque de ces ordres de réalité. Il s'ensuit que les nations, particulièrement les petites nations, ont besoin de l'État pour assurer leur existence et leur développement dans l'histoire. Il faut appartenir à l'espace d'influence de la plus grande nation du monde pour ne pas saisir l'évidence de cette proposition. Soumettre l'allégeance à la nation au libre marché des cultures, sous la protection d'un État voué exclusivement à la préservation des droits individuels, c'est promouvoir une politique aveugle à la dimension historique du phénomène national. Il s'ensuit que la nation n'est pas une communauté identitaire parmi d'autres, mais qu'elle constitue encore aujourd'hui notre lieu politique et mérique, par conséquent, un traitement particulier.

C'est au nom d'une telle distinction qu'il est possible, par exemple, de justifier l'intervention du gouvernement québécois dans le domaine de la langue. Si, indiscutablement, toutes les communautés méritent le respect et si chacune d'entre elles constitue un groupe doté d'une identité de valeur politique comparable, il devient impossible d'établir une hiérarchie entre les revendications. Si, au même titre que la communauté francophone, la minorité anglophone du Québec est une communauté culturelle, fondée sur une identité partagée, il n'est plus justifié de lui imposer une législation contraire à ses intérêts comme semble le faire la loi 101. Il devient donc proprement impossible d'établir une distinction claire entre les revendications d'une nation et celles d'une minorité culturelle, sur la base du concept d'identité. La nation se voit donc privée des instruments politiques dont elle a besoin pour assurer son développement. C'est pourquoi l'utilisation d'un instrument législatif comme la loi 101 n'est légitime qu'à la condition de maintenir la distinction entre la nation et la communauté d'identité.

CONCLUSION

Il s'agissait au départ de déterminer si la politique de la reconnaissance permet de résoudre l'impasse constitutionnelle dans laquelle se trouve emprisonné le Canada. On aura compris qu'une réponse appropriée ne peut qu'être complexe et nuancée. Sans doute devons-nous répondre affirmativement, car on ne saurait rêver pour ce pays d'une fondation réussie permettant à tous de se rallier au projet canadien, sans une reconnaissance institutionnelle de tous les

¹⁶ G. Eley et R. G. Suny, « Introduction: From the Moment of Social History to the Work of Cultural Representation » dans G. Eley et R. G. Suny, dir., *Becoming National*, Oxford, Oxford University Press, 1996.

participants. Sans doute aussi faut-il répondre négativement, car le danger est grand que la rhétorique identitaire, à distinguer d'une authentique philosophie de la reconnaissance, n'engendre de nouveaux malentendus dans les débats politiques, renforçant la confusion régnante. Il faut donc proposer des réponses distinctes à toutes les réclamations de groupes aussi divers que les minorités ethniques, les peuples autochtones et la nation québécoise. À la lumière de cet examen, pour être utile dans le contexte canadien, la politique de la reconnaissance doit être associée à une compréhension appropriée du phénomène national.

Chose certaine, aux yeux d'une majorité de Québécois, il ne saurait y avoir de solution satisfaisante à l'impasse canadienne sans que soit reconnu le caractère proprement politique de la nation québécoise. Une telle reconnaissance implique un nouveau partage des pouvoirs au sein de la confédération canadienne, non pas selon la règle d'une égalité présumée des provinces, mais selon la constitution politique du pays réel. Dans ce contexte, il serait regrettable que la politique de la reconnaissance prenne la forme d'une résistance à l'égard de ce projet. Certains continuent à associer l'idée de nation à une histoire marquée d'iniquités; elle appartiendrait, pars le sens, à la tradition politique européenne et participerait ainsi de sa logique coloniale. Sous le désir de rompre avec cet héritage d'injustices, la nation est trop souvent soumise à une disqualification en règle, opposant le projet d'une reconnaissance universelle à celui de la souveraineté nationale; un projet jugé contraire à l'esprit de tolérance que requiert le pluralisme de nos sociétés.

Au lieu de forcer l'opposition, si nécessaire au mépris de l'histoire, mieux vaudrait chercher un aménagement adéquat de ces ordres de priorités qui permette une fondation véritable du pays et sans laquelle il sera impossible de sortir de l'impasse où nous nous trouvons.¹⁷ Une telle fondation paraît être l'unique voie pour les citoyens, notamment les francophones et les amérindiens, d'accéder à l'expression complète de leur être, de vivre leur appartenance culturelle sous un mode expansif et non plus régressif comme ce fut le cas par le passé. Cette transformation de l'espace politique canadien ne saurait se faire sans un réaménagement des institutions sur la base d'une reconnaissance explicite de la nature du pays réel, c'est-à-dire de son caractère multinational. Toute solution de compromis présuppose ainsi qu'au-delà de ses héritages impériaux, le Canada anglais puisse accepter le caractère propre de sa réalité

¹⁷ G. LaForest, « Se placer dans les souliers des autres partenaires dans l'union canadienne » dans *Sortir de l'impasse*, *supra* note 1 à la p. 80.

historique. Tant et aussi longtemps qu'une prise de conscience à cet effet n'aura pas eu lieu, toute tentative de réconciliation et de réforme de nos institutions paraît vouée à l'échec. Il y a fort à parier que le prix élevé de ce statu quo sera d'abord et avant tout assumé par les communautés amérindiennes et les minorités francophones hors Québec.

FEDERALISM, PLURALISM, AND CONSTITUTIONAL FAITH: CANADA IN QUESTION

Samuel V. LaSelva*

The author examines the political visions of John A. Macdonald and Pierre Elliott Trudeau. In reality, for the majority of Canadians, these two men were the only ones to successfully define the very essence of the country. Yet, Canada transformed itself into a country that is, so to speak, impossible to govern. If nothing changes, Canada is destined to be fragmented and will be made up of antagonistic cultural solitudes. For LaSelva, Québec is also destined for that fate because it is made up of significant minorities, Aboriginal nations, multicultural groups and large Anglophone population. So, how to reconcile the differences? By making way for a political vision as old as Confederation: that of Georges-Étienne Cartier.

L'auteur se penche sur les visions politiques de John A. Macdonald et de Pierre Elliott Trudeau. En effet, pour la plupart des Canadiens, ces deux hommes ont été les seuls à définir avec succès l'essence même du pays. Pourtant, le Canada s'est transformé en un pays, pour ainsi dire, impossible à gouverner. Si rien ne change, le Canada est voué à la fragmentation et sera composé de solitudes culturelles antagonistes. Pour LaSelva, le Québec aussi est voué à ce destin du fait qu'il est composé d'importantes minorités, de nations autochtones, de groupes multiculturels et d'une large population anglophone. Alors, comment réconcilier les différences? En faisant place à une vision politique aussi vieille que la Confédération: celle de Georges-Étienne Cartier.

“Canada in Question” is not a new topic. Canadians have been addressing it at least since Confederation. “Canada in Question” is also the title of a penetrating book by the late Donald Smiley.¹ But that book was published before the failure of the Meech Lake and Charlottetown Constitutional Accords, before the near successful sovereignty referendum in Québec, and before the decision by the Supreme Court that legitimates the breakup of Canada.² These events give new urgency to the problem of “Canada in Question,” and raise new questions about the viability of Canada.

For some Canadians, the time has come to say goodbye to Confederation, and to get Québec out of Canada.³ Others search for new institutional arrangements, such as a three nations conception, that would better

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¹ D.V. Smiley, *Canadian in Question: Federalism in the Eighties*, 3d ed. (Toronto: McGraw-Hill Ryerson, 1980) at 252–80. Compare D.V. Smiley, *The Federal Condition in Canada* (Toronto: McGraw-Hill Ryerson, 1987) at xi.

² Reference re Secession of Quebec (1998), 161 D.L.R. (4th) 385 [hereinafter Secession Reference].

³ See e.g. R. Scowen, *Time to Say Goodbye: The Case for Getting Quebec Out of Canada* (Toronto: McClelland & Stewart, 1999).

accommodate the divergent aspirations of Aboriginals, Quebecers, and the rest of Canada.⁴ There are also those who believe that “Constitutional Reform is the God that Failed,” and that Canadians must now “Look into the Abyss.”⁵

These scenarios raise important questions about the future. What none of them takes seriously enough is the fact that Canadians cannot escape history. Part of the trouble with Canada is that Canadians often neglect or misunderstand their history. For many Canadians, the political visions of John A. Macdonald and Pierre Elliott Trudeau have successively defined the essence of Canada; yet neither vision provides a satisfactory understanding of Canada. Both visions also turn Canada into an impossible country and unwittingly fuel scenarios for separation. However, Canadians have available to them a constitutional vision that takes their country seriously, and recognizes its distinctive character. This vision is as old as Confederation. It also underpins the Supreme Court’s understanding of Canada in the *Secession Reference*. Embedded in the Court’s decision is a powerful exploration of the meaning of Confederation, a subtle articulation of the Canadian constitutional faith, and a fresh insight into the question of Canada.

MISUNDERSTANDING CANADA: MACDONALD AND TRUDEAU

There are significant misunderstandings of Canada that need to be discussed. Not the least of the obstacles to the articulation of a Canadian constitutional faith is the privileged position accorded to the political visions of John A. Macdonald and Pierre Elliott Trudeau. For more than a century, Macdonald’s vision of Canada held pride of place. The Constitutional Settlement of 1867 was commonly described as the Macdonaldian Constitution, and Macdonald was allocated the lion’s share in the creation of Canada. In 1982, the most important constitutional innovations since Confederation were adopted. The chief architect of these changes was Trudeau. But Trudeau’s Canada is no more secure than Macdonald’s, and Canadians seem increasingly unable even to live under a common constitution, let alone recognize a constitutional faith.⁶

⁴ C. McCall et al., “Three Nations” (1992) 70 Can. For. 4 at 4–6.

⁵ A.C. Cairns, “Looking into the Abyss” (Ottawa: C.D. Howe Commentary, 1997) at 3, 11–15.

⁶ See C. Couture, *Paddling with the Current* (Edmonton: University of Alberta Press, 1998); G. LaForest, *Trudeau and the End of a Canadian Dream* (Montreal & Kingston: McGill-Queen’s University Press, 1995); K. McRoberts, *Misconceiving Canada* (Toronto: Oxford University Press, 1977).

Although Macdonald and Trudeau are not often compared, each of them had a powerful influence on the Canadian constitutional order, and each had a strong aversion to the particularisms that define Canada. Both Macdonald's Toryism and Trudeau's Liberalism attempt to escape from Canadian history. In the Confederation Debates of 1865, Macdonald admitted that his own preference was for a legislative union, because such a union was "the best, the cheapest, the most vigorous, and the strongest system of government we could adopt." Not only did Macdonald regard Federalism as an unstable form of government, but he insisted that the United States Constitution had "commenced ... at the wrong end."⁷ What he implied was that Federalism was in large measure responsible for the American Civil War. Accordingly, he regarded Federalism with suspicion, and believed that all the great powers of legislation, including the residuary power, should be conferred on the general legislature.

Macdonald's hostility towards Federalism was not based solely on his misreading of the American Civil War. After all, Macdonald was a Tory and he had a Tory vision of Canada. As a Tory, he not only preferred a legislative union, but also wanted Canada to become a great commercial empire, "commanding the respect of the world, able to hold our own against all opponents."⁸ "[T]he nation," Donald Creighton wrote in his account of Macdonald's idea of union, "transcends the group, class, or section."⁹ Macdonald's suspicion of Federalism was so deeply rooted that while the *British North America Act*¹⁰ was before the British parliament, he "desired ... to have it modified so that a legislative union should be substituted for the proposed federation."¹¹ His efforts ultimately failed, but he continued to believe that the new nation would be a Tory union, in which the provinces were reduced to little more than administrative units.¹²

The four decades after Confederation witnessed the decisive defeat of Macdonald's vision of Canada. In that period, the Canadian constitution had moved decidedly away from Macdonald's centralism and towards provincial rights. What eventually emerged was described in 1947 as "two streams of constitutional thought in violent opposition, represented by the supporters of

⁷ Parliamentary Debates on the Subject of the Confederation of the British North American Provinces (Québec: Hunter, Rose, 1865) at 29, 33 (per Macdonald) [hereinafter Confederation Debates].

⁸ Ibid. at 27 (per Macdonald).

⁹ D. Creighton, *Towards the Discovery of Canada* (Toronto: Macmillan, 1972) at 217.

¹⁰ Constitution Act, 1867 (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5.

¹¹ A. DeCelles, "Sir Georges Etienne Cartier" in S. Leacock et al., Mackenzie, Baldwin, Lafontaine, Hincks, Papineau, Cartier (New York: Oxford University Press, 1926) at 102.

¹² Confederation Debates, *supra* note 7 at 33 (per Macdonald).

federal authority ... and the advocates of the ‘compact theory’.”¹³ By the 1970s, Canada’s constitutional crisis had acquired new dimensions, and called into question even the limited goal of keeping Québec in Confederation. Behind the new crisis, however, was Macdonald’s failure to come to terms with provincial autonomy and local cultures. Moreover, his vision of Canada — a vision that privileged central authority and regarded Federalism with suspicion — was more likely to fuel constitutional instability than to quell it.

Unlike Macdonald, Trudeau admired Federalism. In essays published in the 1960s, Trudeau even drew attention to Lord Acton’s famous criticism of nationalism to remind Canadians that “[a] great democracy must either sacrifice self-government to unity, or preserve it by federalism.”¹⁴ It was Lord Acton who insisted that the combination of different nations within the same state was a necessary condition of civilized life as well as a test of political freedom. Trudeau shared with Acton a distrust of all embracing ideological systems and a belief in the value of counterweights as a guarantee of freedom. Moreover, like Acton but unlike Macdonald, Trudeau praised the United States Constitution and the Madisonian theory of Federalism. When he publicly rejected the Charlottetown Accord as “a mess that deserves a big no,” he used the occasion to draw attention to Madison’s famous essay “Number Ten” of the *Federalist Papers*,¹⁵ and to warn about the dangers of majorities oppressing minorities. The American model, he added, “has worked out well.”¹⁶

As early as 1968, Trudeau advocated a conception of Canadian unity based on respect for individual and minority rights. Two decades later, he insisted that by the enactment of the *Charter of Rights and Freedoms*¹⁷ “firm foundations for a national identity had been laid.”¹⁸ In his *Memoirs*, he returned to this theme. “Writers and poets have always searched for the Canadian identity,” he wrote. “With the charter in place, we can now say that Canada is a society where all people are equal and where they all share some values based on freedom.”¹⁹ Not only did Trudeau regard the *Charter* as his greatest achievement, but he also

¹³ F.R. Scott, *Essays on the Constitution* (Toronto: University of Toronto Press, 1977) at 176–77.

¹⁴ In P.E. Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan, 1968) at 124.

¹⁵ A. Hamilton, J. Madison & J. Jay, *The Federalist Papers*, C. Rossiter, ed. (New York: Mentor Books, 1961) no. 10 (Madison).

¹⁶ P.E. Trudeau, *A Mess That Deserves a Big No* (Toronto: Robert Davies, 1992) at 47–48.

¹⁷ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 [hereinafter Charter].

¹⁸ “The Values of a Just Society” in T.S. Axworthy & P.E. Trudeau, eds., *Towards a Just Society* (Markham: Viking, 1990) at 379.

¹⁹ P.E. Trudeau, *Memoirs* (Toronto: McClelland & Stewart, 1993) at 323.

insisted that it provided Canada with “a new beginning.” “In the grand tradition of the 1789 *Declaration of the Rights of Man and the Citizen* and the 1791 *Bill of Rights* of the United States of America,” the *Charter* established the primacy of the individual and secured the inalienable rights of the individual. Henceforth, Canada would be a country based on “purest liberalism,” and its unity would rest on “equality among all Canadians.”²⁰

The struggle over the *Charter*, Trudeau wrote after the constitutional innovations of 1982, “was much more than the struggle between two levels of governments. It had been a struggle to establish the sovereignty of the people.”²¹ For Trudeau, the sovereignty of the people meant much more than the supremacy of the people over their governments. The people of Canada already possessed such sovereignty, even before the enactment of the *Charter*. What Trudeau wanted to establish was that Canadians were one people. They were one people, Trudeau insisted, because “no one is special” and because all Canadians are on “an equal footing.” In Trudeau’s hands, the sovereignty of the people was also used to reject the compact theory of Confederation and to deny that Québec had a claim to special status.²² Once the *Charter* established the sovereignty of the people, Canadians could dream of one Canada.

When Trudeau began his political career, he was a strong advocate of pluralism and he had a deep respect for the uniqueness of Canadians. He wanted “Canada [to] become the envied seat of a form of Federalism that belongs to tomorrow’s world.”²³ Not only did he regard Canadian pluralism as better than the American melting-pot, but he also insisted that there was “no such thing as a model or ideal Canadian.”²⁴ By the end of his career, however, he insisted that all Canadians had identical rights, that all provinces were the same, and that Canada had “a will of its own.”²⁵ But such a conception of Canada cannot accommodate either Québec or Aboriginal peoples, and it takes no account of their unique cultures and distinctive identities. Ultimately, it embodies a conception of individual rights and an understanding of Federalism that is more American than Canadian. Trudeau ended his political career much like Macdonald. Both of them were disillusioned by the failure of their respective

²⁰ Trudeau, *supra* note 18 at 363.

²¹ D. Johnston, ed., *Pierre Trudeau Speaks Out on Meech Lake* (Toronto: General Paperbacks, 1990) at 94.

²² *Ibid.* at 34, 8.

²³ Trudeau, *supra* note 14 at 178–79.

²⁴ P.E. Trudeau, *Conversation with Canadians* (Toronto: University of Toronto Press, 1972) at 33.

²⁵ Johnston, *supra* note 21 at 45.

constitutional visions, and neither of them was able to come to terms with the deep pluralism of Canadian society.

FROM PLURALISM TO FRAGMENTATION

In Canada, as elsewhere, pluralism can lead to fragmentation if adequate recognition is denied it. In its *Preliminary Report*, published in 1965, the Royal Commission on Bilingualism and Biculturalism noted that "Canada, without being fully conscious of the fact, is passing through the greatest crisis in its history."²⁶ The source of the crisis was, in part, the failure of the Macdonaldian constitution and the inability of Canadians to come to terms with their own diversity. Moreover, the constitutional innovations of 1982 have had the effect of deepening the crisis rather than resolving it. Even as those changes were being adopted, skepticism existed about their contribution to Canadian unity. Donald Smiley, for example, predicted that they would be "fragmenting rather than unifying."²⁷ Since then, even Trudeau has been compelled to admit that Canada's existence as a nation is in doubt. If Canada is going to go, he has said, let it go with a bang rather than a whimper.²⁸

A different response would be to analyze the Canadian predicament in order to better understand the roots of disunity and the challenges that confront Canadians. Some of the challenges are at least as old as Confederation, and were canvassed in the Debates of 1865. Among those who opposed Confederation were Henri Joly and Joseph Perrault. Joly based his opposition on the "great difference of nationality [between French and English], which is certainly fated to play an important part in the destinies of the future Confederation."²⁹ John Perrault was even more emphatic. French and English, he said, had come to the New World, but they had also brought their old national hatreds with them. Confederation would not work because racial hatred between French and English had not disappeared.³⁰ Christopher Dunkin, on the other hand, based his opposition to Confederation on the inability of the provinces to work together and the corresponding absence of a common allegiance to hold Canadians together. The provinces, he said, "cannot possibly work harmoniously together

²⁶ Canada, *Preliminary Report of the Royal Commission on Bilingualism and Biculturalism* (Ottawa: Queen's Printer, 1965) at 13.

²⁷ D.V. Smiley, "A Dangerous Deed: The Constitution Act, 1982" in K. Banting & R. Simeon, eds., *And No One Cheered* (Toronto: Methuen, 1983) 74 at 80.

²⁸ Johnston, *supra* note 21 at 105.

²⁹ *Confederation Debates*, *supra* note 7 at 350 (per Joly).

³⁰ *Ibid.* at 599 (per Perrault).

long; and so soon as they come into collision, there comes trouble, and with the trouble, the fabric is at an end.”³¹

The French–English problem predates Confederation; it is as old as the Conquest of 1760, and as new as Charles Taylor’s influential prescriptions for reconciling the solitudes.³² The Conquest had elements of cruelty as well as kindness, and produced a love-hate relationship between French and English. It also made Québec an enigmatic part of the Canadian identity.³³ Moreover, the Conquest can be regarded as the foundational event in Canadian history because it brought together different ways of life and necessitated the creation of a country that accommodates more than one way of life. But such accommodations are difficult to achieve, as the failed Meech Lake and Charlottetown Accords illustrate.³⁴ Québécois separatists regard such failures as inevitable on the ground that French and English constitute distinct nations and cannot exist within the same state. English-Canadian nationalists embrace a similar position; they believe that the French–English problem will be eliminated only when “lesser allegiances” are replaced by “a common Canadianism.”³⁵

Charles Taylor takes a more complex view, in part because he subtly connects the French–English problem to deep questions about modernity. With modernity, there has come a sense of loss rooted in the atomistic absorption of modern freedom, in the cold efficiency of modern technology, and in the political inability to deal with mounting worldwide catastrophes. At the same time, modernity cannot be rejected without sacrificing the advantages that it has brought, such as improvements in health care and in food production. What we need, Taylor suggests, is a work of retrieval such that the inspiring ideal of modernity, the ethic of authenticity is restored to its proper place. “We become full human agents,” Taylor explains, “through our acquisition of rich human languages ... [and] we define this [agency] always in dialogue.”³⁶ Properly

³¹ Ibid. at 530 (per Dunkin).

³² C. Taylor, *Reconciling the Solitudes* (Montreal & Kingston: McGill-Queen’s University Press, 1993).

³³ C. Dufour, *A Canadian Challenge* (Halifax: Institute for Research on Public Policy, 1990) at 25–32.

³⁴ K. McRae, “The Meech Lake Impasse in Theoretical Perspective” in A. Gagnon & B. Tanguay, eds., *Democracy With Justice* (Ottawa: Carleton University Press, 1992) 140 at 151.

³⁵ A.R.M. Lower, “Two Ways of Life: The Primary Antithesis of Canadian History” in C. Berger, ed., *Approaches to Canadian History* (Toronto: University of Toronto Press, 1967) at 28, 19.

³⁶ C. Taylor, *The Malaise of Modernity* (Concord: Anansi, 1991) at 33.

understood, the ethic of authenticity facilitates mutual recognition within and between cultural communities, works against the destructiveness of atomistic freedom, and enables human beings to see themselves as part of a larger universe. Taylor's fear is that if the malaise of modernity remains unchecked, modern societies will experience increasing fragmentation, and citizens will be "increasingly less capable of forming a common purpose and carrying it out."³⁷

In one respect, Canada is fortunate because its decentralized Federalism can provide a starting-point for the democratic empowerment of citizens necessary to cure the modern malaise. According to Taylor, decentralization overcomes fragmentation by producing successful common action and by strengthening identification with the political community. But Canada is also deficient. It has not created a common understanding that can hold its provinces, regions, and cultures together. Part of the reason for this failure is that many English-speaking Canadians increasingly embrace an American model of individual rights and exalt procedural liberalism. For them, the *Charter* is the new Canadian identity. However, *Charter* patriotism is anathema to the pluralism of Canadian society, especially to French-speaking Quebecers and Aboriginals who belong to Canada through their cultural communities.³⁸ If nothing changes, Canada can turn into a country composed of antagonistic cultural solitudes, trapped by a vicious slide into fragmentation. Such a result is not inevitable. Canadians could also find a cure for the malaise of modernity if they acknowledge the deep diversity of their country and grant each other mutual recognition.

The slide from pluralism into fragmentation can also occur in ways that are not directly connected to the French–English problem. In a stimulating essay, "The Other Crisis of Canadian Federalism," Alan Cairns has suggested that "[e]ven if we leave the Québécois nationalist pressures aside ... the grounds for optimism [in contemporary Canada] are slim." The problem with Canadian Federalism is that it has produced governments "conscious of their historic position, jealous of their prerogatives, and aggressively enterprise in the performance of their managerial responsibilities for their societies." What comes with a plurality of such governments is a crisis of Federalism. The crisis exists partly because "the working constitution" can no longer control the self-defeating competition between the big governments of Canadian Federalism. The upshot is that Canadian Federalism is itself often a source of the strains that

³⁷ Ibid. at 112.

³⁸ Taylor, *supra* note 32 at 183.

afflict Canada, and Canadians “are in imminent danger of being victimized by [their] own creations.”³⁹

Cairns’ later work develops the idea of a constitution in crisis. In “The Canadian Constitutional Experiment” he argues that the changes of 1982 are flawed: a “constitutional settlement that combines a nationalizing Charter and a provincializing amending formula is a contradiction posing as a compromise.”⁴⁰ In “Citizens (Outsiders) and Governments (Insiders) in Constitution-Making,” he explores the emergence and nature of the citizen’s constitution and the failure of the Meech Lake Accord. The Accord was an attempt by political elites to modify the constitution through executive Federalism, in an effort to satisfy the demands of Québec by granting it status as a distinct society. But ordinary Canadians rose up to protest their exclusion, to defend their rights, and to defeat the Accord.⁴¹ Cairns believes that the failure of the Accord contains important lessons for Canadians. “Major formal constitutional change,” he writes, “is a perilous enterprise. There are now many more players than formerly. Their demands appear to be increasingly incompatible. Potential losers multiply.”⁴² It is a short step from these “lessons” to Cairns’ belief that constitutional reform is the God that failed, that Canada is on the verge of fracturing, and that Canadians may be compelled to look into the abyss.⁴³

Historically, the greatest task of Canadian statecraft has been to prevent the fragmentation of Canada. The task has often focused on Québec’s place in Confederation, but it has also included the disparities and rivalries between the provinces, and increasingly confronts the proliferation of multicultural groups and the growth of Aboriginal nationalism. Fragmentation is also a problem that Québec faces because it too has significant minorities, among them Aboriginals, multicultural groups, and a large English-speaking population. In many ways, Québec’s pluralism mirrors Canada’s, with the result that both Canada and

³⁹ The quotations in this paragraph are from “The Other Crisis of Canadian Federalism” and “The Governments and Societies of Canadian Federalism” as reprinted in A.C. Cairns, *Constitution, Government, and Society in Canada* (Toronto: McClelland & Stewart, 1988) at 190, 169, 171.

⁴⁰ “The Canadian Constitutional Experiment” reprinted in *ibid.* 229 at 244.

⁴¹ “Citizens (Outsiders) and Governments (Insiders) in Constitution-Making” reprinted in A.C. Cairns, *Disruptions: Constitutional Struggles from the Charter to Meech Lake* (Toronto: McClelland & Stewart, 1991) 108 at 137–38.

⁴² A.C. Cairns, *Charter versus Federalism* (Montreal & Kingston: McGill-Queen’s University Press, 1992) at 101.

⁴³ A.C. Cairns, “Constitutional Reform: The God That Failed” (1996) 6:7 *Transactions of the Royal Society of Canada* 62–63.

Québec raise questions about the recognition of differences that are not solved satisfactorily either by proposals for assimilation or by political acts of separation. Moreover, a real danger for both Canada and Québec is a slide into fragmentation, accompanied either by the formation of antagonistic cultural solitudes or by a disintegrative social malaise that will eventually compel all Canadians to look into the abyss.

BETWEEN SECESSION AND CONSTITUTIONAL FAITH

If Canada breaks up — either because Québec secedes or because Canadians experience a failure of will — would any important values be lost? Or would the failure signify nothing? Shortly after the outbreak of the American Civil War, Abraham Lincoln asked a similar question about the United States, and provided a famous answer. Lincoln began by saying that slavery was the problem that had contributed most to the outbreak of the war, yet dissolving the Union would not solve the slavery issue. He then said: “*we cannot escape history.*” He did not know if the Union would be saved, but he believed that world historic values were at stake. “We shall nobly save, or meanly lose,” he exclaimed, “the last best, hope of earth.”⁴⁴ For Lincoln, the United States was the greatest experiment in freedom and democracy ever attempted, and its failure would signify a catastrophic defeat for these values. In the Gettysburg Address, delivered during the darkest hours of the Civil War, Lincoln returned to this theme; he prayed for “a new birth of freedom,” so that “government of the people, by the people, for the people, shall not perish from the earth.”⁴⁵

What about Canada? One of the differences between Canada and the United States is that Canadians have never had a strong sense of their country’s identity or the reason for its existence. Sometimes Canada is even said to be a non-nation, or described as an impossible country, while the Canadian mosaic is dismissed as nothing of value.⁴⁶ Québécois separatists, Aboriginal nationalists, and a number of other Canadians often take this position. The most common response to them is to insist that Canada is special because its people are culturally heterogeneous and practice tolerance. On this view, Canada is not an impossible country so much as one based on “limited identities,” in which the values of tolerance and mutual accommodation flourish.⁴⁷ A different kind of response was provided by Trudeau shortly before he became prime minister. In those

⁴⁴ R.N. Current, ed., *The Political Thought of Abraham Lincoln* (Indianapolis: Bobbs-Merrill, 1967) at 234.

⁴⁵ *Ibid.* at 285.

⁴⁶ G. Horowitz, “Mosaics and Identity” reprinted in H.D. Forbes, ed., *Canadian Political Thought* (Toronto: Oxford University Press, 1985) 352 at 363.

⁴⁷ J.M.S. Careless, “‘Limited Identities’ in Canada” (1969) 50 Can. Hist. Rev. 1.

years, he put less faith in the idea of a Charter of Rights and more faith in Federalism reconstructed on a functionalist model. By transforming Federalism into functionalism, he hoped that it would become Canada's new national ideal and even its civic religion.⁴⁸

Of all Trudeau's essays, "Federalism, Nationalism, and Reason" is the most breathtaking, and the most enigmatic. In it, he discovers a "terrible paradox," and then calls for "reason in politics." Federalism, he says, is made necessary by the principle of self-determination because many states contain several distinct groups; yet the principle of self-determination can also destroy Federalism if each group demands a state of its own. If "every sociologically distinct group within [a] nation [has] a contingent right of secession, the will of the people [is] in constant danger of dividing up."⁴⁹ For Trudeau, the way out of the paradox is to retain the federal state, but to discard the emotionalism of nationalism. Federalism will provide the basis for progress by combining different nations in one state; yet the state will now be held together by a consensus based on reason. But what is the principle of reason to which Trudeau attaches so much importance? It turns out to be functionalism in politics, which is itself "inseparable from any workable concept of federalism." For Trudeau, Federalism based on functionalism not only dissolves the terrible paradox of self-determination, but also legitimates the Canadian experiment.⁵⁰

In the case of Canada, an appeal to reason (understood as functionalism) is no more conclusive than an appeal to tolerance or mutual accommodation. One problem with both appeals is that they are inadequate responses to the kind of challenges that Canadian federalists must meet. All nationalists, said Trudeau, are reactionaries; they want "the whole tribe [to] return to the wigwams," so that they can be its tribal "kings and sorcerers."⁵¹ But such a characterization misdescribes the aims of separatists and fails to account satisfactorily for the persistence of nationalist sentiment. After all, the strongest appeal of nationalism is not to emotionalism or even to ethnic exclusivity, but to community. Nationalists insist that there is a common bond and natural identity among those who share a language or a culture. The nation, to use Benedict Anderson's phrase, is an imagined community; but it is not any less important for being imagined. In the imagined community of nationalism, culture binds citizens together; citizens regard themselves as brothers and sisters; and the bond of

⁴⁸ K.J. Christiano, "Federalism as a Canadian National Ideal: The Civic Rationalism of Pierre Elliot Trudeau" (1989–90) 69 *Dal. Rev.* 248 at 265.

⁴⁹ "Federalism, Nationalism, and Reason" reprinted in Trudeau, *supra* note 14, 182 at 189.

⁵⁰ *Ibid.* at 196.

⁵¹ *Ibid.* at 211.

“fraternity” makes it possible for millions of people to die willingly for the nation.⁵² If Canadian Federalism is to meet the separatist challenge, then it too must appeal to a value that can rival the imagined community of nationalism and the understanding of fraternity that underpins it.

The problem of fraternity not only distinguishes Canada from the United States, but also makes the American understanding of Federalism different from the Canadian.⁵³ The key challenge for American federalist theory is, and always has been, the problem of liberty. When the U.S. Constitution was first proposed, a crucial obstacle to its acceptance was the fear that large empires inevitably turn into despotisms and destroy liberty. James Madison’s famous solution to this problem ingeniously linked Federalism and freedom. By compounding the various economic interests of a large territory with a federal system of semi-sovereign states, so Madison believed, Americans could enjoy the military and commercial advantages of a large country without sacrificing either the states or republican liberty.⁵⁴ Ultimately, Madison’s solution proved unstable, because it failed to solve the problem of slavery. However, by freeing the slaves, Lincoln did not thereby deny the importance of Madisonian Federalism. He only denied that it expressed the whole of American freedom. The real touchstone of America’s constitutional faith, as Lincoln insisted, is the Declaration of Independence; in proclaiming that “all men” are equally endowed with “inalienable rights,” it ultimately justified a new birth of freedom and augmented the freedom secured by Federalism.⁵⁵

Canadian Federalism is different, in part because it must come to terms with local and ethnic particularisms. In its decision on the secession of Québec, the Supreme Court recognized the special nature of Canadian Federalism. Most often, the Court’s decision is discussed in terms of the reciprocal obligation to negotiate constitutional change, including the secession of Québec, which it articulates.⁵⁶ But to arrive at this obligation the Court had to analyze the Canadian Constitution — the principles on which it rests and the spirit which animates it. Moreover, in analyzing the Canadian Constitution, the Court provided a subtle re-interpretation of Confederation, and highlighted the

⁵² B. Anderson, *Imagined Communities* (London: Verso, 1991) at 6–7.

⁵³ My use of fraternity is intended to be gender neutral. See also R. Scruton, *A Dictionary of Political Thought* (New York: Harper & Row, 1982) at 178. With respect to fraternity, Scruton notes that “for most revolutionary purposes ‘men’ includes women, and ‘brotherhood’ sisterhood.”

⁵⁴ *The Federalist Papers*, supra note 15, nos. 10, 39, 47–53 (Madison). See also D. Adair, *Fame and the Founding Fathers* (New York: W.W. Norton, 1974) at 106.

⁵⁵ Current, supra note 44 at 88–90.

⁵⁶ Secession Reference, supra note 2 at 424.

importance of George Etienne Cartier. In the founding of Canada, Cartier was the political co-equal of Macdonald; without him, Confederation would have remained a political dream. Not only did Cartier persuade French Canada to join Confederation, but it was largely due to his efforts that the provinces were granted significant powers of their own. Macdonald was suspicious of Federalism and regarded it as the American error. Cartier was an unequivocal federalist, and created a distinctively Canadian federalist theory.

In the *Secession Reference*, the Court recognized Cartier's pivotal role in the achievement of Confederation, and adopted his understanding of Canadian Federalism. "In our federation," the Court quoted Cartier as saying, "we will have Catholics and Protestants, English, French, Irish and Scots and everyone ... will add to the prosperity and glory of the new confederation." Cartier regarded the idea of racial unification as a utopian impossibility. He also insisted that Canadians "are of different races, not so that we can wage war on one another, but in order to work together for our well-being." Like Cartier, the Court insisted that Canadian Federalism was a response to underlying political and cultural realities, and provided "the political mechanism by which diversity could be reconciled with unity." Moreover, the Court emphatically denied that the accommodations achieved by Confederation had become obsolete; it even went so far as to insist that the minority rights protected by the *Charter* were best understood as expressions of Canada's distinctive constitutional tradition. Canada's record had not been "spotless," but the recognition of minority rights continued to be the "goal ... toward which Canadians have been striving since Confederation."⁵⁷

Cartier believed not only that Federalism was desirable, but also that it made the Canadian nation possible. Confederation would bring into existence a country that recognized multiple identities and sustained a common political nationality. It would enable people with different ways of life to live, in addition, a common life. However, Confederation would not succeed if French and English had come together merely to war with each other, or if the provinces refused to recognize common ties and common objectives. Confederation would equally fail if it attempted to create an all-inclusive Canadian nationalism. What Confederation had to sustain was a country based on a new kind of nationality, which Cartier called a political nationality.

⁵⁷ Ibid. at 407, 421, 422.

Cartier's "political nationality" was a kind of nationality with which "neither the national origin, nor the religion of any individual, would interfere."⁵⁸ Cartier believed that Canadians had common sympathies and common allegiances. Once Canadians had made adequate provision for their differences, the existence of these sympathies and allegiances would enable them to identify common objectives and to acknowledge reciprocal claims upon one another. Moreover, Cartier refused to regard Confederation solely as strategic or commercial achievement. Confederation presupposed the existence of strong provinces and the continued existence of Québec's cultural distinctiveness, yet it also envisaged a degree of cooperation that would join Canadians "in the bond of common endeavour" and produce "a common, or national pride."⁵⁹

The irony of the decision in the *Secession Reference* is that the Court both recovers the original promise of Confederation and legitimates the breakup of Canada. Moreover, the Court did not simply draw attention to the pivotal role of Cartier; it also rejected both Macdonaldian centralism and the compact theory. But the Court stopped short of articulating the fundamental value that underpins Confederation and Cartier's reformulation of federalist theory. To discover the value that grounds the Canadian constitutional faith it is necessary to look elsewhere.⁶⁰ In "Constitutional Amendment and Canadian Unity," W.R. Lederman acknowledged that Québec could leave Confederation, yet he regarded Canadian Federalism as worth preserving. "Regardless of the things that may divide us," he wrote, "we have had this recognition in Canada that we are our brothers' keepers."⁶¹ At times, Pierre Trudeau also appealed to the same value. He once noted that British Columbians could have their own country, but agreed to pay taxes to the federal government "to help the less fortunate provinces." To avoid disunity, Canadians were prepared to admit "that we are our brother's keeper in all of Canada."⁶² Finally, there is Henri Bourassa's belief that, in Canada, French and English are separated by language and religion, "but united by a sentiment of brotherhood."⁶³

⁵⁸ Confederation Debates, supra note 7 at 60 (per Cartier). See also S.V. LaSelva, *The Moral Foundations of Canadian Federalism* (Montreal & Kingston: McGill-Queen's University Press, 1996) at xi–xii, 22–27.

⁵⁹ J.I. Cooper, "The Political Ideas of George Etienne Cartier" (1942) 23 *Can. Hist. Rev.* 286 at 291.

⁶⁰ For an insightful discussion of the American constitutional faith, see S. Levinson, *Constitutional Faith* (Princeton: Princeton University Press, 1988).

⁶¹ Reprinted in W.R. Lederman, *Continuing Canadian Constitutional Dilemmas* (Toronto: Butterworths, 1981) at 103.

⁶² Trudeau, supra note 24 at 207–208.

⁶³ J. Levitt, ed., *Henri Bourassa on Imperialism and Biculturalism, 1900–1918* (Toronto: Copp Clark, 1970) at 107.

IS THE CONSTITUTIONAL GAME WORTH THE CANDLE?

Canada and the United States rest on different fundamental values. The American founding fathers, said Lincoln, “brought forth … a new nation, conceived in liberty.”⁶⁴ At Confederation, the deepest aspiration of Canadians was that French and English would “bury the hatchet and … live amicably together.”⁶⁵ To Americans, Canada has often seemed little more than an association of particularisms, and a reminder of the dangers of balkanization. Canada, it has been suggested, is “a confederation of groups” with group membership so strong that it is unrealistic “to envisage … a common citizenship.”⁶⁶ Some Canadians share this view. But there is more to the Canadian experiment. In 1867, Canadians adopted Federalism not because they wished to secure for themselves the kind of freedom promised by Madisonian pluralism, but because they had to respond to multiple identities and competing ethnic nationalisms. For Canadians, the most authentic justification of their brand of Federalism was that it enabled people with different identities to live under a common constitution and to recognize the common duties of citizenship presupposed by the Canadian political nationality. Since Canadians could not take nationhood for granted, their constitutional experiment differed significantly from the American model and ultimately appealed to fraternity rather than liberty.

Underlying Confederation is Cartier’s defence of a Canadian political nationality which presupposes that “fraternity” can and should exist between people of different cultures and religions. In his last book, Donald Smiley praised Cartier’s “noble vision” of Confederation, and endorsed his conception of Canada as a country that allows more than one way of life to flourish.⁶⁷ In Cartier’s understanding, Canadian Federalism enables citizens to have different ways of life, as well as a common way of life. If Canada fails, if Canadians are unable to sustain a Canadian political nationality, the failure would be a catastrophic defeat for Cartier’s vision of Confederation and the complex value of fraternity to which it ultimately appeals. But Canada continues to exist, despite the failure of the Macdonaldian constitution and the malaise that has accompanied Trudeau’s constitutional innovations. For Canadians who believe in pluralism but reject fragmentation, and who regard Canada as resting on different values from the United States, Cartier’s vision of Confederation may

⁶⁴ Current, *supra* note 44 at 284.

⁶⁵ A.R.M. Lower, et al., *Evolving Canadian Federalism* (Durham: Duke University Press, 1958) at 16.

⁶⁶ N. Glazer, *Ethnic Dilemmas 1964–1982* (Cambridge: Harvard University Press, 1983) at 268.

⁶⁷ Smiley (1987), *supra* note 1 at 143.

be the best bet in the game of constitutional politics and the most authentic articulation of the Canadian constitutional faith.

LE CAS DU QUÉBEC À LA LUMIÈRE DU DÉBAT TAYLOR-HABERMAS

Donald Ipperciel*

The fate of Quebec is of interest not only to political scientists and historians but also to philosophers. Charles Taylor examined this question, but he is not the only one, as the German philosopher, Jürgen Habermas also pronounced himself on the Quebec "case." Consequently, Donald Ipperciel tries in his article to cover all the subtleties of the Taylor/Habermas debate.

Le destin du Québec n'intéresse pas seulement les politologues ou les historiens, mais aussi les philosophes. Charles Taylor s'est penché sur la question, mais il n'est pas le seul puisque le philosophe allemand Jürgen Habermas s'est aussi prononcé sur le « cas » du Québec. Donald Ipperciel tente par conséquent dans son article de cerner toutes les subtilités du débat Taylor/Habermas.

Le « cas » du Québec représente, on le sait, cette situation à l'intérieur du débat politique et constitutionnel canadien dans laquelle le discours public d'une province qui se perçoit comme une nation, ne s'accorde pas avec le discours politique de sa contre-partie, la nation anglo-canadienne. Cette divergence est interprétée de diverses façons, selon les allégeances politico-philosophiques et aussi selon les antécédents culturels. La philosophie y a trouvé un intérêt en la personne de Charles Taylor¹ et Jürgen Habermas,² qui se sont penchés sur la question du Québec. S'ensuit un débat qu'il est bon peut-être d'essayer de cerner.

Il est probable qu'au-delà du débat sur sa souveraineté, le cas du Québec met en relief un problème qu'on peut aujourd'hui estimer central en philosophie politique. Il s'agit de l'articulation de la sphère des droits civiques, laquelle se veut universaliste, et celle de la culture et de l'identité collective qui, elle, est particulariste. Plus que l'exemplification d'une idée philosophique, le cas du Québec apparaît heuristique. En effet, le modèle américain ou allemand aborde

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¹ Nous nous en remettons pour la position taylorienne au texte suivant : C. Taylor, *Multiculturalisme: Différence et démocratie*, Paris, Aubier, 1994 [ci-après *Multiculturalisme*].

² La réponse de Habermas est formulée dans le texte suivant: J. Habermas, « La lutte pour la reconnaissance dans l'État de droit démocratique » dans J. Habermas, *L'Intégration républicaine*, Paris, Fayard, 1998, 205 [ci-après *Lutte pour la reconnaissance*].

la question de la tension universalisme-particularisme³ à partir du présupposé de l'État-nation, une situation qui correspond à leur réalité géopolitique. Le cas du Québec, auquel pourraient s'ajouter celui de la Catalogne, de la Wallonie, du Tessin, etc., permet de mettre en relief certaines lacunes dans ces modèles; en quoi on reconnaît sa qualité heuristique.

LA POLITIQUE DE RECONNAISSANCE

La philosophie politique de Charles Taylor s'articule autour des concepts d'identité et de reconnaissance.⁴ Conformément à la dialectique du maître et de l'esclave,⁵ l'identité authentique de l'individu passe par la reconnaissance de l'autre. Ainsi, le dialogue n'est pas simplement un attribut adventice de l'être humain mais, pour reprendre le vocabulaire de Heidegger, un existential, c'est-à-dire un trait fondamental du sujet qui structure son essence. La formation du Soi passe par la confrontation à l'autre et la reconnaissance par l'autre.⁶ Conséquemment, si l'autre renvoie une image négative de soi, cette image s'intégrera à l'identité de l'individu. Souvent, comme l'ont démontré les théories du post-colonialisme,⁷ c'est de cette image négative que doivent se libérer les cultures assujetties culturellement. Soi et autre sont ici rapprochés dans une dialectique qui les rend indissociables.

Selon Taylor, la politique de la reconnaissance a donné lieu historiquement à deux formes distinctes: la politique d'universalisme et la politique de la différence. La première est née du passage de la société d'honneur, dans laquelle la reconnaissance vise les priviléges, donc l'inégalité, à la société égalitaire, dans

³ L'utilisation du doublet « particularisme-universalisme » n'est pas nouvelle dans l'étude des phénomènes sociaux, voir T. Parsons, *The Social System*, New York, The Free Press, 1951 à la p. 61-63 et *passim*, et ses successeurs, tel S. M. Lipset, *Revolution and Counter-revolution*, New York, Anchor Books, 1970 à la p. 38 et *passim*.

⁴ Voir entre autres C. Taylor, « L'atomisme » dans et trad. par P. de Lara, *La liberté des modernes*, Paris, PUF, 1997, 223 [ci-après L'atomisme].

⁵ Axel Honneth développe une théorie politique de la reconnaissance fondée non pas sur la dialectique du maître et de l'esclave, présente dans la *Phénoménologie de l'Esprit* de Hegel, mais sur le concept de lutte pour la reconnaissance, telle qu'elle se présente dans la philosophie de jeunesse de Hegel, celle de la période de Iéna. Voir A. Honneth, *Kampf um Anerkennung*, Francfort-sur-le-Main, Suhrkamp, 1994.

⁶ On reconnaît ici la thèse taylorienne de la socialité de l'individu, laquelle s'oppose à l'atomisme des ultra-libéraux. Voir L'atomisme, *supra* note 4, aux pp. 223-254.

⁷ E. Saïd, *Orientalism*, New York, Vintage Books, 1979. Taylor se réclame plutôt, dans ce contexte, de F. Fanon, *Les Damnés de la terre*, Paris, Maspéro, 1968. On pourrait aussi s'en remettre à A. Memmi, *Portrait du colonisé*, Montréal, L'Étincelle, 1972.

laquelle la reconnaissance vise la dignité égale de tous les citoyens. La politique de l'universalisme lutte ainsi contre la discrimination et prône la cécité face aux différences entre les citoyens. La politique de la différence, quant à elle, met l'accent sur ce qui distingue les individus les uns des autres: ce qui fait l'objet de la reconnaissance, c'est précisément l'identité unique et irréductible de chaque individu ou collectivité.

Or, selon Taylor, ces deux formes de la politique de la reconnaissance se heurtent l'une à l'autre: « Le reproche que la première politique fait à la seconde est de violer le principe de non-discrimination. La seconde reproche à la première de nier toute identité en imposant aux gens un moule homogène qui ne leur est pas adapté ».⁸ Qui plus est, ce « moule homogène » ne serait pas aussi neutre que le prétend la culture dominante. En fait, il semble que l'universalisme cacherait un particularisme qui n'aurait d'universel que la prétention.

Le cas du Québec représente une figure emblématique de ce choc des politiques. Le conflit qui oppose le Québec au Canada anglais se réduirait, selon Taylor, à l'opposition des deux politiques de reconnaissance. Alors que le Canada anglais se fait le porte-flambeau de l'universalisme, de la non-discrimination et des droits individuels pareils chez tout un chacun, le Québec, suite à un désir de survie ou d'affirmation identitaire, chercherait à mettre en valeur des intérêts particularistes afin de préserver son identité propre. Aux droits individuels du libéralisme classique, le Québec opposerait des droits collectifs qui cherchent à assurer un mode de vie idéal. L'opposition des deux points de vue devient patente dans les politiques positives adoptées par le gouvernement québécois. L'objectif collectif de la survie et de l'affirmation de la culture québécoise restreint certains droits individuels, comme le choix de la langue d'éducation des immigrants, la langue de travail dans les moyennes et grandes entreprises, etc. Taylor cherche précisément à articuler l'universalisme et le particularisme des intérêts publics, à articuler le juste et le bon, les droits et la vie idéale. Comment donc accorder deux perspectives qui entrent en conflit?

La réponse de Taylor à cette question se résume par sa thèse de la *présomption de l'égalité des valeurs*. Cette présomption commande une attitude d'ouverture envers les autres cultures; laquelle ouverture permet une réelle reconnaissance. Elle prédispose aussi le sujet de la présomption à modifier ses propres pré-jugés, conformément au modèle gadamérien de la fusion des horizons et, ce faisant, à respecter l'altérité de l'autre culture. Le principe veut que chaque culture recèle une « vérité » digne d'être reconnue. La présomption

⁸ *Multiculturalisme*, supra note 1 à la p. 63.

de l'égalité des valeurs est davantage une attitude qui cherche à moduler un *habitus* qu'une norme qui définirait une obligation.

RÉPLIQUE DE HABERMAS

Habermas est connu pour son universalisme, bien que celui-ci soit formel (ou procédural) plutôt que matériel. Tout comme Rawls,⁹ Habermas postule de plus la préséance du Juste sur le Bon parce que le premier définit une norme applicable *pour tous*, alors que le Bon est par essence un Bon *pour nous*, donc particulariste. L'idée du *républicanisme* rassemble chez Habermas cette conception de la prééminence du Juste et des droits civiques ayant une portée universelle. Il n'est donc pas surprenant qu'il ait pris le contre-pied de la position de Taylor.

Bien qu'il convienne du jeu dialectique de reconnaissance réciproque dans la constitution de l'individu,¹⁰ Habermas défend une théorie individualiste des droits¹¹ qui rendrait compte également des phénomènes collectifs tels l'*ethos* (c'est-à-dire des habitudes et attitudes ancrées socialement et visant la vie idéale),¹² les formes de vie culturelles et les identités collectives. La dimension éthique n'est donc pas ignorée, mais elle ne prend qu'un rôle secondaire. En fait, selon Habermas, l'opposition entre individu et collectivité, entre intérêts universalistes et particularistes, procède d'une interprétation fautive qui n'a pas su reconnaître le lien intrinsèque qui unit l'autonomie privée à l'autonomie publique, l'État de droit à la démocratie. Il rappelle le principe rousseauiste de la souveraineté démocratique où les destinataires de la loi se perçoivent en même temps comme ses destinateurs.¹³ L'autonomie privée est la conséquence de l'autonomie publique d'agents sociaux qui, par la délibération sur l'intérêt public, déterminent au préalable l'extension des libertés individuelles.¹⁴

⁹ J. Rawls, *Théorie de la justice*, Paris, Seuil, 1997.

¹⁰ J. Habermas, « L'individuation par la socialisation » dans *La Pensée postmétaphysique*, Paris, Armand Colin, 1993, 187.

¹¹ Lutte pour la reconnaissance, *supra* note 2 à la p. 205.

¹² Hegel emploierait ici le terme de *Sittlichkeit*.

¹³ En termes rousseauistes: la personne publique est à la fois sujet et citoyen. Un écho lointain de ce principe se retrouve aussi dans les *Lois* de Platon (643e): le « citoyen accompli », produit de l'éducation, sait « commander et obéir selon la justice » ($\alphaρχειν \tau\epsilon \kappa\alpha \alphaρχεσθαι \epsilon πιστάμενον μετα δίκης$). C'est-à-dire qu'il est à la fois sujet et chef et ce, *μετα δίκης*, avec justice ou à l'intérieur des paramètres du juste.

¹⁴ Habermas cite en exemple la quête d'égalité matérielle du mouvement féministe: « les droits subjectifs, qui sont censés garantir aux femmes une vie privée autonome, ne peuvent pas être formulés de façon adéquate si les personnes concernées n'ont pas préalablement articulé et

Inversement, l'autonomie publique d'une collectivité est rendue possible grâce à une libre participation délibérative du citoyen, à qui on accorde une liberté politique (droit de conscience, droit de parole, etc.). Qui plus est, les libertés subjectives doivent être appliquées à une situation précise, ce qui ne peut se faire sans un débat public sur les conditions d'applicabilité à l'intérieur d'un contexte de signification propre à une collectivité. Un tel débat est précisément l'expression de l'autonomie publique.

La mise en relief de la co-originarité des autonomies publique et privée permettrait de réintégrer la « politique de la reconnaissance » à une théorie individualiste des droits. Ainsi, la critique de Habermas à l'endroit de Taylor ne porte pas tant sur l'idée de la politique de la reconnaissance elle-même que sur la présupposition qu'il faille *compléter* la théorie individualiste des droits par une telle politique.

Habermas prétend que seul un libéralisme abstrait soutient que l'on doit faire fi des formes de vie particularistes pour faire valoir l'universalisme des droits fondamentaux.¹⁵ L'abstraction de la politique libérale disparaît une fois reconnue l'immanence de l'autonomie publique à la liberté individuelle, autonomie qui s'exprime dans la discussion publique sur les considérations concrètes de l'application de la loi. Selon Habermas, le droit passe par la démocratie; entendu qu'il s'agit ici de la démocratie communicationnelle et de ce fait procédurale.

Lui-même champion d'une forme d'universalisme, Habermas reconnaît ce qu'il appelle une « inévitable imprégnation éthique »¹⁶ de l'État de droit, parce qu'à l'encontre de la morale, le droit ne s'applique qu'à une société concrète.

justifié, dans le cadre de débats publics, les aspects chaque fois significatifs pour l'égalité ou l'inégalité de traitement des cas typiques. L'autonomie privée des citoyens égaux en droits ne peut être assurée qu'en activant leur autonomie civique », La lutte pour la reconnaissance, *supra* note 2 à la p. 213.

¹⁵ Kymlicka adopte une stratégie similaire à Habermas dans *Liberalism, Community and Culture* lorsqu'il prétend que si le libéralisme doit s'assurer que l'individu puisse faire des choix personnels judicieux (par quoi se définit sa liberté), il doit du même coup promouvoir la culture qui produit le contexte de choix: « Liberals should be concerned with the fate of cultural structures [...] because it's only through having a rich and secure cultural structure that people can become aware, in a vivid way, of the options available to them, and intelligently examine their values ». Dans W. Kymlicka, *Liberalism, Community and Culture*, Oxford, Clarendon Press, 1989, à la p. 165 [ci-après *Liberalism, Community and Culture*].

¹⁶ Le traducteur emploie ici le terme de « coloration » éthique. *L'intégration républicaine*, *supra* note 2 à la p. 219 et *passim*.

« Tout ordre juridique n'est pas seulement le reflet du contenu universel des droits fondamentaux, mais aussi l'expression d'une forme de vie particulière »¹⁷. En ce sens, des considérations quant à la bonne vie peuvent être invoquées comme raisons dans les délibérations qui contribuent à une formation rationnelle de la volonté populaire. En ce sens également, la dimension éthico-politique représente aux yeux de Habermas un aspect central de la politique. En fait, à l'exception de droits fondamentaux qui se fondent exclusivement sur la perspective morale, les normes juridiques sont toujours aussi fondées sur des considérations éthico-politiques.¹⁸

Le concept de « patriotisme constitutionnel », terme qu'utilise Habermas depuis la fin des années 80,¹⁹ illustre bien l'inéluctable imbrication de l'*ethos* et du droit formel. L'idée de constitution formelle ne pourrait, à elle seule, être un moteur assez puissant pour motiver et toucher la population. Selon Habermas, non seulement l'idée de constitution se fond-elle à des considérations éthiques, mais elle doit nécessairement s'y fonder si elle veut devenir un véritable agent social. L'expression apparemment antinomique, « patriotisme constitutionnel », traduit l'idée du mariage de la raison (incarnée par la constitution, les droits universels) et du cœur (ce à quoi réfère le patriotisme en tant que poussée affective et particulariste).

Alors que d'emblée, parce qu'universaliste, la position d'Habermas semblait pouvoir servir de munitions à ceux qui s'opposent à la politique particulariste du Québec, une lecture de son texte, précisément sur le cas du Québec, révèle qu'il en est tout autrement. La description circonstanciée de Habermas, dans laquelle le républicanisme s'amalgame à l'*ethos*, pourrait au contraire permettre une justification théorique des politiques particularistes du gouvernement québécois, tel sa politique linguistique. Le cadre établi par Habermas permettrait notamment d'invoquer le thème éthique de la *survivance* ou de l'affirmation identitaire, bien que ces concepts aient une substance particulariste. On pourrait souscrire au droit légitime de *tous* les individus d'assurer la survie de leur culture et de leur langue, ces dernières leur garantissant un contexte social qui nourrit l'autonomie privée. C'est l'argument même de Habermas, que les conditions sociales du débat public assurent l'autonomie privée, en quoi on reconnaît le *telos* du libéralisme. Ainsi

¹⁷ La lutte pour la reconnaissance, *supra* note 2 à la p. 221.

¹⁸ J. Habermas, *La paix perpétuelle*, Paris, Cerf, 1996 à la p. 89.

¹⁹ J. Habermas, « Über den doppelten Boden des demokratischen Rechtsstaats », *Eine Art Schadensabwicklung. Kleine Politische Schriften VI*, Francfort, Suhrkamp, 1987, 19 sq., et « Geschichtsbewußtsein und posttraditionale Identität », *ibid.* en particulier la section III, p. 168 *sq.*

se trouve préservée l'idée d'universalisme, bien qu'elle soit amalgamée à une substance particulariste. Par cet argument, on se conforme à l'idée habermassienne selon laquelle « le processus démocratique doit assurer *simultanément* l'autonomie privée et l'autonomie publique [...] L'autonomie privée des citoyens égaux en droits ne peut être assurée qu'en activant leur autonomie civique »²⁰. Dans cette optique, un débat public sur les présupposés linguistiques de l'autonomie privée peut mener à la conclusion qu'il faille défendre la langue contre les pressions assimilatrices de l'extérieur.

La variante habermassienne du libéralisme permet donc d'articuler théoriquement les considérations particularistes à l'universalisme des droits civiques. La politique linguistique peut ainsi être formulée en termes qui satisfont les exigences d'un débat public rationnel, même si un certain particularisme s'amalgame en elle. Dans de tels arguments où le particularisme se fond à l'universalisme, il faut cependant s'assurer qu'aucune forme de vie ne sera privilégiée au détriment de l'autre, nous rappelle Habermas. Il faut que chaque individu ait la possibilité, fondée en droit, de perpétuer la culture dont il a hérité, ou de s'en émanciper:²¹

Dans les sociétés multiculturelles, la coexistence à égalité de droits entre les différentes formes de vie offre à chaque citoyen la chance de grandir sans être offensé dans le monde culturel de ses origines et d'y éléver ses enfants, c'est-à-dire la chance de s'expliquer avec cette culture comme avec toute autre, de la perpétuer de façon conventionnelle ou de la transformer, mais aussi celle de se détourner avec indifférence de ses impératifs ou de s'en émanciper dans un esprit auto-critique, pour vivre, dorénavant, sous l'aiguillon d'une rupture consciente avec la tradition, voire avec une identité scindée en deux.

Dans cette perspective, le choix de l'appropriation ou du rejet d'une culture doit se faire librement. Or, d'aucuns admettront que des pressions énormes s'exercent sur la culture québécoise, des pressions provenant avant tout du poids démographique disproportionné de la population anglophone en Amérique du Nord. Dans un cadre non-réglementé, ces pressions pousseraient naturellement la minorité francophone à s'assimiler. Il y a donc coercition, bien qu'elle soit anonyme. Peut-on alors parler de « coexistence à égalité de droits entre les différentes formes de vie », en l'occurrence de la nation anglo-canadienne et franco-canadienne? Évidemment non; de par sa précarité, la forme de vie du

²⁰ La lutte pour la reconnaissance, *supra* note 2 à la p. 213.

²¹ *Ibid.* aux pp. 227-228.

Québec francophone se trouve dans un état d'inégalité face à celle de la culture dominante au Canada.²² Tout discours qui se cacherait derrière le concept d'égalité pour interdire le particularisme de la politique linguistique du Québec serait abstrait et idéologique. Sous des oripeaux en apparence universalistes ces discours dissimuleraient un autre particularisme, celui de la nation dominante. Aux aspirations particularistes du Québec s'ajoute une visée universaliste: celle d'être en mesure d'offrir une société cohésive qui sache intégrer politiquement et socialement ses citoyens et assurer de ce fait les assises d'une démocratie communicationnelle.

Une fois reconnue l'imbrication de l'*ethos* au droit républicain, c'est donc dans l'articulation de ces deux dimensions que se joue, selon Habermas, l'essence normative de l'État de droit. C'est dans ce passage de l'être au devoir-être, que se distingue véritablement la position de Habermas à l'égard des communautariens comme Taylor. Conformément à la théorie de l'agir communicationnel, Habermas distingue la forme de la matière du consensus social. Alors qu'aucun consensus matériel ne peut être envisagé dans une société pluraliste, la société démocratique trouve son fondement dans un consensus quant à la forme; à savoir, la procédure qu'il faut suivre pour légitimer l'action politique et juridique. Ainsi, pour nommer quelques règles procédurales, tout acteur qui prend part aux délibérations publiques doit reconnaître l'autre comme interlocuteur légitime, quelles que soient ses positions idéologiques; il doit avancer des raisons à ses opinions, lesquelles raisons s'exposeront à la critique et au débat; il doit présupposer la faillibilité de ses propres positions, et ainsi de suite. En conséquence, on dépeint une société pluraliste quant aux *ethoi*, mais monolithique quant à la procédure communicationnelle. C'est la raison pour laquelle Habermas propose de séparer l'intégration politique, tout à fait légitime dans le cadre d'un État de droit démocratique, de l'intégration éthique qui imposerait des formes de vie spécifiques.

DIFFICULTÉ EMPIRIQUE

De prime abord, cette position circonstanciée et raisonnable de Habermas semble probante. On peut même reconnaître, relativement à Taylor, une certaine supériorité théorique de la position habermassienne en ce qu'il réussit à reconstruire l'État de droit démocratique à partir du seul concept de l'autonomie

²² Kymlicka défend une thèse similaire dans la question de la culture autochtone, eu égard à la culture anglo-canadienne. *Liberalism, Community and Culture*, supra note 15 à la p. 151.

individuelle. Taylor doit, quant à lui, invoquer divers principes pour rendre compte d'une société juste.

Cependant, la théorie habermassienne n'est pas sans présenter quelques difficultés. L'une de celles-ci est d'ordre empirique. Selon Habermas, l'*ethos* n'entre pas en conflit avec le républicanisme, les deux ayant leur sphère distincte d'opération malgré leur amalgamation dans les situations concrètes. Le principe du droit égal pour tous est tout aussi possible, selon Habermas, dans le cas de la coexistence de groupes ethniques partageant des formes de vie divergentes à l'intérieur d'un même État et ce, sans qu'il faille en appeler d'un nouveau type de politique.

Or, l'expérience ne semble pas vouloir confirmer un tel état d'harmonie. La situation du Québec est exemplaire de l'antagonisme entre les visées éthico-collectives et individuelles. La politique linguistique du Québec, par exemple, se heurte aux droits individualistes d'une portion de la population qui se sent lésée. Habermas, pour sa part, affirme que « tant que le législateur politique est guidé par les principes de l'État de droit, et donc par l'idée de réaliser les droits fondamentaux, l'*ethos* d'une nation politique, traduit en termes juridiques, ne peut entrer en contradiction avec les droits civiques »²³. Il s'ensuit, dans cette optique, que ou bien le Québec ou bien la nation anglo-canadienne ne cherche nullement à réaliser les droits fondamentaux. Dans le premier cas le Québec devrait se rétracter, dans le second les anglo-Canadiens devraient accepter les politiques linguistiques du Québec. D'une façon ou d'une autre, Habermas pourrait interpréter la situation comme l'échec de la discussion publique dans laquelle se trouvent les deux groupes, à cause de déformations de toutes sortes.

Et si ces déformations étaient structurelles et par conséquent entravaient toujours la discussion? Elles devraient alors être incluses dans tout modèle d'ordre pragmatique. C'est courir le risque, en les négligeant, de les laisser agir à notre insu. De ce fait, les limites de la discussion doivent elles-mêmes devenir objet de la discussion.

Malgré toutes les précautions qu'il prend pour ancrer l'individualité dans la socialité, Habermas semble commettre une réduction individualiste lorsqu'il aborde la question de l'*ethos*. Il semble presupposer que, par un effort de réflexion, l'individu est chaque fois en mesure de choisir la forme de vie qu'il juge adéquate. C'est là une présupposition qu'il partage avec les penseurs libéraux, dont Rawls n'est pas le moindre. Or, bien qu'il soit indéniable que

²³ Lutte pour la reconnaissance, *supra* note 2 à la p. 232.

l'individu ait le pouvoir de prendre de telles décisions, il ne peut pas toujours en jouir. Non seulement une grande part de l'*ethos* détermine l'individu malgré lui à un niveau pré-conscient, mais la structure même de l'*ethos* est souvent de nature collective,²⁴ donc non-disponible. Si un quidam désire mener une vie uniquement en français, une simple décision personnelle ne suffira pas. Le caractère collectif de l'*ethos* proscrit ici tout décisionnel: on ne peut pas disposer d'une collectivité. Autre exemple: bien que par simple volition, un chrétien puisse renier le christianisme en tant que religion, il ne peut répudier le christianisme en tant que culture. En d'autres mots, il ne pourra se méprendre sur les références culturelles propres au christianisme et ne pourra laisser d'être façonné par les valeurs chrétiennes au sein desquelles il a grandi. Ici, même une négation radicale de ces valeurs témoigne de leur omnipotence. De toute évidence, on peut tirer la conclusion que la discussion publique s'infléchira nécessairement selon des canaux préétablis par les *ethoi*. On reconnaît ainsi une source de conflit potentiel entre les aspirations éthiques et civiques et, du fait, une première déformation éthique de la discussion. S'il doit être fructueux dans les analyses concrètes comme dans le cas du Québec, le discours théorique de Habermas doit être complété par une analyse des déformations structurelles de la communication. Le souverainiste pourra alors contester que l'État-Nation constitue un espace qui réduit l'importance de telles déformations; le fédéraliste, muni de l'analyse des déformations, pourra défendre un fédéralisme qui prendrait en compte et qui proposerait une solution aux problèmes inhérents à la discussion inter-culturelle.

Une seconde déformation éthique de l'éthique de la discussion, pour reprendre l'expression même de Habermas, se retrouve dans son application. Toute discussion réelle comporte, au-delà des contraintes formelles et procédurales identifiées par Habermas, des exigences concrètes de réalisation qui dépendent chaque fois des cultures dans lesquelles elles se déploient. Ainsi, les interlocuteurs doivent parler une langue commune (qu'ils utilisent directement ou par le truchement de la traduction); posséder des canaux d'échanges communs (publics: médias, assemblées, lignes ouvertes; privés: réseaux d'amis et de connaissances, etc.); utiliser des références culturelles pertinentes; partager les valeurs et les conceptions du monde qui forment les *enthymèmes* communs; saisir les non-dits permettant d'harmoniser les interactions sociales, et ainsi de suite. Les nations ou les communautés qui partagent ces pratiques, que ce soit à l'intérieur du modèle confédéral ou inter-étatique, seront mieux en mesure d'éviter l'échec de la discussion, alors que les autres feront face à des entraves

²⁴ Kymlicka définit la restriction éthique en termes de « context of choice » déterminé par l'héritage culturel. *Liberalism, Community and Culture*, *supra* note 15 aux pp. 164-165.

supplémentaires à la discussion. Le débat quant au caractère « distinct » du Québec semble graviter autour d'un tel problème. L'idée des deux solitudes où la production littéraire et savante d'une nation n'est pas reçue par l'autre en est un autre exemple. Non pas que de tels écarts éthiques soient irréconciliables, mais ils représentent un obstacle supplémentaire à ceux qui préexistent à l'intérieur d'une même nation. Ces obstacles doivent être intégrés à la théorie si celle-ci veut prétendre à une quelconque efficacité.

Enfin, la réalité de la géographie politique confirme l'existence de résistances objectives face à l'idée d'une union purement rationnelle.²⁵ Si le débat public, dans sa double nature éthique et civique, exhibait l'harmonie que semble dépeindre Habermas, l'existence des pays indépendants ne pourrait être justifiée et l'on verrait ces derniers converger invariablement vers un fédéralisme cosmopolite à l'échelle planétaire. Habermas semble parfois favorable à une telle idée.²⁶ Les montées nationalistes qui découlent des tentatives récentes d'union politique, à l'exemple de l'Union européenne, et l'effritement des grands empires, tel que l'Union soviétique, pointent plutôt vers des résistances éthiques qui doivent être envisagées si l'on veut éviter de poursuivre une politique abstraite et étrangère à la réalité. Malgré tout idéal républicain, force est de reconnaître que les nations sont des entités à l'intérieur desquelles une certaine cohésion est assurée par des affinités de toutes sortes. Cette cohésion, à n'en pas douter, permet un débat public qui augmente les chances de consensus ou de compromis.

²⁵ W. Kymlicka, « Communautarisme » dans M. Canto-Sperber, dir., *Dictionnaire d'éthique et de philosophie morale*, Paris, PUF, 1996, à la p. 270.

²⁶ Plus qu'une intégration simplement européenne, telle que défendue dans « 1989 dans l'ombre de 1945: Sur la normalité d'une future République berlinoise » (1999) 3 Symposium 53 (Version allemande: « 1989 im Schatten von 1945... » *Die Normalität einer Berliner Republik*), *La Paix perpétuelle*, supra note 18 aux pp. 76-78, semble promouvoir une intégration planétaire.

CULTURAL MYTHS AND POLITICAL REALITIES, OR WHY QUÉBEC WILL NEVER SEPARATE

Barry Cooper*

Cultural conflict in liberal societies always looks much more serious than it ever actually becomes. Certainly the cultural conflict between Québec and western Canada looks grave indeed. One could say as much, however, about the cultural conflict between the west and the east, and the east, in the eyes of westerners, includes Québec. Indeed, the east occupies the same symbolic space in the mythology of the west as English-Canada does in Québec. The political reality — to say nothing of economics and business — is another matter. It is characterized in liberal societies as a realm of negotiation and compromise, of deal-making. Québec has enjoyed enormous success in its political achievements and will doubtless continue to do so. The only conditions under which Québec could seriously threaten Canada's political stability would entail a transformation of a liberal society in that province into a hostile and distinctly anti-liberal one. There is no evidence that such a transformation is under way. Accordingly, threats by sovereignists are, and will continue to be, a strenuous and assertive form of bargaining.

En surface, la division politique et culturelle entre le Québec et l'Ouest canadien semble très grave. Toutefois, pour Barry Cooper, le sérieux de la situation a été grandement exagéré. À travers une analyse du rapport de Lord Durham, Cooper démontre pourquoi le Québec ne se séparera pas et que dans le cas, où un jour, il deviendrait indépendant, cela ne ferait aucune différence pour le Canada. La réalité politique, économique et d'affaires ne laisse pas entrevoir le même fossé. Le Québec a enregistré d'énormes succès au sein de la Fédération en jouant le jeu d'une société libérale. Or, pour que le Québec devienne vraiment une menace pour le Canada, il faudrait qu'il se transforme en société non-libérale. Il n'y a aucun indice qu'une telle transformation est en place. Par conséquent, la menace des souverainistes est exagérée.

CULTURAL MYTHS AND POLITICAL REALITIES

As much as I admire lawyers, I prefer not to sound like one. Nevertheless, I should like to add to my subtitle, “Or, why Québec will never separate,” a sub-subtitle, “Or, in the alternative that it does, it will not matter.” Again this must be qualified: it will not matter in terms of the internal political reality that constitutes a liberal society. In the alternative that Québec separates from Canada there will of course be transaction costs, which in turn will be sufficiently high to return the weight of probability to my subtitle.

On the surface the political and cultural division between Québec and the West looks serious, just as it looks as though the separatists are a threat to the

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political, economic, and territorial integrity of Canada. It is, however, easy to exaggerate the seriousness of differences. To show why this is so I will first make a few remarks on politics and religion, followed by a brief analysis of Lord Durham's *Report*.¹ With clarity provided by Durham we can better see the obscurity of a series of denials advanced chiefly by antiliberal intellectuals. One can discuss this phenomenon in terms of "political religion," a concept widely employed in contemporary German political science. It can also be understood in terms of Vico's famous symbol, the barbarism of reflection.² In either case, the intellectual underpinning of separatist political action simply sustains some very assertive bargaining, which necessarily reinforces the common liberalism of North America.

RELIGION AND POLITICS

On 10 January 1799, Joseph-Octave Plessis, later Bishop of Québec, preached a sermon celebrating Admiral Nelson's victory at Aboukir, the Battle of the Nile. To Nelson, said Plessis, "belongs the glory of having been the instrument used by the Lord to humble a proud and unjust power."³ He went on to thank the Lord for the benefits won by Nelson's success, mentioning three in particular: France was weakened, Britain was strengthened, and "it assures the happiness of this Province in particular."⁴

Even to his congregation the words of Monsignor Plessis must have seemed odd, since he immediately drew attention to the difficulty of calling enemy those who were so long united by ties of blood, friendship, commerce, language, and

¹ G. Craig, ed., *Lord Durham's Report: An Abridgement of Report on the Affairs of British North America by Lord Durham* (Toronto: McClelland & Stewart, 1968) [hereinafter *Lord Durham's Report*]. This version is more accessible than C.P. Lucas' three-volume edition: C.P. Lucas, ed., *Lord Durham's Report on the Affairs of British North America*, vol. 2 (Oxford: Clarendon, 1912). Accordingly, where possible, reference is made only to the Craig edition. Where not, then to volume 2 of Lucas.

² G. Vico, *New Science*, trans. T.G. Bergin & H.M. Finch (Ithica: Cornell University Press, 1984) at para. 1106. See also B. Cooper, "Quebec Nationalism and Canadian Politics in Light of Voegelin's *Political Religions*" in G. Hughes, S.A. McKnight & G.L. Price, eds., *Politics, Order and History: Essays on the Work of Eric Voegelin* (Sheffield: Sheffield Academic Press, 2001) 208.

³ See Y. Lacroix, "Un Français et un Anglais dénoncent la révolution française: deux textes anciens de 1763 et 1799" (1970) 30 *Écrits du Canada français* 231 at 254. The text is available in English in H.D. Forbes, ed., *Canadian Political Thought* (Toronto: Oxford University Press, 1985) 1 at 2.

⁴ Forbes, *ibid.* at 3.

religion. Should not the source of our fathers, protectors, governors, pastors, our models for all the virtues, our dear sovereigns whose wise and moderate government ensured our happiness, receive our gratitude and affection? Such a France, he said, is no more. It had fallen prey to the dark, sinister cunning of a deceitful philosophy of depraved reason, the monstrous principles of the Diderots, Voltaires, Rousseaus, and other deists of the eighteenth century. Their doctrines led to a sudden, conquering, bloody, patricidal, and sacrilegious revolution. The time for punishment had arrived; this insolent Goliath was beginning to lose the upperhand, and Nelson's victory was a sure sign.⁵

The benefits to *canadiens* were not simply that the pernicious notions of the Enlightenment were being checked by force of arms or that no deadly trees of liberty would poison the shores of the St. Lawrence. There was the continued benefit of "mild government," as it was called: a government marked by moderation, a government that respected the religion of those it ruled, took into account the interests of its subjects, and respected their property. "While all France is in disorder," he declared, "while every *Ordonnance* bearing the stamp of Royalty is proscribed, is it not amazing to see a British Province ruled by the *coutume de Paris* and by the edicts and declarations of the King of France?"⁶ In return for such benefits, he said, *canadiens* owed Great Britain a lively feeling of gratitude and an ardent desire never to separate from her.⁷

If one adds to these political considerations the more important matter of the institutions that support the spirit, expressions of gratitude towards and praise of Britain were even more appropriate. Liberty of religion was guaranteed by law, and the work of rural *curés* to conserve faith and morals had been unfailingly supported. If, on the other hand, faith was weakening, this was because the people were listening to those dishonest and unprincipled men, those perpetual grumblers who are offended by order, humiliated by obedience, and outraged by the very existence of religion. What, he asked with a shudder, would happen if such men should get the upper hand? It was not a pretty picture. But, he concluded, we need not dwell on such gloomy matters; instead, let us give thanks and rejoice. "Everything that weakens France," he said, "tends to draw us away from it. Everything that separates us from her sustains our lives, our liberty, our peace, property, religion, and happiness."⁸

⁵ *Ibid.* at 3–4.

⁶ *Ibid.* at 8.

⁷ *Ibid.* at 9.

⁸ *Ibid.*

This is a fascinating text for any number of reasons. First, it is clear evidence that for leaders of the Roman Catholic Church there were no great objections to being part of the British rather than the French Empire, especially when the latter had transformed itself into an imperially aggressive and revolutionary republic. Second is the issue of “mild government.” From the time the French settlers referred to themselves as *habitants* sometime early in the seventeenth century, it was assumed they would be residents, not visitors. In this respect little was changed by the cession of New France by the terms of the 1763 treaty. In addition, it is important to draw attention to the authority with which Plessis denounced the Enlightenment and its revolutionary political manifestations, because it was the same authority that enabled him to praise the limited, but nevertheless real, benefits brought by the British.

The great legal historian, F.W. Maitland, once described the transfer of authority between the old and new regimes as the nation stepping into the shoes of the prince, as the prince had stepped into the shoes of both bishop and pope. For this reason, he said, the modern absolute state, with or without a prince, could make claims like a church.⁹

Likewise, the revolutionary regimes that replaced monarchies were conditioned by the kinds of governments they overthrew. Historians and political scientists have long noted the difference between the French and the American revolutions, and attributed it, quite plausibly, to the historical inheritance of limited monarchy and mild government on the one hand and absolute government on the other.¹⁰ In this context, the inheritance of New France was a mild government, common to North America, for which the change from absolute French monarchy in 1763 was a minor change of form, not a major change in substance. The proof is found, somewhat surprisingly perhaps, in Lord Durham’s *Report*.

Before considering that contentious document, let me draw a contrast with European events. In the previous paragraph Maitland was cited with approval. Now let us have a closer look. When the prince stepped into the shoes of bishop and pope, he did not at the same time receive pontifical or ecclesiastical sanctity. He did not succeed legitimately; he usurped. Historically or previously, religion and religious authority limited the temporal realm on the grounds of a reality that transcended the temporal.

⁹ See E. Kantorowicz, “Mysteries of State: An Absolute Concept and Its Late Medieval Origin” (1955) 47 Harv. Theological Rev. 127.

¹⁰ See H. Arendt, *On Revolution* (New York: Viking, 1965).

Now, the problem of a basis for authority does not disappear with secularization, that is, with the end of ecclesiastical tutelage of the temporal political world. In this context, absolutism is an ersatz replacement for the limit that authority based on a transcendent ground formerly supplied.¹¹ It is ersatz precisely because political rule, whether absolute or not, is by nature mundane.

Among the substitutes for the lost sanction of religion, two seem to me to have a particular bearing on the present problem. First, consider the nation. Historically, nations gained political significance when peoples became conscious of themselves as cultural and historical entities, when they understood the territory they inhabited was a permanent home that had been marked by the cultivation of their ancestors, and would be passed on as a common patrimony. In western Europe, the nation expressed the collective self-consciousness of emancipated peasants. The nation-state was the political form that an emancipated peasantry assumed, and France was the exemplary instance especially following the Revolution.

Consciousness of nationality was more recent than the legal structure of the state, which was derived from monarchy and administrative rule. The chief purpose of the state was in turn derived from the medieval notions of the administration of justice and the defence of the realm. In more modern language, the state was to act as a supreme institution enforcing the rule of law upon all the inhabitants of the territory, national and nonnational alike. With the French Revolution, however, came the first “conquest of the state by the nation,” to use the phrase of Hannah Arendt.¹² Thus Abbé Sieyès, for example, declared in the early years of the revolution that the nation was the source of all legality and the foundation of justice.¹³ This was, of course, a fateful step insofar as citizens were no longer defined chiefly in terms of law but could be interpreted as pseudomystical representatives of a national soul, or destiny, or nearly anything the imagination might devise, especially when intoxicated with ideological fantasies.

¹¹ See H. Arendt, *Between Past and Future: Eight Exercises in Political Thought* (New York: Viking, 1968) at c. 3.

¹² See H. Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace & World, 1966) at 230.

¹³ “*La nation*,” he said, “*existe avant tout. Elle est l’origine de tout. Sa volonté est toujours légale, elle est la Loi elle-même.*” A. Sieyès, *Qu’est ce que le Tiers Etat?*, 2d ed., (Paris: Samaritaine, 1789) at 79–81.

There is a more modest point to consider: if we take nationalism to be the expression of the subordination of the state to the nation and the identification of citizen and national, then nationalism is one of the most prominent substitutes for the last sanction of religion. With the recent evocation of symbols such as *pure laine*, nationalism in this sense is without question an element in the consciousness of some Quebecers. Necessarily, however, it is largely confined to spiritually disordered intellectuals and their train of malcontents.¹⁴

Sieyès view of the nation as the source of law found an echo across the Channel. Blackstone, for example, declared that an “absolute, despotic power” must in all governments reside somewhere.¹⁵ Blackstone’s use of the term “despotic” indicates clearly that this absolute power is severed from any world transcendent limit, that is, from any limit that had been established previously by religion. And yet, he, along with his predecessors Selden and Coke, did discover or invent a limit through the use of what has been called “forensic history.”¹⁶ Legal custom as interpreted by courts instructed by the likes of Coke and Blackstone would, in the case of Britain, provide a solution to the problem of an absent ground of legal authority. It was a “higher law,” as Corwin put it, because it was an old one.¹⁷ For Plessis, who in this respect was more realistic, the pragmatic benefit of the rule of law in its British variant was mild government and liberty.

DURHAM'S LIBERALISM

Plessis’ views were confirmed by Lord Durham in his great *Report*. The greatness of the *Report* has often been more sensed than understood, particularly by *canadien* critics. To them and to many other commentators, Durham’s advocacy of assimilation “as speedily and rapidly as possible” was simply not

¹⁴ Thus Michael Oakeshott called the nationalist an *individual manqué*, incapable of sustaining an individual life and as a consequence “longing for the shelter of the community.” A state run by such people was “an association of invalids, all victims of the same disease and incorporated in seeking relief from their common ailment.” M. Oakeshott, *On Human Conduct* (Oxford: Oxford University Press, 1993) at 275–76, 308.

¹⁵ Quoted in E.S. Corwin, “The ‘Higher Law’ Background of the American Constitution” (1928) 42 Harv. L. Rev. 365 at 407.

¹⁶ J.P. Reid, “The Jurisprudence of Liberty: The Ancient Constitution of the Legal Historiographers of the Seventeenth and Eighteenth Centuries” in E. Sandoz, ed., *The Roots of Liberty: Magna Carta, Ancient Constitution, and the AngloAmerican Tradition of the Rule of Law* (Columbia: University of Missouri Press, 1993) at 203.

¹⁷ Corwin, *supra* note 15.

an acceptable option.¹⁸ Durham's argument, however, was more subtle and persuasive than most critics guessed. To begin with, the phrase about assimilation was part of a discussion concerning the ways that "a government may deal with a conquered territory."¹⁹ There were, he said, two such "modes," a very Machiavellian term to have used. The first was to respect "the rights and nationality of the actual occupants," a mode that, in 1838, was no longer possible, owing to the scale of British immigration to Lower Canada.²⁰ The second was to open the conquered territory to the conquerors, to regard the "conquered race" as subordinate, and to assimilate "the character and institutions" of the new subjects as speedily and rapidly as possible to the character and institutions of British America which, he said, were "predominant over the whole North American Continent."²¹

Before denouncing Durham as a racist or worse, it would be useful to know what he meant by the character and institutions of the *canadiens* and of British America, a term that somehow included the United States. It would also be useful to bear in mind that Durham was dealing with a practical question, not with a philosophical one, and that he did so with the intellectual equipment at hand, which for the most part amounted to liberalism.

So far as Durham was concerned, liberalism was not a doctrine and even less a philosophy. It was a practical set of assumptions. Ever since the settlement of 1688, the Glorious Revolution, two nearly unquestioned assumptions guided practical men of affairs in Britain. The first was taken from Hobbes: all men must be regarded as equal. The second, taken from Locke, declared that no one could claim political superiority on the basis of conscience, nature, or divine sanction. We may call this the assumption of toleration.

The *Toleration Act* of 1689²² and the *Act of Settlement* of 1701²³ ended, for all practical purposes, the political use of religion. Henceforth consent and the public good, not conscience and higher principles, would determine what was authoritative in politics. In the seventeenth century, the challenge to Locke's

¹⁸ *Lord Durham's Report*, *supra* note 1 at 47.

¹⁹ *Ibid.* at 50, 159.

²⁰ *Ibid.* at 146.

²¹ *Ibid.*

²² These two acts of the British Parliament consolidated the Glorious Revolution and effectively purged the Church of England political life. See B. Cooper, ed., *The Collected Works of Eric Voegelin*, vol. 24 (Columbia: University of Missouri Press, 1998) at 153–56.

²³ *Ibid.*

position came from kings who claimed to rule by divine right. In the eighteenth century, Blackstone argued against the arbitrary prerogative power of the king. In the nineteenth century, Durham argued against the claims of “race” and national origin as being as offensive as priestly hierarchies and hierarchies of the blood had been to Hobbes or Locke.²⁴ The debate changed its content over the centuries, of course, but it is still recognizable as formally the same debate.²⁵ Moreover, it is a debate that is fully contemporary in the guise of multiculturalism, Aboriginal rights, and so on.

The consequence of the advancement of uncompromising claims by a minority of priests or aristocrats is likely to be rather different than the result of similar claims being advanced by an ethnic minority. In the first instance the danger is one of domination or minority rule without the consent of the majority; in the second, it is of exploitation of a minority. In both instances, however, the violation was the same: the liberal understanding of the rule of law was violated. It was equally repugnant whether the laws protected an exploited minority in its intolerance or an intolerant ruling despot, faction, or oligarchy.

Bearing Durham’s understanding of the rule of law, of equality, and of toleration in mind, his prescription of assimilation of *canadien* institutions and character was intended to end, not perpetuate British domination. If the *canadiens* were to enjoy the prosperity of North American life, they must adopt the way of life common to the continent, which is one of equality and toleration. So long as the *canadien* minority retain their particular character and institutions, “the great part of them must be labourers in the employ of English capitalists.... The evils of poverty and dependence would merely be aggravated in a tenfold degree, by a spirit of jealous and resentful nationality, which should separate the working class of the community from the possessors of wealth and employers of labour.”²⁶ Ramsay Cook observed of this passage: “Lord Durham’s prediction was a fairly accurate one.”²⁷

²⁴ J. Ajzenstat, *The Political Thought of Lord Durham* (Kingston: McGill-Queen’s University Press, 1988) at 5–6.

²⁵ This is not the occasion to discuss the limits to the liberal understanding of equality and toleration. See however, E. Voegelin, *History of Political Ideas*, vol. VI (Columbia: University of Missouri Press, 1997). See also B. Cooper, ed., *Revolution and the New Science* (Columbia: University of Missouri Press, 1998) at c. 4. See also D. Walsh, *The Growth of the Liberal Soul* (Columbia: University of Missouri Press, 1997).

²⁶ *Lord Durham’s Report*, *supra* note 1 at 149.

²⁷ R. Cook, *Canada and the French-Canadian Question* (Toronto: Macmillan, 1966) at 83.

Durham was of the opinion, moreover, that *canadiens* did not wish to “remain stationary” but that well-intentioned British laws designed to protect their institutions such as the land tenure system or the privileges of the Church — in fact held them back.²⁸ At the same time, an English-speaking colonial faction sought to exclude the French. As Janet Ajzenstat put the matter, “The effect of laws and policies designed to maintain the French-Canadian way of life was equally harmful whether prompted by goodwill or prejudice.”²⁹ That is, the British efforts to help the *canadiens* simply provided opportunities for the English-speaking colonials to gain an advantage and then to protect their own collective privileges. The failure of the *canadiens* in their quest for equality and toleration was the source of the “fatal feud” between the “races.”³⁰

The implications of Durham’s analysis are pretty much the opposite of what they are conventionally taken to be. By the 1830s, the English, not the French, were the problem. Not only had the French become adept at parliamentary practice, like the American patriots two generations earlier, the *patriotes* were willing to take up arms against the arbitrary rule of the Crown, clear evidence that Papineau and the other men in the Assembly had become thoroughly assimilated to the “character and institutions” of liberal North America.³¹ And yet, the *patriotes* no less than the English-speaking colonists made an appeal to “race.” Durham aimed to prevent the English elite from relying on their national sense of superiority and the French from relying on their national sense of resentment.

Indeed, there would be no resentment if the *canadiens* had remained “stationary.” But they had not: the *habitants* had begun to leave the *seigneuries* for the towns and cities, education once despised was now sought after, and the motive for rebellion was at least as much a rejection of “feudal burthens” as an anti-English action.³² The result of the *canadien* experience between the French cession of New France and the rebellion was, in Durham’s view, “a new form of nationality compatible with the fact of assimilation.”³³ Durham’s point is easily overlooked: the new nationality arose because of the accomplished fact of assimilation. The old nationality, which was incompatible with assimilation, had passed from historical view. What made the new nationality new was the mode

²⁸ *Lord Durham’s Report*, *supra* note 1 at 151.

²⁹ Ajzenstat, *supra* note 24 at 8.

³⁰ *Lord Durham’s Report*, *supra* note 1 at 145.

³¹ *Ibid.* at 53–56.

³² *Ibid.* at 42. See also Lucas, ed., *supra* note 1 at 11, 24, 134–35.

³³ *Ibid.* at 21–22. See also Ajzenstat, *supra* note 24 at c. 8.

of its evocation. It was not, like the old nationality, an unconscious unreflective tradition given to the *habitants* as naturally as their Catholic faith and their French language. On the contrary, it was a deliberate and tactical creation of the French leaders to gain the support of the *habitants* for their party in the Assembly, which was typical political action of liberal politicians fully at home in North America, and so in Durham's sense "assimilated" already. As Ajzenstat said,³⁴

If the nationality they fostered had something of the aura of the old nationality, because it used the old names and recalled the old emotions, it was undoubtedly stronger for that; but it was in its origins and character markedly different from the old: new wine in old bottles. The old form of nationality in French Canada had restrained men's passions and subjected individuals to the common good; the new is subject to the individual, one of the means by which he achieves his personal aims.

Durham's analysis of the tactical use of the appeal to "race" was both historically astute and relevant to the current topic. Durham distinguished between the purposes of the politicians and those of the communities they claimed to represent. The politicians in the Assembly, he said, appealed to the principles of popular control and democracy and thereby gained "the sympathy of liberal politicians in every quarter of the world."³⁵ In the legislature, however, they abandoned this posture and used "their democratic arms for conservative purposes" including a "vague expectation of absolute independence" and the creation of "*la Nation Canadienne*".³⁶ This was, however, a ruse. On land reform, for example, which was "absolutely essential" to the settlement and improvement of a new country, the French politicians opposed change simply because they were part of the English program.³⁷ That is, they opposed land reform not because they sought to retain the feudal past but from personal ambition and the desire to oppose the English. "[T]hey were," said Ajzenstat, "invoking nationality in the new form."³⁸ Indeed, it was a modern form "compatible with the fact of assimilation."

For Durham, then, the problem was the existence of two irresponsible factions, each of which made an appeal to "race," and each of which controlled a different branch of government. The competition between English and French was both a problem and evidence that a solution was already in place. His

³⁴ Ajzenstat, *supra* note 24 at 78.

³⁵ *Lord Durham's Report*, *supra* note 1 at 25–26.

³⁶ *Ibid.* at 25–26, 43.

³⁷ *Ibid.* at 37. See also Lucas, ed., *supra* note 1 at 11, 25–26.

³⁸ Azenstat, *supra* note 24 at 84.

recommendation, responsible government and union of Upper and Lower Canada, would ensure both that *canadiens* could become Ministers of the Crown and that the English would have to undertake to pass measures that would gain popular support and consent. Under these circumstances the appeal to the intolerant and inegalitarian principle of “race” would end.³⁹

The influence of perfectly equal and popular institutions in effacing distinctions of race without disorder or oppression, and with little more than ordinary animosities of party in a free country, is memorably exemplified in the history of the state of Louisiana, the laws and population of which were French at the time of its cession to the American Union.

As in Louisiana, the *canadiens* would retain their language, religion and culture; as in Louisiana, these particularities would no longer be the sole or even the chief grounds for political animosities and struggle.

BARBARISM OF REFLECTION

In his *New Science*, Vico presented an elaborate and complex philosophy of history.⁴⁰ One part of it may be extracted to make some sense of the response to Durham’s *Report* in light of the sentiments expressed in Plessis’ sermon. Providence, Vico said, guides all nations through what he called an ideal eternal history, of which Rome is the great exemplar. His *New Science* revealed that every society, founded on “marriage, religion, and property” began in a divine age, where humans stood in fear of the gods. This era was invariably followed by the age of the cruel patriarchal heroes, which in turn gave way to the enlightened, human, republican age. At the same time as these social developments take place, the individual develops from ignorance to reason, from *stultus* to *sapiens*. And yet, the triumph of reason over wisdom expressed in poetry about the gods carries a cost. Instead of virtuous actions being “motivated directly by religious sentiments,” reason transforms these subrational “common senses,” written poetically in the hearts of men and women, into ideas. But when poetry is criticized by reason, customs wither and political order disintegrates into what Vico called the “barbarism of reflection.”⁴¹

³⁹ Lord Durham’s *Report*, *supra* note 1 at 154.

⁴⁰ See Vico, *supra* note 2. See also Cooper, *supra* note 22 at c. 3 and B. Cooper, *Eric Voegelin and the Foundations of Modern Political Science* (Columbia: University of Missouri Press, 1999) at c. 9.

⁴¹ Vico, *ibid.* at para. 1106.

Plessis' sermon giving thanks for Nelson's heroic action expressed the authentic sentiments of poetry tied to the divine and heroic ages. His criticism of Revolutionary France was Vichian: the reason of the Enlightenment had destroyed the basis for moderate government because it criticized religion, family, and property. In this respect, Durham's position was a compromise: like all liberalism it permitted private devotion as a pragmatic compromise in the service of civic peace.

The response to Durham's *Report* initially was also poetic. The ink was hardly dry when in 1840 François-Xavier Garneau published a novel, *Louise: Une légende canadienne*.⁴² Five years later he began the publication of the monumental *Histoire du Canada*.⁴³ The *Histoire*, in particular, set the pattern for a great deal of subsequent French-Canadian historiography, inspired a school of patriotic poetry, and the plot-lines of innumerable historical novels. It even animated the grumpy opinions of Joseph Perrault during the Confederation Debates.⁴⁴ The structure was one of a typical heroic quest: the evil Protestant English sought to suppress the good Catholic *canadien* and yet the good survived and endured and one day would triumph. The key to survival was to cling to tradition, to change nothing, and to resist the temptation of "English" liberalism. Liberalism was a temptation because it promised prosperity, just as Durham had said.⁴⁵

The formulaic novels of the mid-nineteenth century disclosed a variation on the following story: a young French-Canadian man abandons the farm, lured by an urban *anglaise* temptress. In the city he is demoralized and degraded: he learns to swear, drink, smoke, and brawl but is saved by a virtuous French-Canadian girl who brings him back to the rural paradise, saves his soul and ensures continued ethnic survival. The plot was a central theme as late as the

⁴² F.-X. Garneau, *Louise: Une Légende canadienne*, quoted in W. Johnson, *A Canadian Myth: Quebec Between Canada and the Illusion of Utopia* (Montreal: Robert Daner, 1994) at 30–34; and W. Johnson, *Anglophobia, Made in Quebec* (Montreal: Stanké, 1991) at 72.

⁴³ F.-X. Garneau, *Histoire du Canada*, 6th ed. (Paris: Alcan, 1920).

⁴⁴ See his remarks delivered to the Legislative Assembly, 3 March 1865. They are reproduced in J. Ajzenstat, *et al.*, eds., *Canada's Founding Debates*, (Toronto: Stoddart, 1999) at 349–51. His Confederate colleague, Joseph Dufresne, attributed his odd views to "some peculiarity of mental organization," Parliamentary language for calling someone crazy.

⁴⁵ See *Lord Durham's Report*, *supra* note 1 at 149; Cook, *supra* note 27 at 83.

1922 novel by Abbé Groulx, *L'Appel de la race*,⁴⁶ who is often identified as the patron of contemporary Québec nationalism.

A generation later, the contrast between the corrupt but rich urban “English” and the virtuous but poor rural French had turned into the contrast between rich corruption and poor virtuousness within the city. We are growing closer to Vico’s barbarism of reflection. If it was not God’s will that only the rural poor were virtuous, then another explanation had to be sought. Sociologically inclined historians supplied one. Michel Brunet, for example, explained the relative poverty of French Canadians in 1950 by way of the conquest of New France nearly 200 years earlier.⁴⁷

By the time of the Quiet Revolution of the 1960s, the liberalization of Québec was effectively complete. Pluralism, secularism, materialism, the widespread participation of Quebecers both in the prosperity of North American life and in the assumptions that sustained it, were commonplace. No longer was the expression *maudits anglais* to be taken literally, but this did not mean it was abandoned altogether. A new doctrine, now grounded in reason, replaced the old poetry, but the same villain remained. No longer did Québec Catholicism alone provide French-Canadians, and especially political intellectuals, with a sense of their own moral superiority to the damned English. The first substitute was also the most extreme. I refer to the bastardized Hegelianism of Fanon, Sartre, and

⁴⁶ L. Groulx, *L'Appel de la race* (Montreal: Action Francaise, 1922). This was the story of a French-Canadian youth who actually married an *anglaise*, who had providentially converted to Catholicism. The young man then learns he has betrayed his ancestors and *la race*, a term that is currently as embarrassing in French as it is in English. The mongrel children, especially the ones who reflect their mother’s background, are nasty, mean and confused. According to the author this is because mongrel children have two souls fighting within, rather as Durham put it in his *Report*, and can never form a stable, pious and integrated personality. The hero returns to his village, meditates in the graveyard surrounded by the ghosts of his ancestors, is mystically transformed, and discovers his national soul. He returns to Ottawa, where he practices law, purges his home of all traces of English culture and cultivates only French-speakers. His *anglaise* wife leaves him (so he need not leave her; but they must part if he is to recover his French soul). The two “English” mongrel children turn against him, but he is able to save the two “French” mongrels for French culture. He then becomes a French-Canadian nationalist in the heart of “English” Ontario, and nurtures irredentist ambitions.

⁴⁷ See e.g. M. Brunet, *La Présence anglaise et les canadiens: Etudes sur l'histoire et la pensée des deux Canadas* (Montreal: Beauchemin, 1954).

Vallières that inspired the FLQ.⁴⁸ It is the Hegelianism and its connection to reason, not the expectation of apocalyptic transfiguration through violence, that constitutes the evidence for Vico's barbarism of reflection.

Recall for a moment Durham's position, that the *canadiens* were conforming to the Louisiana model. They were well on the way to assimilation to the North American way of life, which was in no way incompatible with retaining the French language, ethnic and national schools, churches, and cultural institutions along with a rich collective historical memory, including the memory of adapting to a liberal way of life. His criticism of the *mauvaise foi* of the French-Canadian politicians who sought at the same time to privilege a particular way of life and to live as modern, liberal, political leaders.

Even so, there remains the chorus of critics, singing from the same hymnal: Durham was wrong and *la survivance* of French Canada and latterly, of Québec society, proves it. Historically minded commentators point to the pre-Confederation period and especially to Baldwin and La Fontaine to discover the seed-time of "consociationalism."⁴⁹ On these grounds they criticized Durham for being prejudiced, intolerant, and naïve. We have seen, however, that Durham was highly conscious of the importance of "race," which in this context is the "idea" for which the realities were marriage, religion, and property. In fact, however, the kind of partnership achieved by Baldwin and Lafontaine would have been thoroughly acceptable to Durham, though it may be doubted that he would have been comfortable with the notion of consociationalism, at least insofar as it tended to encourage the continuation of "race" and what we now call elite accommodation. The source of the confusion of Durham's critics is that they prefer both equal opportunity and they give political visibility to cultural

⁴⁸ See P. Vallières, *Nègres blancs d'Amérique: Autobiographie Précoce d'un « terroriste » québécois*, éd. rév. (Montreal: Éditions Parti Pris, 1969). See also B. Cooper, "Vallières' Confession" (1971) 6:2 J. Can. Stud. 3.

⁴⁹ See e.g. K. McRae, "Consociationalism and the Canadian Political System" in K. McRae, ed., *Constitutional Democracy: Political Accommodation in Segmented Societies* (Toronto: McClelland & Stewart, 1974) at 255; see a recent version of the rise and fall of consociationalism examined from the perspective of English-speaking Quebecers in G. Stevenson, *Community Besieged: The Anglophone Minority and the Politics of Quebec* (Montreal & Kingston: McGill-Queen's University Press, 1999). See also J.R. Saul, *Reflections of a Siamese Twin: Canada at the End of the Twentieth Century* (Toronto: Viking, 1998); and B. Cooper, "Shoddy Pamphlet or Great Man's Thesis?" (1998) 7:3 Literary Rev. of Can. 16.

particularism and communitarianism.⁵⁰ This is a question to which I will return by way of conclusion.

The poetic memory of the heroic quest was not satisfied by the Quiet Revolution. Accordingly, it has been criticized in the name of reason, which has had the consequence of pressing farther down the road towards the barbarism of reflection. Consider, for example, the late Fernand Dumont's *Genèse de la société québécoise*.⁵¹ Dumont's language and doctrine are expressed in terms of Hegelian reason. In his autobiographical preface, for example, Dumont spoke with a voice of great confidence. It is obvious, he began, that the present state of a society can be understood only by again raising the question of its past. By raising (*remonte*) the question of its past, Dumont meant both returning to the historical and elevating it to the dignity of a true and reasonable Hegelian account. History, he said, is not a chain of events punctuated by a few dramatic episodes that somehow ends up in the present.⁵²

Following a more or less lengthy maturation, sometimes a turning (*un tournant*) is reached that is so decisive in the past of a collectivity that the very meaning of its becoming turns out to be changed. From a history long lived without focus, [the collectivity] has gained access to the political sphere; from the confrontation of ideologies has emerged a recollection of collective projects. Then, the society has been truly *founded*: with a *character* to which individuals and groups can relate themselves, an *identity* that they have had to define, a historical consciousness that gives them the more or less illusory feeling of making history and the more or less confident ability to interpret it.⁵³

It was ever thus, Dumont assured his readers, from the ancient city to modern nations.

Dumont's choice of terms was deliberate; the "collectivity" is the basic unit, a quasi-organic entity that changes form, moving from "a history without focus," to existence as a "society," to a political nation. For obvious reasons, Dumont could account only for the "turning" from an unfocussed collectivity to a

⁵⁰ The most articulate example is probably Charles Taylor. See his *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism* (Montreal & Kingston: McGill-Queen's University Press, 1993). See also B. Cooper, "Taylor-Made Canada" (1996) 5:2 *Literary Rev. of Can.* 19.

⁵¹ F. Dumont, *Genèse de la société québécoise* (Montreal: Boréal, 1993).

⁵² *Ibid.* at 6–7.

⁵³ *Ibid* at 9.

society.⁵⁴ The transitional character of the present epoch, from society to state, was emphasized by Dumont's analogy between the development of his own life and that of the collectivity.

Most of his generation, he said, were children of the parish: church, school, factory, the corner store and the local garage provided stability in space; the eternal return of tide, season and festival expressed the stable rhythms of time. The radio, the newspapers and school books conveyed echoes of another world, but one that existed in continuity with the familiar everyday one. For a child, said Dumont, "the world is a homeland," familiar and enchanting, but not simply closed upon itself because of the presence of the mysterious sphere of the sacred. "The solemnity of the ceremonies, the strangeness of the texts and rituals introduced an element of difference that gradually unsettled this harmony with the immediate milieu."⁵⁵ And then another fissure appeared in a poetic world with continuous links to that of Plessis.

Dumont's recollection of World War II and the conscription crisis constituted a personal "turning" and in retrospect a prelude to the "turning" of his society. "This passage from childhood to adolescence," he said, "this transition from homeland to country is not without analogy with what, in the course of history, is the genesis of the nation."⁵⁶ The analogy, however, was imperfect: Dumont's maturation as a prominent scholar was not matched by the analogous maturation of his society in the direction of Hegelian "reason." Just as with his own adolescent experience of the conscription conflict, Québec remained a hypothetical country. Just as with his transition from adolescence to maturity, the road ahead was clear: Québec would have to become a nation.

Yet, it has not done so. There were, he said, many reasons for this arrested development, which Dumont likened to a deep wound. He considered them in the pages of his book, but he did so with a rare clarity in his perspective: the oft-told story of Québec's religious origins, its struggle for survival, its constitutional conflicts with Canada and the other provinces, he said, has become a piece of romantic self-indulgence.⁵⁷

⁵⁴ The "turning" is probably a reference to the *Kehre* turning of the German philosopher Martin Heidegger from "existential phenomenology" to "fundamental ontology" though on a large socio-political scale, not on the scale of the individual thinker.

⁵⁵ Dumont, *supra* note 51 at 6–7.

⁵⁶ *Ibid.* at 8.

⁵⁷ *Ibid.* at 17.

The real story is that the transition from homeland to country has yet to be made. There is no doubt in anyone's mind that Québec is a "distinct society," but that status has become as much a roadblock as an achievement. Under such circumstances, therefore, a new self-consciousness that would complete the "turning" from distinct society to nation can emerge only on the basis of a re-examination of the genesis of the collective identity that had now become exhausted.

Dumont's argument follows a familiar Hegelian pattern. Each stage in the rational and historical development of self-consciousness towards wisdom engenders its successor by providing an obstacle to be overcome. Just as a child cannot become a mature human being without coming to terms with the difficulties of growing up, neither can a society. Just as a mature individual takes charge of her life, so a society must take charge of its history. Like all aspects of communal life, the nation cannot survive and develop without the support of the state.⁵⁸ This was for Dumont the final *Aufhebung*, the last historical overcoming, which corresponded to the new self-consciousness achieved through a re-examination of the genesis of the collective identity as set out in *Genèse de la société québécoise*.

And yet, (to repeat) this final overcoming has not taken place. Dumont was able to evoke a goal or a purpose, which he called a "utopia," but he was not able to account for its achievement. That is why his book is called "The Genesis of Québec Society," not "The Genesis of the State of Québec." Even so, he had a clear vision of what the state can (or must) do: the power of the state is instrumental in defining and maintaining the historical consciousness of the nation. We have achieved the position of Sièyes in 1790. The history of Québec, therefore, is the story *not* of the birth of a nation, but of the genesis of a society awaiting transfiguration into a nation.

But this "idealist" or purposive element in Dumont's argument also means that his is not a serious Hegelianism.⁵⁹ According to Hegel, the social elements awaiting transfiguration will remain external to one another so long as the

⁵⁸ *Ibid.* at 17.

⁵⁹ In much the same way, Guy LaForest pointed out that Léon Dion was a kind of Fichtean. See G. LaForest, *Trudeau et la fin d'un rêve canadien* (Sillery: Septentrion, 1992) at c. 4. For an account of what "serious" Hegelianism entails, see B. Cooper, *The End of History: An Essay on Modern Hegelianism* (Toronto: University of Toronto Press, 1981).

society in question is shielded from the experience of violence.⁶⁰ Dumont does not discuss this *zauberisch* aspect of Hegelian political science, which, because it would lead back to the arguments of Vallières and the violence of the FLQ, may be just as well. The results, however, remain regrettably incomplete because to retain Dumont's metaphor of birth, Québec's history has been, as he said, akin to a series of abortions, beginning with the failure of New France to convert the Indians.⁶¹ Of course, Dumont argued, Québec survived, but the catalyst for its survival was the "English." More to the point, the rebellion of 1837 in Lower Canada also aborted the realization of the connection between politics and the almost-nation. Responsible government was followed by a retreat into the consociational ethnic garrison.⁶² Now what? Dumont had enough common-sense or perhaps enough Christian faith to shrink from the full-fledged Hegelian answer. Here the futility of the FLQ did indeed provide a cautionary tale. And yet ethnic survival is not enough because it still depended on the "English."

The old problems, therefore, remained. Of course, "survival has not ceased to require constant vigilance," but "the utopias of the quiet revolution are faded; the collective memory has been devastated; Quebecers are slow to take in hand the indispensable mastery of politics, which escaped them in the middle of the last century."⁶³ Hence the difficulty for which the metaphor of abortion is not inapposite. Québec cannot become a nation without creating itself as a state; the lost opportunity of the nineteenth century, which was attended by the violence of 1837, seems lost forever; the current alternative, which conceives of a utopian ethnic enclave dedicated to survival, can never more beyond a purely "defensive strategy."

In this situation, the limitations of "utopia" are as obvious as the temptations to move beyond it. On the one hand there is a return to the apocalyptic alternatives: *égalité ou indépendance, maintenant ou jamais, gouverner ou disparaître*. And yet, however, these alternatives appeal only to the intellectuals who write books with such titles. In this respect, they express that form of consciousness appropriate to what Hegel called the *geistige Tierreich*, the spiritual bestiary.⁶⁴

⁶⁰ See G.W.F. Hegel, *Phänomenologie des Geistes*, J. Hoffmesiter, ed., (Hamburg: Meiner, 1952) at 146; see also A. Kojève, *Introduction à la Lecture de Hegel* (Paris: Gallimard, 1947) at 455.

⁶¹ Dumont, *supra* note 51 at 55.

⁶² *Ibid.* at 335.

⁶³ *Ibid.*

⁶⁴ Hegel, *supra* note 60 at 285ff; Cooper, *supra* note 59 at 132ff.

The second alternative appeals more to politicians than to intellectuals. If there is no way beyond the ethnic garrison and if the “Dumont paradigm,” is accepted as the sole and dogmatic basis for further conversation, then its premises will never be called into question. This position amounts to little more than a recovery of the *mauvaise foi* of the *patriotes*, a shrewd appeal to the nobility of aspiration coupled to a gimlet eye for cheque-book Federalism and the bottom line. Here one says, even if it is not simply true that it is “natural” for a collectivity to become a society longing to be a nation made conscious of itself as a state, it is certainly useful for those who wish to establish a state, for whatever reasons or motives, to say that this entire Hegelian account is “natural” or “normal,” two terms that are currently in wide use among Québec’s separatist politicians.

There is a third option as well. The failure of an entire generation of talented political leaders to find a constitutional settlement for the Québec question will not be a great squandering of intellectual capital if it concludes with the realization that none was needed.

CONTEMPORARY IMPLICATIONS

Lord Durham’s liberalism assumed that individuals were in the best position to determine their own interests and that they would take pride in so doing. Accordingly, it was also egalitarian insofar as all individuals would be subject to equal treatment by the state and would have equal protection against the state. Finally, within the nineteenth-century context, it was democratic. In contemporary language, Durham was a procedural liberal.⁶⁵

⁶⁵ The distinction between procedural and substantive liberalism has been applied to Canada-Québec relations most notably by C. Taylor in G. Laforest, ed., *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism* (Montreal & Kingston: McGill-Queen’s University Press, 1993); and C. Taylor, *Multiculturalism and “The Politics of Recognition”* (Princeton: Princeton University Press, 1992). For analysis see J. Ajzenstat, “Decline of Procedural Liberalism: The Slippery Slope to Secession” in J.H. Carens, ed., *Is Quebec Nationalism Just? Perspectives From Anglophone Canada* (Montreal & Kingston: McGill-Queen’s University Press, 1995) at 120–36. See also B. Cooper, “Canadian Issues and Political Science: 1970–1995” (1996) 25 Poli. Sci. Reviewer 100. See also B. Cooper, “Taylor-Made Canada” (1996) 5 Literary Rev. of Can. 19. See also R. Knopff, “Liberal Democracy and the Challenge of Nationalism in Canadian Politics” (1982) 9 Can. Rev. of Stud. in Nationalism 23; and R. Knopff, “Democracy vs. Liberal Democracy: The Nationalist Conundrum” (1978–79) 58 Dal. Rev. 638.

Procedural liberalism is neutral with respect to political interests because it looks upon the constitution as rules for securing citizen rights and limiting jurisdictions. The procedural constitution does not favour one way of life over another, nor does it support one ideology or policy program. This is why such a constitution enables divergent parties with opposed programs to come and go in office, to pass laws and have laws repealed by successor governments with divergent understanding of the public good.

Today's winners will be tomorrow's losers. Indeed, it is precisely the formal neutrality of the constitution that allows the contest of politics to take place. Just as the rules of the game apply equally to all contesting teams, so does the constitution apply neutrally to all contesting parties.

Substantive liberalism is something else. According to Taylor, it entails collective and purposive ideas, so that Québec is "not neutral between those who value remaining true to the culture of our ancestors and those who might want to cut loose in the name of some individual goal of self-development."⁶⁶ Taylor illustrated his contention with the example of a Toronto Italian-Canadian or an Edmonton Ukrainian-Canadian who "might indeed feel Canadian as a bearer of individual rights in a multicultural mosaic."⁶⁷ In contrast, a Quebecer, a Cree or a Dene might be Canadian "through being members of their national communities."⁶⁸ The first examples illustrate what Taylor called "first-level diversity" whereas the second mode of participation in citizenship through "national communities" resulted in "deep diversity." Taylor at least entertains sufficient doubt as to whether any country can accommodate "deep diversity" by wondering whether the hope for accommodation is "utopian,"⁶⁹ which was Dumont's term as well.

There is some constitutional justification for Taylor's substantive liberalism in sections 16–23 of the *Constitution Act, 1982*, which deals with official

⁶⁶ Taylor, *supra* note 50 at 175–76.

⁶⁷ *Ibid.* at 183.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.* at 183. What Taylor and other Québec intellectuals seem to neglect is that, for a Ukrainian-Canadian in Edmonton to think of Quebecers as the embodiment of "deep diversity," he or she would have to think of Ukrainian-Canadian diversity not as "first-level" but as shallow. Likewise the demand by Québec that it be recognized as a distinct society carried with it the implication that non-Quebeckers were "indistinct." That such negative implications or insults were not intended indicates only the insensitivity of Québec nationalists — a charge that is usually directed in the opposite direction.

languages.⁷⁰ Official languages, however, may seem to entail official cultures, so that section 27 was added in order to guide judges in interpreting the *Charter* “consistent with the preservation and enhancement of the multicultural heritage of Canadians.” The inclusion of the work “enhancement” naturally gave non-official-language cultures a means to seek favourable concessions from government.⁷¹ In response, the government of Québec sought, through a constitutional amendment proposed as part of the 1987 Meech Lake Accord, to restore cultural dualism as an interpretative guide to the constitution. Just as section 27 provided for state “enhancement of multiculturalism,” section 2(3) of the proposed amendment would authorized the Government of Québec to “promote” language and culture to ensure that Québec remained a “distinct society” according to section 2(l)(b). The logic of substantive liberalism was further exposed in the “Canada clause” of the proposed Charlottetown Accord, which was intended to constitutionalize Canadian culture by ensuring that Aboriginal culture would be “promoted,” that Québec culture was “unique,” and that judicial interpretation should reflect “cultural and racial diversity.”⁷² In other words, the Canada clause proclaimed that all cultures were equal, which is precisely the point that Durham and his procedurally liberal successors would make, except that Charlottetown encouraged all cultures to become “constitutional rentseekers,”⁷³ each more equal than the others.

In fact, some cultures turned out to be more equal than others. In the Charlottetown example, they would be Québec and Aboriginal cultures, both of which we may call national minority cultures that happen to occupy specific territories. Giving special government powers to such minorities, it may be argued, is just a new form of Federalism. As Madison pointed out in the

⁷⁰ Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, ss. 16–23.

⁷¹ See T. Flanagan, “The Manufacture of Minorities” in N. Nevitte & A. Kornberg, eds., *Minorities and the Canadian State* (Oakville: Mosaic Press, 1985) at 107–23; C.P. Manfredi & M. Lusztig, “Why Do Formal Amendments Fail? Institutional Design and the Capacity for Constitutional Modification” (1998) 50:3 *World Politics* 3 at 77.

⁷² Section 2(b) would ensure Aboriginal language and culture would be promoted; s. 2(c) declared that Québec had a unique culture; s. 2(e) indicated the need to reflect cultural and racial diversity in judicial decisions.

⁷³ The phrase is borrowed from M. Lusztig, “Canada’s Long Road to Nowhere: Why the Circle of Command Liberalism Cannot be Squared” (1999) 32 *Can. J. Poli. Sci.* 451 at 469.

Federalist Papers, minority rights and majority rule can be reconciled by divided jurisdictions and federal institutions.⁷⁴

If individuals could join or abandon minority cultures it may be possible to look upon the cultural provisions of the Canada clause — or, indeed, subsequent decisions of the Supreme Court of Canada regarding Aboriginal rights — as being compatible with procedural liberalism. But cultural mobility is far from analogous to geographical mobility. Is an Ungava Cree an Aboriginal or a Quebecer? To put it more elegantly: what are the decision rules for minorities within minority cultures? And what of internal minorities within those minorities? Should a disabled, lesbian Cree be protected against able-bodied, non-lesbian Cree, and both protected against the non-Cree Quebecers who are protected against non-Quebecers? The problem is obvious: there is no *a priori* way to determine which substantive or cultural cleavage is most important. Accordingly, discussion degenerates into a high decibel dialogue of the deaf, a collection “of socially maladroit anarchist poets,” as Katherine Fierlbeck put it.⁷⁵

Michael Lusztig’s observation on this endless iteration deserves repeating:⁷⁶

Of course ... ultimately the only politically irreducible core is the individual. And once we begin to think of special rights for the individual, ‘special’ rights becomes a meaningless concept. We are back to liberal individualism. Not only are the ‘special’ rights of the individual specious, but the logic for privileging the group disappears as well.”

That is, in the example of a disabled lesbian Cree, the decision as to what substantive minority culture counts for the individual is up to the individual. And that means the state has an obligation to be neutral, which is the procedural liberal position.⁷⁷

⁷⁴ J.E. Cooke, ed., *The Federalist* (Middleton: Wesleyan University Press, 1961) no. 10 at 57–59, no. 48–51 at 332–53. See also D.F. Epstein, *The Political Theory of the Federalist* (Chicago: University of Chicago Press, 1984) at 131–36.

⁷⁵ K. Fierlbeck, “The Ambivalent Potential of Cultural Identity” (1996) 29 Can. J. Poli. Sci. 3 at 14.

⁷⁶ Lusztig, *supra* note 73 at 465.

⁷⁷ These are *not* fantastic examples. W. Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon, 1995) was criticized on these grounds by B. Walker, “Plural Cultures, Contested Territories: A Critique of Kymlicka” (1997) 30 Can. J. Poli. Sci. 211. James Tully advanced an argument to justify special consideration for Aboriginal rights: J. Tully, “Diversity’s Gambit Declined” in C. Cook, ed., *Constitutional Predicament: Canada After the Referendum of 1992*, (Montreal: McGill-Queen’s University Press, 1994) at 149. Lisa Young has made a similar argument regarding gender rights in Nunavut: L. Young, “Gender Equal Legislatures: Evaluating the Proposed Nunavut Electoral System” (1997) 23 Can.

CONCLUSION

In conclusion, let us return to Lord Durham. Durham was not a sovereignist though he was of the view that, notwithstanding their common liberalism, the existing British colonies could “counterbalance” the former British colonies in America. In 1839 Durham refused to apply that logic to Upper and Lower Canada because of the importance of the “race” question. If any words from the *Report* are familiar, they are these:⁷⁸

I found two nations warring in the bosom of a single state: I found a struggle, not of principles but of races; and I perceived that it would be idle to attempt any amelioration of laws or institutions until we could first succeed in terminating the deadly animosity that now separates the inhabitants of Lower Canada into hostile divisions of French and English.

There is some reason to think that the “deadly animosity” has not been entirely extirpated. The words of Mr. Parizeau after the 1995 referendum come to mind.⁷⁹ It is even understandable that liberal Anglo-Quebeckers might advocate expulsion,⁸⁰ but even so, laws and institutions have ameliorated the violence of 1837. The arguments of Papineau simply do not apply. There is no exclusion of the Québec leadership from places of power. *Au contraire!* the Premier of Québec is at liberty to complain, but he cannot expect anyone to think he is telling the truth. In short, the substantive homogeneity of political habits and manners have turned separatist rhetoric into rebarbative burps, little more than strenuous bargaining for what a candid Premier Bourassa used to call profitable Federalism, *fédéralisme rentable*.⁸¹ Moreover, anyone familiar with the inter-regional transfer account knows just how profitable Federalism is for Québec.

Pub. Pol'y 306.

⁷⁸ *Lord Durham's Report*, *supra* note 1 at 23.

⁷⁹ After blaming “money and ethnics” for the referendum defeat, Parizeau went on to say: “Okay, if you like, let’s stop talking about the francophones of Quebec. We’ll talk about us. At 60 percent we voted for it … Don’t ever forget that the three-fifths of what we are have voted ‘Yes’. It wasn’t quite enough, but soon, it will be. This country is ours. Soon we shall have it.” J. Parizeau, “Statement” *La Presse* (2 November 1995) A1; see also H. Bauch, “Canada Survives” *Montreal Gazette* (31 October 1995) A1.

⁸⁰ See R. Scowen, *Time to Say Goodbye: The Case for Getting Quebec Out of Canada*, (Toronto: McClelland & Stewart, 1999). Indeed David Bercuson and I explored this option in D.J. Bercuson & B. Cooper, *Deconfederation: Canada Without Quebec* (Toronto: Key Porter Books, 1991).

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This is why Québec will not separate. At the same time, it is why in the alternative, if Québec does become independent, it won't matter. Papineau's *nation canadienne* on the banks of the St. Lawrence is today relatively modern, tolerant and liberal, with no way of life being exceptionally privileged, not even *pure laine* Quebecers. No other way has been possible in North America for over two centuries. That is not going to change, though no modern Bishop Plessis is likely ever to offer thanks for an undoubted blessing.

MUTATIONS ET LIMITES DE L'IDENTITAIRE AU QUÉBEC

Diane Lamoureux*

The author exposes the importance of the dimension of identity in the Quebec discourse. What particularly drew her attention was the “the transition of a project to justify Quebec sovereignty in terms of national oppression to a justification in terms of national affirmation”. She then proceeds to an “overview of the fluctuation of the Quebec identity and its conjugation as a result of distinct and entangled temporal registers” and ends her analysis on a more theoretical note by raising the political problems that such a recourse to identity poses.

L'auteure cherche à démontrer l'importance de la dimension identitaire dans le discours québécois. Ce qui retient particulièrement son attention, c'est « le passage d'une justification du projet de souveraineté du Québec en termes d'oppression nationale à une justification en termes d'affirmation nationale ». Elle procède ensuite à « un tour d'horizon de la fluctuation de l'identité québécoise et de sa conjugaison suivant des registres temporels distincts et enchevêtrés » et termine son analyse sur une note plus théorique en soulevant les problèmes politiques que pose un tel recours à l'identité.

Les enjeux et les choix politiques dans le Québec post-révolution tranquille se sont largement exprimés dans le langage de l'identité. Pourtant, le contenu de cette identité a varié au fil des années et des nécessités instrumentales de l'action politique. Ce que je me propose d'explorer dans ce texte, c'est d'abord l'importance de la dimension identitaire dans le discours politique québécois. J'aborderai ensuite l'enchevêtrement des temps dans la référence identitaire et je terminerai sur une note plus théorique par un examen des limites de la référence identitaire.

L'objectif central est de montrer le caractère largement « imaginé » de la référence identitaire. D'une part, celle-ci sert à délimiter un « nous » pouvant acquérir un statut d'acteur social collectif dans une perspective émancipatrice. De l'autre, ce « nous » fuit de toute part, l'acteur collectif ne pouvant englober l'ensemble des particularismes qui sont le fait du travail, dans nos sociétés, de l'individualisme démocratique. À la fois incluant et excluant, le « nous » peut difficilement s'inscrire dans une stratégie politique qui tienne compte du pluralisme, d'une part, et de la difficulté de donner un contenu explicite et stabilisé à quelque identité sociale que ce soit dans les sociétés fragmentées qui sont les nôtres.

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IMPORTANCE DE LA DIMENSION IDENTITAIRE

Prenons comme point de départ la série d'articles publiés par *Le Devoir* à l'été sur le thème « Penser la nation québécoise ». La plupart de ces textes tournaient autour de la définition identitaire du Québec. Dans un tel contexte, penser la nation prenait souvent l'allure d'une définition substantielle la nation québécoise, de la nomandeture diverse composantes et de l'évaluation des possibilités de développer une citoyenneté démocratique inclusive comme cadre politique de cette nation.

Cet exemple montre bien l'importance de la dimension identitaire dans la justification du projet souverainiste. En fait, ce qui retiendra mon attention, c'est le passage, somme toute rapide, d'une justification du projet de souveraineté du Québec en termes d'oppression nationale à une justification en termes d'affirmation nationale. Certes le dernier discours n'éclipse pas totalement le premier mais il est tout de même symptomatique que l'on concentre la démonstration de l'oppression sur l'absence de reconnaissance, une autre façon de décliner le registre de l'identitaire.

On peut voir cette évolution en comparant les textes des années 1960, comme le *Speak White*¹ ou *Les Nègres blancs d'Amérique*,² avec celui de l'affirmation tranquille de Jean Campeau.³ Dans le premier cas, la situation du Québec est comparée à celle de peuples colonisés:⁴

tell us again about Freedom and Democracy
nous savons que liberté est un mot noir
comme la misère est nègre
et comme le sang se mêle à la poussière des rues d'Alger ou de Little Rock

Dans le second cas, nous avons droit à un calcul rationnel des profits et pertes du fédéralisme et à l'affirmation sereine de la nécessité de l'indépendance:⁵

¹ M. Lalonde, « Speak White » dans L. Gauvin et G. Miron, dir., *Écrivains contemporains du Québec. Anthologie*, Montréal, L'Hexagone et Typo, 1998 [ci-après Speak White].

² P. Vallières, *Nègres blancs d'Amérique*, Montréal, Éditions Québec/Amérique, 1979.

³ J. Campeau, « Des propositions totalement inacceptables pour le Québec (1991) » dans A. Ferretti et G. Miron, dir., *Les grands textes indépendantistes*, Montréal, L'Hexagone, 1992 [ci-après Des propositions totalement inacceptables].

⁴ Speak White, *supra* note 1 à la p. 300.

⁵ Des propositions totalement inacceptables, *supra* note 3 à la p. 457.

Nous n'avons jamais eu avantage à confier notre développement économique aux autres, et ce ne sera pas différent dans l'avenir. Au contraire, notre gouvernement doit détenir tous les pouvoirs et instruments utiles à ce développement. Ce n'est pas inconciliable avec de la concertation avec les autres, avec des ententes, avec du libre-échange, avec l'harmonisation de politiques mais c'est inconciliable avec le fait qu'un autre gouvernement détienne des pouvoirs juridiques d'intervenir dans notre économie, de la structurer, de la modifier, de l'orienter.

Certes, ce déplacement est facilement explicable dans la mesure où le discours de l'oppression nationale est simultanément un discours de modernisation. Or le problème auquel a été confronté le Québec des années 1970, est qu'il s'agissait déjà d'une société moderne. On peut bien sûr mettre en cause l'ampleur de la modernisation qui a été nécessaire dans les années 1960 et qui a nourri cette fameuse révolution tranquille, mais le discours moderniste a plus fait figure de pétard mouillé que de détonateur.⁶

Le Québec de la fin des années 1960 vit donc simultanément à l'ère de la modernisation et peut vibrer à l'unisson des mouvements de décolonisation du tiers-monde mais il vit aussi en pleine modernité. L'Algérie, le Vietnam ou Cuba peuvent entretenir le souffle révolutionnaire, le Che et la Tricontinentale remplacer les crucifix et les mouvements de jeunesse catholique, mais les référents culturels, ce sont également les Beatles, mai '68, le Flower Power, et les Black Panthers.

La situation des années 1990 est encore plus évidente à cet égard. Comme le souligne Maclure, « toute tentative de fixation identitaire, nationaliste ou cosmopolitique, est contraire à une identité contemporaine conçue comme *projet narratif* ».⁷ Il ajoute un peu plus loin: « [l']identité est une question ouverte, où chaque réponse peut être problématisée, révisée et peut-être corrigée ».⁸ Dans cette optique, il est impossible d'assigner un contenu substantiel à l'identité québécoise, ou d'ailleurs à quelque identité contemporaine que ce soit, parce que nous ne vivons plus dans une société traditionnelle où les identités seraient assignées, mais dans une société suffisamment moderne pour qu'elles soient construites, même si elles le sont à partir d'un faisceau de possibilités limitées.

⁶ Sur la question de la modernisation au Québec, on pourra se reporter à l'ouvrage de K. McRoberts et D. Postgate, *Développement et modernisation au Québec* Montréal, Boréal Express, 1983.

⁷ J. Maclure, « Authenticités québécoises. Le Québec et la fragmentation moderne de l'identité » (1998) 1 *Globe* à la p. 10.

⁸ *Ibid.* à la p. 29.

Bref, à l'instar des autres sociétés capitalistes avancées, la société québécoise est confrontée à la fragmentation identitaire, plus spécifiquement à l'éclatement des enjeux sociaux. L'unité du projet révolutionnaire, relayée par l'unité du sujet révolutionnaire, vole en éclat. Il n'y a pas qu'une seule « cause » sociale, le « projet » ne cesse de se ramifier, que ce soit à travers les luttes étudiantes, la radicalisation du mouvement syndical, le développement du féminisme ou l'apparition d'un mouvement gay, le Québec vit à l'ère des nouveaux mouvements sociaux et des luttes partielles.

On assiste donc à une reconversion de la réflexion sur l'identité nationale. Celle-ci commence à se structurer en identité englobante,⁹ forcée d'admettre que la nation se décline de plusieurs manières et que « l'édification d'une *société globale* francophone depuis la révolution tranquille permet de comprendre la montée au Québec d'un discours pluriel sur l'identité ».¹⁰ Les autres affiliations identitaires se situent à l'intérieur du projet national, mais absorbent pour leur propre compte la demande de libération. Ce sont d'abord, par exemple, les femmes qu'il faut libérer pour produire un Québec libre. Il n'est pas question de remettre le combat pour la libération des femmes entièrement aux lendemains qui (dé)chantent de l'indépendance. D'où le slogan du Front de libération des femmes: « Pas de libération des femmes sans Québec libre, pas de Québec libre sans libération des femmes ». En même temps, l'horizon du pays, de la nation constituée en État, est celui de tous ces mouvements et l'existence d'un mouvement comme les *Partenaires de la souveraineté* lors du référendum de 1995 confirme cette conversion de l'identité nationale québécoise comme identité englobante de cette fragmentation identitaire.

D'un autre côté, malgré la lassitude que l'on peut éprouver vis-à-vis de cette variation sur le thème national, il faut lui reconnaître un mérite: celui d'avoir maintenu un niveau élevé de politisation dans la société québécoise. Ceci se vérifie dans la diffusion sociale¹¹ des débats sur les « projets de société », lesquels ont de moins en moins cours dans les sociétés contemporaines. Ceci se manifeste également dans un taux singulièrement élevé de participation aux consultations politiques, particulièrement lors des référendums.

⁹ Il faut entendre par identité englobante, une identité qui se superpose à d'autres identités perçues ou considérées comme partielles et communes à plusieurs identités. Par exemple, on peut se définir comme intellectuelle et Québécoise, la caractéristique « québécoise » ne regroupant pas que des intellectuelles.

¹⁰ D. Karmis, « Interpréter l'identité québécoise » dans A.-G. Gagnon, dir., *Québec: État et société*, Montréal, Éditions Québec/ Amérique, 1994, 305 à la p. 309.

¹¹ M. Venne, dir., *Penser la nation québécoise*, Montréal, Québec-Amérique, 2000.

Dans ce cadre, la scène politique québécoise est devenue la scène du « vivre-ensemble », même si les notions de peuple ou de nation québécoise pour décrire ce mode du vivre-ensemble ne font pas l'unanimité. Langlois¹² va même jusqu'à décrire les affrontements Canada / Québec comme « le choc de deux majorités, [le] choc de deux identités nationales »¹³ après avoir préalablement soutenu:¹⁴

les Québécois se perçoivent eux comme une majorité. La spécificité québécoise s'est affirmée au fil des ans, alors que s'émuissaient l'identité canadienne-française, parce qu'elle a su s'appuyer sur un ensemble d'institutions fortes et sur l'existence d'un État qui a assuré la promotion collective de ses citoyens, mais aussi sur des institutions qui reconnaissent et dispensent tous les services à la minorité historique anglophone, des institutions qui affirment le visage français de la société civile québécoise, des institutions qui permettent d'atteindre des objectifs sociaux donnés et des institutions mises en place pour accueillir et intégrer les immigrants à la majorité francophone.

Qu'ils soient fédéralistes ou souverainistes, le processus d'identification à l'espace politique québécois est quasiment achevé, comme en témoigne l'évolution de l'auto définition du groupe: les Canadiens français du Québec sont largement devenus des Québécois. On n'a qu'à penser au slogan du comité du « non » lors du référendum de 1980, « mon non est québécois », pour se convaincre que le phénomène dépasse largement les milieux souverainistes. De même, la formation de groupes comme Alliance Québec, ou d'un parti politique comme le Parti Égalité, témoigne du fait que les anglophones du Québec ne tentent plus uniquement de se définir par rapport à l'État fédéral canadien. Ils cherchent aussi à s'inscrire dans le cadre politique québécois. Ils ne se perçoivent pas seulement sous l'angle de consommateurs de services étatiques comme le laisse sous-entendre Langlois. Le même phénomène peut s'observer dans les communautés immigrées les plus structurées sur le plan associatif (Juifs, Italiens, Grecs), surtout si l'on considère le rôle de médiateur que ces associations ont pu jouer dans la période entre Meech et Charlottetown. Dans une moindre mesure et avec de notables exceptions, comme les Mohawks et les Crees, on peut observer le même phénomène dans certaines communautés autochtones.

Dans un tel contexte il est encore plus troublant de constater le décalage entre le cadre du débat politique et la symbolique politique. Si le Québec est le cadre d'un débat politique sur le vivre-ensemble, les institutions politiques et les

¹² S. Langlois, « Le choc de deux sociétés globales » dans L. Balthazar, G. Laforest et V. Lemieux, dir., *Le Québec et la restructuration du Canada, 1980-1992*, Sillery (Qc.), Septentrion, 1991.

¹³ *Ibid.* à la p. 103.

¹⁴ *Ibid.*

symboles de la vie publique restent encore largement imperméables aux voix plurielles de la collectivité québécoise. La fonction publique reste largement francophone, blanche et catholique, tant dans sa composition que dans ses préoccupations. Le drapeau et la « fête nationale » sont largement tributaires de l'expérience historique d'une seule des composantes de la société québécoise. La culture « nationale » valorise le « tricoté serré ».¹⁵

Le discours identitaire québécois se constitue donc simultanément sur un plan ethnico-culturel et sur un plan civique (ce qu'il ne faut pas confondre avec l'opposition entre nationalisme ethnique et nationalisme civique). J'entends par là essentiellement le va-et-vient entre des tentatives culturelles et des tentatives politiques de définition de l'appartenance. C'est cette ambiguïté que voudra stigmatiser Régine Robin lorsqu'elle dira:¹⁶

[...] ce paradigme de la souche vient s'articuler sur un discours moderniste, technocratique, instrumental issu de la Révolution tranquille, qui a mêlé des argumentations de gauche à un discours du contrôle social et de la normalisation. On utilisera donc le paradigme de la souche pour inverser les signes, et le petit peuple frileux, né pour un petit pain, deviendra le peuple fier de ses origines, issu des 60 000 habitants du temps de la Conquête.

Il n'est pas innocent, dans ce contexte que la langue plus que la culture soit associée au mouvement d'affirmation nationale. Certes, depuis Fichte,¹⁷ nous connaissons le rôle de la langue dans les mouvements d'affirmation nationale. Ce qui est intéressant au Québec, c'est que cette langue est dissociée de son contexte culturel. Depuis la loi 22, et plus encore avec la loi 101, la langue s'est détachée de la culture pour devenir la « langue publique commune ». Ce qui laisse supposer la coexistence avec d'autres langues qui, ayant un statut plus privé, seraient le lieu de l'attachement identitaire. La langue publique commune devient ainsi « neutralisée » historiquement et culturellement pour s'identifier aux institutions.

¹⁵ Voir à ce sujet l'ineffable « préambule » à une éventuelle future constitution du Québec souverain, distribuée dans tous les foyers et dévoilée en grandes pompes. Ce texte sema aussi l'émoi au Canada anglais: « Nous le peuple du Québec » *Globe and Mail* (7 Septembre 1995).

¹⁶ R. Robin, « L'impossible Québec pluriel: la fascination de 'la souche' » dans M. Elbaz, A. Fortin et G. Laforest, dir., *Les frontières de l'identité*, Sainte-Foy (Qc.), Presses de l'Université Laval et Paris, L'Harmattan, 1996, à la p. [302] [ci-après *Les frontières de l'identité*].

¹⁷ J. G. Fichte, *Discours à la nation allemande*, Paris, Aubier, 1981.

L'ENCHEVÊTREMENT DES TEMPS DANS LA RÉFÉRENCE IDENTITAIRE

Le discours sur l'identité québécoise se poursuit également dans trois temps, le passé, le présent et l'avenir. Le présent étant le plus estompé du fait de la prééminence du *hic et nunc* dans une société qui a renoncé à toute télologie, y compris celle du progrès, même si le présent est le temps par excellence de la modernité tardive.

Le passé est à la fois omniprésent et occulté. Il se présente simultanément sous le signe d'une amnésie collective (absence réelle de l'enseignement de l'histoire) et d'un répertoire de l'oppression. Dans ce sens, il est constamment refoulé par l'affirmation nationale qui insiste sur la rupture. C'est d'ailleurs probablement la seule dimension « révolutionnaire » de la révolution tranquille, avoir voulu faire table rase du passé. Dans ce sens, il y a rupture avec le projet groulxien de « notre maître le passé »,¹⁸ mais la rupture est inachevée et s'apparente davantage à une inversion des signes, comme le soulignait Robin dans le texte mentionné précédemment. Par ailleurs, ce passé est un passé simple. Il s'impose comme le récit mémoriel univoque du groupe numériquement majoritaire dans le façonnement de l'identité québécoise contemporaine; au lieu de partir du discours actuel sur les modes multiples de l'appartenance québécoise et de la contribution de ses quatre composantes: les autochtones, les colons français, les colons britanniques, les autres groupes immigrés.

D'où son caractère litanique, où l'histoire, celle avec laquelle on voudrait rompre, se lit comme une suite ininterrompue de défaites. C'est ce qu'on appellera la saga conquêtiste, avec tout ce qu'elle recèle de potentiel de ressentiment, d'unilatéralité et de victimologie. Ce qui est important dans ce récit du passé, c'est sa constante réitération. La conquête n'est pas un événement définitivement révolu, pas plus que la Révolution française, malgré les injonctions de Furet de la clore pour pouvoir la penser. La conquête ne se limite pas à 1760 ou 1763. Toutes les humiliations nationales répertoriables depuis lors sont ramenées à cet événement fondateur pour en devenir des réincarnations,

¹⁸ Se reporter à l'ouvrage éponyme du chanoine Lionel Groulx, Montréal, Bibliothèque de l'Action française, 1924.

sans tenir compte de l'avertissement de Marx que si l'histoire peut se répéter, la première fois elle relève de la tragédie mais ensuite de la farce.¹⁹

Néanmoins, ce passé ne peut pas être complètement oblitéré. Même si le discours de l'oppression n'a plus la cote dans le mouvement souverainiste, il reste quand même la justification principale de la revendication d'indépendance nationale. C'est au nom de l'histoire, de la survivance malgré l'humiliation, de l'histoire surmontée pourrait-on dire, que s'érige l'authenticité de la québécoise, et c'est sur le socle de cette histoire qu'est revendiqué l'accès à une « normalité politique »,²⁰ la forme étatique de la nation.

Le deuxième temps, le présent, est fortement associé au caractère moderniste du projet souverainiste. Il occupe trois dimensions: l'inscription dans la logique de l'individuation libérale, l'importance du territoire et l'étatisme.

La principale difficulté du projet souverainiste est probablement le remplacement de la communauté par l'individualisme libéral. C'est sans doute sa principale réalisation, mais aussi ce qui empêche l'aboutissement du projet souverainiste. Car le souffle de liberté qui a animé le Québec de la révolution tranquille, c'est fondamentalement la rupture des liens communautaires, la disparition de l'illusion de la *Gemeinschaft* déjà largement érodée par l'urbanisation, dont les effets se font sentir dès les années 1920. Le paradoxe de cette collectivité qui n'est plus une communauté, c'est qu'elle préserve difficilement une identité collective qui fuit de toute part. Si l'histoire offre plusieurs exemples de transformation de *Gemeinschaften* en *Gesellschaften* sur la base de l'accès à la forme étatique de la nation, on ne peut que se méfier des tentatives de recommunautarisation des sociétés impersonnelles modernes où prolifèrent identités et identifications.

La profonde division de la société québécoise face à son avenir politique peut être vue comme un signe d'ambivalence, mais il semble plus fécond d'y voir un

¹⁹ K. Marx, *Le 18 Brumaire de Louis Bonaparte*, Paris, Éditions sociales, 1969 à la p. 15. Et il ajoute, tout à fait approprié en la circonstance: « La tradition de toutes les générations mortes pèse d'un poids très lourd sur le cerveau des vivants. Et même quand ils semblent occupés à se transformer, eux et les choses, à créer quelque chose de tout à fait nouveau, c'est précisément à ces époques de crise révolutionnaire qu'ils évoquent craintivement les esprits du passé ».

²⁰ Alors qu'un examen rapide des États nous permet de constater que l'État-nation est loin de constituer la norme et ce, malgré la vague de constitution de nouveaux États sur la base du principe de nationalité dans l'après 1989.

résultat de la décommunautarisation. C'est ce travail de sape moderniste de la communauté que l'on veut conjurer avec la pratique des « sommets » et la logique du « consensus québécois ». Malgré tous les efforts gouvernementaux des dernières années, le consensus ne prend pas, la mayonnaise tourne et les voix discordantes nous rappellent la difficulté du projet. Plus particulièrement, elles soulignent l'impossibilité, dans le libéralisme démocratique, de faire « bloc ». « Le discours politique de l'identitaire relève donc d'exigences qui n'ont parfois que peu à voir avec la pluralité réelle des identités au quotidien. »²¹

Une deuxième dimension de conjugaison du présent, c'est le territoire. Depuis la révolution tranquille, celui-ci a été profondément refaçonné. Cette humanisation consciente du territoire se fait sentir sous les modes suivants: la maîtrise, l'occupation et la structuration. Le caractère épidermique des débats entourant la question de la partition nous montre bien l'importance de l'imaginaire territorial.

La maîtrise se fait sentir sur le mode du grand-œuvre. Il n'est pas anodin que le slogan « maîtres chez nous » ait surgi dans le débat sur la nationalisation de l'électricité, ni qu'Hydro-Québec soit devenu un des symboles de l'identité québécoise moderne. Ce qu'on y retrouve, c'est l'idée d'une nature qui doit être harnachée, bétonnée, pour être véritablement habitée. On est loin de l'imaginaire du coureur des bois, sorte de nomade qui se fondait dans la nature. On voit poindre plutôt celle de l'ingénieur, le « maître et possesseur ». Dans ce contexte, le barrage, que ce soit celui de Manic 5 ou de la Baie James, est le symbole par excellence du Sujet moderne, indépendant entreprenant et dominant. Ce qui n'est pas sans rappeler l'éloge soviétique du Dnieprostro ou les toiles du futuriste Sant'Elia à la gloire du barrage hydroélectrique. D'une certaine façon, on peut dire que le barrage symbolise l'occupation du sol, pensée en termes de prise/transformation. Comme le souligne la romancière Arundhati Roy dans un autre contexte, celui de l'Inde:²²

Big Dams are to a nation's "development" what nuclear bombs are to its military arsenal. They're both weapons of mass destruction. They're both weapons governments use to control their people. Both twentieth-century emblems that mark a point in time when human intelligence has outstripped its own instinct for survival.

L'occupation du territoire ne prend pas uniquement la forme de la modification du paysage. Elle se vérifie par la dissémination du drapeau dans des

²¹ S. Simon, « Espaces incertains de la culture » dans S. Simon *et al.*, *Fictions de l'identitaire au Québec*, Montréal, XYZ, 1991, 13 à la p. 16.

²² A. Roy, *The Cost of Living*, Toronto, Vintage Canada, 1999 à la p. 80.

parties du territoire qui n'étaient pas auparavant investies par les institutions publiques québécoises. Le cas le plus évident à cet égard est celui du Grand Nord, largement abandonné au gouvernement fédéral en tant que fiduciaire de la couronne impériale et de ses obligations vis-à-vis des populations autochtones. Les choses commencent à changer avec la Convention de la Baie James. Certes ce projet est lié au développement hydroélectrique, mais il signifie également une présence tangible du gouvernement québécois (par le biais des institutions de santé et d'éducation) sur une partie du territoire provincial qu'il avait négligée jusque là. L'occupation du sol et son inclusion dans le développement de la modernité québécoise font partie d'une reformulation symbolique de la spatialité. Le Québec n'est plus la grande Laurentie ou même la nation canadienne-française répartie sur l'ensemble du territoire canadien, mais un projet territorialisé qui occupe l'ensemble du territoire dévolu à la province dans le cadre de la fédération canadienne, peu importe le mode de peuplement de ce territoire.²³

Troisième dimension, la structuration du territoire. Depuis la révolution tranquille, nous avons assisté d'abord à un mouvement de grande centralisation institutionnelle. La construction de l'État québécois a pris la forme de la gestion technocratique de la population et d'une volonté de planification et d'aménagement centralisé du territoire. C'est au nom de la rationalité technocratique que l'on a voulu « réorganiser » des régions plus ou moins sinistrées (voir à ce sujet les plans d'aménagement du BAEQ) et surtout qu'on a uniformisé le territoire découpé en régions administratives régies par les mêmes institutions. Notre Père qui est à Québec pratiquait alors la politique du mur à mur et on a vu proliférer les organismes gouvernementaux centralisés. Depuis quelques années on assiste à un discours sur la régionalisation, plus apparenté à la déconcentration administrative qu'à une véritable décentralisation du pouvoir et des institutions.

Ce processus de territorialisation a été largement marqué du sceau de l'étatisme et continue de l'être, malgré l'abandon de la plupart des politiques keynésiennes. L'analyse qui prévalait au début des années 1960 présentait la société québécoise comme une société ethniquement structurée, où le capital se confondait avec la population anglophone. D'un tel point de vue, l'État se voyait assigner un double rôle: d'une part il devait conduire le mouvement de modernisation, d'autre part, il devait remplacer la bourgeoisie canadienne-

²³ D'où la sensibilité, très épidermique, du nationalisme québécois face aux divers projets partitionnistes, qu'ils émanent des anglophones ou des autochtones.

française et jouer un rôle déterminant dans l'émergence du Québec Inc. Mais l'État a eu également pour mission de faire société.

C'est sous la houlette étatique qu'on a vu se développer les principales institutions du Québec moderne. La grande noirceur avec laquelle voulait nous faire rompre la révolution tranquille était bel et bien, selon le mot de Sol, une « grande noire sœur ». Comme le souligne Nicole Laurin, l'Église qui est rejetée au moment de la révolution tranquille, c'est essentiellement celle d'un « modèle inédit d'organisation matriarcale hiérarchique ».²⁴ Ce modèle est marqué du sceau de l'éthique de la sollicitude, avec ce que cela comporte de personnalisation des rapports sociaux qui sont le propre de la *Gemeinschaft*. Le remplacement sera un État technocratique, masculin quant à ses promoteurs et à ses gestionnaires, fonctionnant à l'éthique dépessoinalisée de la justice: le fameux modèle de domination rationnel-bureaucratique de Weber et appartenant à l'univers de la *Gesellschaft*.

Quant au temps du futur, il prend à la fois la forme du projet et du report. Le projet est marqué du sceau de l'impossibilité et de l'incomplétude. De façon périodique, on se demande quels changements il faudrait faire, ce qu'il faudrait changer et ce qu'il conviendrait de conserver dans un éventuel futur Québec souverain. Le futur comporte à la fois les espoirs de refondation de la collectivité politique québécoise, la place des divers groupes au sein de cette collectivité (groupes ethniques ou sociaux), les institutions (le fantasme républicain hérité du mouvement patriote), la monnaie et les rapports éventuels avec le Canada hors-Québec. Cet espoir de refondation explique le soutien des « partenaires de la souveraineté » que sont les organisations syndicales, féministes et populaires au projet souverainiste québécois. Un soutien qui n'est pas entamé par les actions (et parfois les exactions) des divers gouvernements du Parti québécois à l'égard de ces organisations.

Cette projection dans l'avenir est aussi marquée du sceau du report. Au lieu de poser les enjeux sociaux dans le cadre du Québec actuel, on attend ... la souveraineté, avant de tenter de régler certaines questions, notamment celle de la parité représentative entre les hommes et les femmes. Il s'agit indéniablement d'une revendication d'actualité dans la quasi-totalité des démocraties libérales occidentales qui se pose autant dans le cadre fédéral canadien que dans celui du Québec souverain. Il est pourtant révélateur, du moins jusqu'à tout récemment,

²⁴ N. Laurin, « Le projet nationaliste gestionnaire. De l'hôpital des religieuses au système hospitalier de l'État » dans *Les frontières de l'identité*, supra note 16 à la p. 97.

qu'avant de soulever la question de la parité, les groupes féministes québécois qui ont appuyé cette démarche attendaient des lendemains qui chantent (ou qui déchanteront) de l'indépendance.

Ces temps n'existent pas seulement de façon distincte, mais ils se caractérisent également par un enchevêtrement. Le passé et le présent se confondent et le « nous autres » est un halo où règne le flou artistique. Selon les besoins, la collectivité québécoise comprend toutes les personnes résidant au Québec ou seulement les Canadiens français de souche. C'est ce qu'on peut assimiler aux glissements entre un nationalisme civique et un nationalisme ethnique mais qui ne s'y laisse pas réduire. En effet, le projet indépendantiste québécois est inclusif, mais il représente largement les aspirations d'un groupe ethnique spécifique majoritaire, et les autres groupes conservent largement un horizon canadien, quand ce n'est pas nord-américain (pensons non seulement aux autochtones mais également à plusieurs groupes ethniques transfrontaliers).

Ceci transparaît dans la manière dont se raconte l'histoire. À cet égard, il n'y a pas eu de mutation fondamentale du récit historique québécois, même s'il a connu une éclipse de vingt ans dans les écoles parce qu'on ne savait trop comment le présenter. Sa matrice reste une matrice nationale: l'arrivée des Blancs, la Nouvelle-France, la Conquête, les Patriotes, la Confédération, la Révolution tranquille, à laquelle se greffent des appendices comme les ouvriers, les femmes, les autochtones, les Anglais, les immigrants; sans que la greffe puisse influencer le cœur du discours, étant affublée de particularisme. Thériault a raison de nous rappeler qu'au fil des ans, sous l'effet du démocratisme, le nationalisme québécois est devenu *soft* et que « la prétention du mouvement national à définir l'espace québécois à partir d'un héritage français a activé des prétentions contraires. [...] Ces prétentions contraires, amenées par le débat démocratique sur l'identité québécoise, ont semé le doute dans l'esprit de plus d'un nationaliste ».²⁵ Il n'en demeure pas moins que ce trouble identitaire connaît des variations selon les impératifs militants et la nécessité du rapport de forces.

La plupart des nationalistes québécois ont une version civique de la nation, mais la déclaration de Parizeau au soir du référendum de 1995 ne peut pas être entièrement mise au compte de l'alcool ou du passéisme d'un individu en particulier. Ce sont « des actes manqués, des lapsus, des gaffes, se [rapportant] à un discours de l'homogénéité, de la nostalgie d'une *Gemeinschaft* imaginaire, de la fusion dans la chaleur du préjugé aurait dit Herder, de tout ce qui rappelle la société canadienne-française [...] Ces traces passent par le paradigme de la

²⁵ J.-Yvon Thériault, « La démocratie et le trouble identitaire » *ibid.* à la p. 177.

souche, du tronc, de l'arbre comme l'arbre généalogique, des branches, des rameaux, toute une conception botanique de la culture ».²⁶ En fait, le problème fondamental réside dans la nécessité de trouver une justification au projet souverainiste québécois, puisqu'il n'en est qu'à l'état de projet et non de réalité. Cette justification est puisée dans le passé et relève dans l'ensemble du conquétisme. Elle pourrait éventuellement se situer dans un projet (comme ont tenté de le faire les « partenaires de la souveraineté » avant le début formel de la campagne référendaire de 1995), ce qui serait plus susceptible de faire appel à l'ensemble des composantes ethniques de la population québécoise. Or, ce passé ne mobilise qu'un groupe ethnique particulier, les Canadiens français; il n'est pas un passé commun, car seul l'avenir peut l'être.

De même, il y a enchevêtrement du présent et de l'avenir. À cet égard, la saga de la loi 101 est révélatrice. Pièce maîtresse de la législation du premier gouvernement du Parti québécois, elle cherche largement à anticiper la souveraineté du Québec et, dans son anticipation même, contribue à en reporter l'avènement. Elle représente dans le contexte des États souverains une banalité, notamment la détermination étatique d'une langue de fonctionnement des institutions, des administrations publiques, des lieux de travail et du système scolaire.²⁷ Si elle avait été le fait d'un pays reconnu souverain sur la scène internationale, il n'y aurait pas eu grand chose à en redire du point de vue de la légalité démocratique. Mais le scalpel juridique qui la redimensionne (l'affichage, la clause Québec vs la clause Canada, etc.), rappelle que le Québec n'est pas un pays souverain, qu'il évolue encore à l'intérieur du cadre fédéral canadien. En outre, en levant la principale inquiétude justifiant le projet souverainiste (la volonté de vivre en français au Québec), la loi 101 contribue *de facto* à saper les appuis à la souveraineté. Celle-ci devient superflue puisque cette loi a pu être adoptée alors que le Québec fait encore partie du Canada. Dans ce sens, on peut même soutenir que la promulgation de la loi 101 avant la tenue du référendum est une des causes de la cinglante défaite référendaire du Parti québécois en 1980.

²⁶ R. Robin, *ibid.* à la p. 296.

²⁷ Voir à ce sujet les commentaires de C. Taylor (*Multiculturalism and the Politics of Recognition*, Princeton, Princeton University Press, 1992) qui semble aller plus loin que les intentions du gouvernement québécois en en faisant l'illustration d'un projet commun, sinon d'un bien commun. Sur la question de la « normalité » de la procédure pour les États souverains on peut également se reporter à W. Kymlicka, *Multicultural Citizenship*, New York, Oxford University Press, 1995.

LES LIMITES DE LA RÉFÉRENCE IDENTITAIRE

Après ce tour d'horizon de la fluctuation de l'identité québécoise et de sa conjugaison suivant des registres temporels à la fois distincts et enchevêtrés, je compte terminer cette analyse sur une note plus théorique en soulevant les problèmes politiques que pose le recours à l'identité. Dans le contexte québécois, trois grands problèmes semblent ressortir: d'abord, celui de la plénitude supposée des identités; ensuite, le mélange entre la sphère publique et la sphère privée que semble produire le recours à l'identité et à l'identification; enfin, la logique politique de l'affirmation /confrontation que semble induire le recours à l'identitaire.

Le premier problème, souligné d'emblée en montrant comment l'identité nationale a agi comme identité englobante d'autres identifications politiques, laisse bien entendre que l'identité n'est jamais donnée une fois pour toutes. Plus encore, dans des sociétés complexes, des sociétés où les enjeux sociaux ne se laissent pas réduire au monisme, comment peut-on penser en termes d'identités uniques et, donc, quels problèmes cela pose-t-il pour une action politique qui se fonde sur l'identité ou l'identification?

Il est possible de s'en tirer avec une pirouette, en mettant l'accent sur le côté essentiellement imaginé de la nation, s'inscrivant ainsi dans le sillage de la réflexion ouverte dans l'ouvrage d'Anderson.²⁸ Si Anderson a entièrement raison de souligner que les nations ne constituent pas des données naturelles mais correspondent à des constructions sociales, il n'en reste pas moins que la dimension symbolique est susceptible d'atteindre une matérialité effective. Tout imaginées qu'elles soient, les nations n'en constituent pas moins un trait central des États modernes et le fantasme de l'État-nation contribue largement à nourrir l'imaginaire politique.

Je me situerai donc plutôt sur le terrain d'un auteur, Robert Musil, ayant vécu au cœur du *maëlstrom* identitaire et en ayant fait le sujet principal de son oeuvre romanesque. Celui-ci souligne que « l'habitant d'un pays a toujours au moins neuf caractères ».²⁹ Avec une ironie cinglante, cette remarque met en évidence le caractère nécessairement réducteur de l'identité par rapport à la complexité du social et à la multiplicité des rapports sociaux dans lesquels nous sommes insérés.

²⁸ B. Anderson, *Imagined Communities*, 2e éd., Londres, Verso, 1991.

²⁹ R. Musil, *L'homme sans qualités*, t. 1, Paris, Seuil, 1982 à la p. 39.

L'identité, dans un tel contexte, ne peut jamais être « pleine ». Il y a toujours un excédent identitaire, d'une part, et un bricolage identitaire, d'autre part. Les sujets modernes résistent partiellement à l'identification et se retrouvent toujours en excès par rapport à leurs identifications. En même temps, ces identifications ne sont jamais données une fois pour toutes, mais modulées au gré des circonstances.

En fait, dans l'action politique, l'identité intervient simultanément sur trois registres. Le premier: celui de l'identité imposée, celle qui porte la marque de la stigmatisation et dont on veut se déprendre. Le deuxième s'apparente à la figure du « paria devenu rebelle » qu'évoque Arendt,³⁰ le refus assumé de cette identité stigmatisante. Le troisième, qui comporte une forte dynamique de pluralisation, réfère à l'identité libérée qui, parce qu'elle relève de la liberté et donc de la pluralité, n'obéit pas à un modèle unique.³¹

Ce n'est donc pas un hasard si la volonté de maintenir l'identité québécoise comme identité englobante nécessite un tel travail de la part de ses promoteurs, mais ce travail s'apparente au labeur de Sisyphe. Il y a d'abord une volonté de monopoliser politiquement les symboles identitaires: le parti souverainiste provincial s'appelle *québécois*, comme si les autres ne l'étaient pas, tandis que le parti souverainiste sur la scène fédéral soutient dans son appellation même que le Québec doit faire *bloc* à Ottawa. Il y a également une volonté d'exclusion des « traîtres » à la nation québécoise. Les politiciens fédéralistes font au mieux figure de vendus et au pire de traîtres, s'excluant d'eux-mêmes de l'univers national. Enfin, il y a plusieurs tentatives de faire taire les voix discordantes, dont l'exemple le plus grotesque est certainement la politique des « sommets » visant à dégager le « consensus québécois ».

Un deuxième problème que pose la formulation d'un projet politique en termes identitaires est la confusion des genres qu'elle entretient entre la sphère privée et la sphère publique. Il peut sembler étrange qu'une féministe veuille éviter une telle confusion étant donné l'importance qu'a pris l'idée que le « personnel est politique » dans le féminisme contemporain. Il semble toutefois nécessaire de souligner qu'une remise en cause du renvoi des femmes à la seule sphère du privé n'implique pas le désir d'abolition de toute distinction entre le

³⁰ H. Arendt, *La tradition cachée*, Paris, Christian Bourgois, 1987.

³¹ Je me suis attardée beaucoup plus longuement à ce sujet sur deux textes: « Féminins singuliers et féminins pluriels » dans *Les frontières de l'identité*, supra note 16 et « Agir sans nous » dans D. Lamoureux, dir., *Les limites de l'identité sexuelle*, Montréal, Éditions du remue-ménage, 1998, 87.

public et le privé. En fait, c'est le propre des régimes totalitaires d'abolir cette distinction.

Dans cette perspective, la querelle québéco-québécoise sur le statut politique du Québec a souvent été présentée comme une querelle de famille. La métaphore familiale est omniprésente dans le débat politique québécois, que ce soit la thématique de la « femme battue » ou de la « petite sœur » cherchant plus d'autonomie mais tassée dans le coin par son grand frère des partisans de la souveraineté ou la manifestation d'*« amour »* des autres Canadiens pour le Québec à l'occasion du référendum de 1995.

Cette métaphore familiale renvoie à une conception genrée des rapports de forces nationaux. Ainsi, l'oppression se décline au féminin, d'où la femme battue ou la petite sœur, tandis que l'affirmation s'effectue au masculin. Ceci peut s'expliquer également par la traditionnelle division entre la sphère publique et la sphère privée: le registre de l'oppression est interprété comme un non-accès ou encore un accès limité à la sphère *masculine* du politique. De là proviennent les idées de société tronquée, la métaphore de la castration ou l'idée de l'*« homme à genoux »*, posture féminine, suppliante. Au contraire, s'exprimant dans le cadre de l'État-nation, le registre de l'affirmation implique la double louange de la virilité et de l'*homo aeconomicus*, subsumée dans la figure de la performance, comme le décrit si bien Jocelyn Létourneau dans ce passage: « l'Homme performant, avec sa ribambelle de traits caractéristiques (parmi lesquels l'audace, l'ambition et l'assurance, les trois « A » de la réussite!), est en effet la nouvelle figure à travers laquelle la collectivité québécoise [...] se représente dorénavant ».³²

Le troisième problème que soulève la référence à l'identité est la logique de l'affirmation/ confrontation qui se situe aux antipodes du compromis démocratique. En fait, l'identité n'est pas négociable. Présentée comme pleine et achevée, sans excès et sans creux, elle ne peut que s'affirmer. Le problème, c'est qu'elle se heurte à d'autres identités à la fois à l'intérieur et à l'extérieur du territoire québécois.

À l'intérieur, elle est confrontée à ceux et celles qui continuent, pour des raisons diverses, à se définir comme Canadiens, que ce soient les anglophones, les populations récemment immigrées, les autochtones ou les 40 p. cent de francophones qui auraient voté non lors du référendum de 1995. À l'extérieur,

³² J. Létourneau, « La nouvelle figure identitaire du Québécois » (1991) 6 British Journal of Canadian Studies 17 à la p. 19.

elle se heurte aux politiciens fédéraux qui ont bâti leur carrière sur l'« éradication » du nationalisme québécois, mais aussi aux minorités francophones hors-Québec qui se sentent largement « abandonnées » par le nationalisme québécois.

Plus profondément, ce que la logique identitaire interdit, c'est la négociation, le compromis, le louvoiement. Le Sujet identitaire fonctionne à la logique de l'opposition, il ne devient sujet que dans un affrontement où lui est renvoyé, sur un mode spéculaire, son statut de sujet. Il se pose en s'opposant, comme en témoigne la dialectique du maître et de l'esclave développée par Hegel.³³ La seule alternative envisageable dans ce contexte devient la suivante: ou l'affirmation nationale et l'accès au statut d'État souverain, ou l'humiliation nationale et le dépérissement à l'intérieur d'un État canadien de moins en moins fédéral et de plus en plus unitaire. Bref, nous sommes dans la logique du tout ou rien, celle du consensus qui ne s'obtient qu'au prix de la mort, c'est-à-dire l'élimination d'une des parties en présence. Cela est fort éloigné de l'idéal démocratique qui fait du dissensus le cœur même de l'existence politique.

³³ G.W.F. Hegel, *Phénoménologie de l'esprit*, Paris, Aubier, 1991. Voir principalement le chapitre IV.

SPECULATION: ALTERNATIVES TO SECESSION

Gordon Laxer*

The author proposes to consider the option of Québec's asymmetry and explores the conditions that would render such an arrangement politically viable. He maintains that the formation of a tripartite national alliance (English Canada, Québec, First Nations) would make it possible to counter global corporatism and market forces.

L'auteur propose de reconsidérer l'option de l'asymétrie du Québec et explore les conditions qui rendraient un tel arrangement constitutionnel politiquement viable. Finalement, il soutient que la formation d'une trialliance nationale (Canada anglais, Québec, Premières Nations) permettrait de contrer le corporatisme mondial et les lois du marché.

INTRODUCTION

In the first half of the 1990s, two attempts to bring Québec into the *Constitution Act, 1982*¹ by recognizing Québec as a *distinct* society failed. These were compromise agreements: the Meech Lake Accord of 1987, finally rejected in 1990, and the Charlottetown Accord of 1992, defeated ten years ago in a national referendum.² For some, the Meech Lake Accord was minimally satisfactory to Quebecers, offended people outside Québec, and the perception was that it would have weakened English-speaking Canada. The Charlottetown Accord was also seen as a bad compromise in which it seemed neither party was satisfied. Recognition of an inherent right to self-government for Aboriginal peoples and declaring Aboriginal government to be “one of three orders of government in Canada”³ were the only truly positive things about it.

* Department of Sociology, University of Alberta. I would like to thank Barb Cameron for asking me review the question of asymmetry and for her own stimulating work on the concept. I would also like to thank Claude Denis and David Schneiderman for collaboration in developing the idea with me in the early 1990s. Ineke Lock provided very competent research assistance.

¹ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11. The 1982 Constitution applies to all of Canada including Québec, but the Québec National Assembly was the only legislature that rejected it. Most federalist Québec Liberal MNAs voted with Parti Québécois members against the *Constitution*. In the 1982 Constitution, Québec lost its *de facto* veto over constitutional change and was not recognized as a distinct people within Canada.

² Kenneth McRoberts provides excellent summaries of the Meech Lake and Charlottetown Accords in *Misconceiving Canada — The Struggle for National Unity* (Toronto: Oxford University Press, 1997) at 190–221.

³ *Ibid.* at 210.

In the aftermath of these failures came polarization. The Parti Québécois government held its own referendum on sovereignty-association in 1995. It was narrowly defeated in a cliff-hanger vote. The failure of these compromises and the near victory for Québec sovereignty pushed middle positions of renewed Federalism off the table, at least temporarily. As a result, for several years only the stark choices of secession or the *status quo* merited discussion. Today, with the obvious weakening of the independentist movement in Québec, the *status quo* appears to be the only option.

In the 1990s a counter-productive verbal war was waged. Canada is not a real country, claimed Lucien Bouchard.⁴ We will partition Québec if it tries to separate, retorted Preston Manning.⁵ “A majority of Quebecers in a democratic referendum is not enough for Quebecers to choose their future,” argued Jean Chrétien, and “furthermore the federal government will not recognize Québec’s question unless approved by Ottawa.”⁶ On the night of the 1995 Québec referendum, Jacques Parizeau attributed the narrow defeat of sovereignty-association to money and the ethnic vote.⁷ In light of this, foreign observers could be forgiven for thinking that such inflated rhetorical wars could lead to real war.

While verbal wars continued amongst politicians, for ordinary citizens, there was surprisingly little hostility. A poll released by Montreal’s *L’actualité* magazine on 1 November 1998 asked Quebecers and Canadians how each saw the other.⁸ Quebecers evaluating English-speaking Canadians gave high marks to good qualities such as honesty, ambition, loyalty and friendliness.⁹ English-speaking Canadians rated Quebecers most highly as ambitious, honest, loyal and respectful of the environment.¹⁰ These results looked less like civil war than

⁴ Bouchard proclaimed that independence would allow Québec to become “un pays normal.” J. Simpson, “Just what does Quebec mean when it says it wants to be ‘normal’?” *The Globe and Mail* (14 September 1994) A22.

⁵ In December 1995, the Reform Party released a report entitled “Twenty Realities of Secession,” which laid out terms for Québec’s separation. The harshest terms included partition, if desired by Anglophone, allophone and Aboriginal minorities and a corridor through Québec to Atlantic Canada. See J. Conway, *Debts to Pay: A Fresh Approach to the Quebec Question*, 2d ed. (Toronto: Lorimer, 1997) at 225–26.

⁶ J. Chrétien, *The Province (Vancouver)* (19 September 1995) A5.

⁷ L. Gagnon, “The vote divided Yes and No; the speech united them” *The Globe and Mail* (4 November 1995) D3.

⁸ See “Les Frères Siamois” *L’actualité* 23:17 (1 November 1998) 27.

⁹ *Ibid.* at 28.

¹⁰ *Ibid.*

two peas in a pod. Unfortunately, the poll also invited respondents to name flaws. What an opportunity to hurl insults. Each side could have come up with insults such as ignorant, lazy or incompetent. In actuality, only thirty-nine percent of Quebecers thought Canadians outside Québec were hypocrites and fifty-seven percent of English Canadians returned the favour.¹¹ However, the largest number of Quebecers only managed epithets as insulting as hedonists (seventy-five percent), and spendthrifts (fifty percent) about English Canadians. English Canadians managed to hurl back equally pathetic accusations. The number one flaw of Quebecers was hedonism again (eighty-two percent), followed by carefree ways.¹² Even if politicians are eager to fight rhetorical wars of polarization, most Quebecers and English-speaking Canadians, despite some misperceptions, do not want to jump into the trenches.

However, despite goodwill at the individual level between Quebecers and English-speaking Canadians, there is universal constitutional fatigue and an unwillingness to accommodate each other's differing visions of Canada. In their frustration about what is seen as the irrational and intransigent position of most Quebecers, English-speaking Canadians ask: What does Québec want? The answer is simple. Most Quebecers want both their nation (Québec) and their country (Canada) without being forced to choose one over the other. Nevertheless, hard liners on both sides demand this decision. In the 1990s Preston Manning's Reform Party, whose fortunes thrived whenever popular opinion in English-speaking Canada was whipped up against Québec, essentially said to Quebecers: Live in Canada as a province just like the others or leave. We will scare you into submission.¹³ It was a variation on the old Chicago blues song "I told you I love you — now get out."¹⁴ Reform's, and now the Alliance Party's vision, except for the question of official bilingualism, is similar to that of Jean Chrétien, Stéphane Dion or Pierre Trudeau. The main difference is that the Liberals support official bilingualism across Canada, whereas the Alliance opposes it. On the other side, hard line separatists like Jacques Parizeau and Bernard Landry have a similar message for Quebecers.: You must choose your

¹¹ *Ibid.* at 29.

¹² *Ibid.* at 29. I am grateful to Myrna Kostash for directing me to *L'actualité*'s poll. Kostash's analysis appears in *The Next Canada: in Search of our Future Nation* (Toronto: McClelland & Stewart, 2000).

¹³ Shortly after the 1995 sovereignty referendum was defeated in Québec, Preston Manning warned that violent conflict and perhaps civil war is inevitable if Québec attempts to separate from Canada. See N. Ovenden, "Violence warned of if Quebec separates" *Edmonton Journal* (2 December 1995) A8.

¹⁴ P.C. Newman, *Maclean's* (16 November 1992) 60.

nation — Québec — over your country. Poly-nation federations like Canada are not normal. In this polarized debate, in abeyance now that sovereignists fortunes have waned, no one is putting forth moderate positions between secession and the *status quo*.

Thus, this paper explores two themes despite the apparent victory of the *status quo*. First, it puts middle positions back on the operating table in the case of a resurgence of the bipolarization, by examining the merits and flaws of asymmetrical arrangements. Second, it explores the conditions necessary to re-engage in serious consideration of middle positions.

The place of Aboriginal peoples within Canada and how the creation of a third order of government for natives would affect asymmetrical relations between Québec and English-speaking Canada is not discussed here. By their nature, self-government agreements involve particular arrangements not applying to non-native Canadians and they differ from agreement to agreement. Treaties are unique historical documents and are by their nature asymmetrical. It is curious that asymmetry for First Nations was endorsed in the failed Charlottetown Accord, but was denied for Québec. That being said, in any new arrangement between Québec and English-speaking Canada, First Nations rights to national self-determination must be recognized, and Aboriginals must be full partners in negotiations between Québec and English-speaking Canada.

THE DIFFERING NATIONAL ASPIRATIONS OF QUEBECKERS AND ENGLISH-SPEAKING CANADIANS

We live in an era where globalization is assumed to be inevitable. The Washington Consensus or neoliberal globalism, is the regime of governance of this corporate world, where international trade agreements guarantee constitution-like rights of entry to transnational corporations, and curb the power of elected governments.¹⁵ In the dominant world ideology, economic and cultural nationalisms are deemed to be *passé* and reactionary. Lawrence Summers, former Secretary of the United States Treasury and former chief economist of the World Bank, uses the term *separatists* differently than do Canadians. He calls anyone who opposes Washington's Globalist Consensus a *separatist*.¹⁶ The aura of inevitability about the Washington Consensus was tarnished by the failures

¹⁵ S. Gill, "Globalisation, Market Civilisation, and Disciplinary Neoliberalism" (1995) 24 Millenium: J. Int'l Stud. 412.

¹⁶ L. Summers, "America's Role in Global Economic Integration" (Brookings Conference, "Integrating National Economies: The Next Step," 9 January 1996).

of the Multilateral Agreement on Investment (MAI) in Paris in 1998, and by popular street resistance against the World Trade Organization (WTO) in Seattle in 1999. Despite the tarnish, globalism is still the dominant ideology of world governance.

I argue elsewhere that neoliberal globalism threatens civic-based nations, where shared citizenship is the glue holding diverse, democratic communities together.¹⁷ Their sense of belonging comes from such things as sharing universal public services and public cultural institutions. By putting consumerism and corporate rights over those of active citizenship, neoliberal globalism takes aim at the heart of state-nations. On the other hand, globalism has strengthened many ethno-cultural nationalisms. People still yearn for a sense of belonging to a smaller community and when their civically-oriented state becomes the corporate state, some seek the bonds of community in homogeneous cultural or linguistic nations.

English-speaking Canada has moved a great distance along the continuum from a historic British cultural and ethnic sense of nationality, towards a civic, state-nation. In contrast, the concept of French Canada is based on ethno-cultural membership space tied to individuals of French-Canadian origin living anywhere in Canada. A Québec conception of nation is territorially based. Theoretically, it includes all who live there equally, regardless of ethnicity. This concept is a move towards a civic sense of national inclusiveness. However, under pressure from neoliberal globalism, an activist Québec state is no longer at the heart of the Québec nation as it was during the Quiet Revolution in the 1960s and 1970s. The momentum towards a civic sense of Québec nationality seems to have been halted or possibly reversed. Comments made by prominent Québec politicians during and after the 1995 sovereignty referendum campaign made it clear that Québec nationalism can be a thin civic veneer over an ethno-cultural basis of nationhood.¹⁸

¹⁷ G. Laxer, "Surviving the Americanizing New Right" (2000) 32:1 Can. Rev. Socio. & Anthro. 55.

¹⁸ Several quotes and actions by Parti Québécois Premiers are well known. In discussing Québec's low birth-rate, former Premier Lucien Bouchard stated that Quebecers are "one of the white races that has the least children" See T.T. Ha, "Bouchard remark sparks outcry" *The Globe and Mail* (16 October 1995) A1. After the narrow defeat for the sovereignist side in the 1995 referendum, Bernard Landry lashed out at two night clerks in a hotel, indirectly accusing one, an immigrant, of supporting the No side. See L. Gagnon, "The most powerful Finance Minister in Canada" *The Globe and Mail* (11 May 1996) D3. Parizeau's "ethnic vote" quotation was referred to *supra* note 7. Although these outbursts revealed much, it does not mean that the sovereignist movement as a whole is racist or prejudiced. A great

Phil Resnick calls English-speaking Canada the nation that dare not speak its name.¹⁹ Most English-speaking Canadians identify with Canada as a whole, not with an entity called *English Canada*. Nevertheless, even if they do not know it, their nationalism applies only to English-speaking Canada.

As English Canada shares a language with the most powerful country in the world, its long-term survival, as George Grant argued in the 1960s, depends on the retention of a distinctive *ethos*.²⁰ The touchstones of that *ethos* are a broader public life and a more activist state than in the U.S. Such an entity has been held together in recent decades through a positive nationalism of civic inclusion, built around universal, high-quality public services. A national, publicly-based medicare system is central to English-speaking Canadians sense of nationality and distinctiveness. Nonetheless, it is broader than that. The sense of belonging is based on a social union, which enforces national standards for a wide range of public services and strong mobility rights. Canadians are proud of prominent artists, many of whom have had a chance to shine, because of national, publicly supported cultural-policies. Canadian content regulations in music and television, support for the Canadian Broadcasting Corporation and aids to Canadian magazines and book publishing are crucial in developing Canadian talent. Even if the economic elites have sold out private and public corporations to foreign owners, Canadians have not given up on the need for Canadian ownership and control.²¹ English-speaking Canada needs a strong, activist federal government that makes the whole greater than the sum of all the provinces. Due to this, English-speaking Canada's national existence is highly vulnerable to the anti-statist fundamentalism of American-style neoliberalism.

Most English Canadians view Canada as one multiculturally diverse nation of ten equal provinces and three territories. They relate to Canada as individuals or as members of groups such as visible minorities, women and rights bearers, in categories indifferent to Federalism's spatial construction of communities.²²

wave of indignation against Parizeau's ethnic vote statement swept through the Parti Québécois caucus and cabinet and Parizeau announced his resignation as Premier. See Gagnon, *supra* note 7.

¹⁹ P. Resnick, *Thinking English Canada* (Toronto: Stoddart, 1994) at 111–15.

²⁰ G. Grant, *Lament for a Nation: The Defeat of Canadian Nationalism* (Toronto: McClelland & Stewart, 1994) at 68.

²¹ C. Wood "The Vanishing Border – 16th Annual Poll by Macleans/CBC" *Maclean's* (20 December 1999) 20.

²² A. Cairns, *Disruptions: Constitutional Struggles from the Charter to Meech Lake*, D.E. Williams, ed., (Toronto: McClelland & Stewart, 1991) at 166.

Most Francophone Quebecers, in contrast, relate to Canada through their province and have an understanding that Canada was formed as a “compact” between two peoples, one French-speaking and the other English-speaking. This conception is more accurate than English-speaking Canada’s, One Canada with lots of diversity conception, but it shares in English Canada’s blindness to the national collective rights of Aboriginal peoples.

For the past forty years all Québec governments, whether federalist or separatist, have consistently asked for recognition of Québec as a nation, and for greater powers. Most Quebecers support these aspirations because they feel that only the Québec government can be counted on to represent their collective, national interests.²³ There is little confidence that French power in Ottawa — the influence of Québec politicians in the federal government — can defend Québec’s national needs against majority opinion in English-speaking Canada.

If English-speaking Canada needs to maintain a strong central government and Québec needs stronger provincial powers, is it possible to satisfy both? Yes, but only if Canada adopts some variation of Québec-specific asymmetry.

QUÉBEC-SPECIFIC ASYMMETRY²⁴

Several middle positions were articulated before the impasse and polarized choices of the 1990s. The mildest have been the informal and formal asymmetries which affirm Québec’s distinctiveness, do not formally give Québec more powers than other provinces, and do not affect the influence of Québec members of Parliament in Ottawa. Formal and informal asymmetries have existed ever since Francophones and Anglophones began to live together²⁵, that is — since the conquest of New France in 1760. The 1774 *Quebec Act* recognized Québec’s distinctive civil law code and Catholicism, a religion forbidden in the rest of the British Empire.²⁶ In 1867, Confederation joined British colonies as a defensive measure against aggressive American threats, but

²³ See Kenneth McRoberts’ discussion of dualism, *supra* note 2 at cc. 1–2.

²⁴ I do not know who coined the term asymmetry. It came into general use in the 1990s as a new way of saying particular or special status for Quebec — terms widely used in the 1960s. Before sovereignty-association replaced it in 1967 as the main position of soft Quebec nationalists, special status was widely supported in Quebec.

²⁵ For a discussion of such asymmetries until 1991 see D. Milne, “Equality or Asymmetry: Why Choose?” in R.L. Watts & D.M. Brown, eds., *Options for a New Canada* (Toronto: University of Toronto Press, 1991) 285.

²⁶ *Quebec Act*, 1774 (U.K.) 14 Geo. III, c. 83.

gave the provinces a considerable degree of autonomous powers, mainly because of religious, linguistic and educational conflicts between what is now Ontario and Québec. The *British North America Act*²⁷ made French an official language in the Legislature only in Québec and at the federal level of government. Under the *Act*, Québec assumed protection for the province's Protestant (mainly English) minority's school rights. French or Catholic minority rights in other provinces were not constitutionalized in 1867.

Many informal asymmetries were established since Confederation, for example, separate collection of Québec taxes (1950s)²⁸ and a separate Québec Pension Plan (1960s).²⁹ In 1999, Québec once again excluded itself by opting out of the Social Union agreement between the federal and provincial governments. The Social Union commits governments to ensuring adequate funding and access for all people to essential social programs wherever they live or move.³⁰ Québec receives fiscal compensation from the federal government for similar programs in the province. Québec has opted out with compensation from other federal programmes as well.³¹

The Meech Lake Accord (1987) and the Charlottetown Accord (1992), which both failed, as well as the Calgary Declaration (1997), added a purely symbolic recognition of Québec as a distinct society, but mandated no extra powers for Québec. Such mild asymmetries are compatible with the constitutional *status quo* of Québec's representation in federal politics, but do not go far enough to satisfy most Quebecers' aspirations.

Stronger asymmetries would grant Québec more substantial powers than other provinces, balanced by less influence in Ottawa. Such asymmetries cannot be accommodated by mild informalities and formalities. They would run into the same legitimacy problems Pierre Trudeau pointed out in the 1960s: "[H]ow can

²⁷ *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5.

²⁸ In 1954, the Duplessis government established a separate Québec provincial income tax. See K. McRoberts, *Quebec Social Change and Political Crisis*, 3d ed. (Toronto: McClelland & Stewart, 1988) at 124–25.

²⁹ McRoberts, *ibid.* at 41–42.

³⁰ The Social Union breaks little new ground. It is more a codification of normal operating procedures. For a critique of the Social Union, see P.L. Browne, ed., *Finding Our Collective Voice: Democratizing the Social Union* (Ottawa: Centre for Policy Alternatives, 1998) [hereinafter *Finding Our Collective Voice*].

³¹ Student loans and youth allowances were other programs that Québec opted out of with full fiscal compensation. See D. Smiley, *Canada in Question: Federalism in the Eighties*, 3d ed. (Toronto: McGraw-Hill Ryerson, 1980) at 229.

a constitution be devised,” he asked, “to give Quebec greater powers than other provinces without reducing Quebec’s power in Ottawa?”³² How indeed? Québec-specific asymmetry is discussed in greater detail below.

The *Allaire Report*, prepared by the provincial Liberals in Québec after the failure of the Meech Lake Accord in 1990, proposed that the federal government retain powers only over defence, customs, currency and the debt.³³ It was in essence a sovereignty-association proposal that would apply to every province. It was the worst of all proposals, combining Québec nationalism with equality of the provinces. If implemented, it would not only sever meaningful ties between Québec and the rest of Canada, but break up English-speaking Canada into mini-states. Sooner or later, some would likely seek to join the United States. To give Québec powers as great as the *Allaire Report* suggested would go beyond asymmetry. Such solutions would involve sovereignty-association or a confederal union of two associate states.³⁴ In these scenarios, Canada would be a country in name only, just a shell hiding the reality of two countries. I see such scenarios as possible only after Québec votes Yes to sovereignty in a referendum.³⁵ However, it is more likely that a Yes vote would lead to an aftermath of bitterness where English Canadians would be in no mood to negotiate close ties with an independent Québec. These options are not explored here.

I argue that asymmetrical Federalism is the best solution to affirm the national aspirations of Québec and English-speaking Canada. By giving broader powers exclusively to Québec — to be balanced by less Québec influence in Ottawa — Québec-specific asymmetry would accommodate Quebecers’ aspirations for greater self-determination. At the same time, asymmetry would benefit English-speaking Canada by preserving a strong federal government, which could get back into the social and economic activism essential for English-speaking Canada’s long-term existence. It could also enhance the influence of the West, Atlantic Canada and the North in the federal government. Instead of looking for uniform unity solutions that deny the aspirations of each

³² P.E. Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan, 1968) at xxiv.

³³ Parti libéral du Québec, *Un Québec libre de ses choix, Rapport du Comité constitutionnel du Parti libéral du Québec* (Montréal: Le Parti, 1991).

³⁴ See P. Resnick, *Toward a Canada-Quebec Union* (Montreal & Kingston: McGill-Queen’s University Press, 1991).

³⁵ See D. Drache & R. Perin, eds., *Negotiating with a Sovereign Quebec* (Toronto: James Lorimer & Company, 1992).

party, as did the Calgary Declaration, the Charlottetown and Meech Lake Accords, asymmetry could affirm the different needs of each.

In English-speaking Canada, asymmetry has always been more popular amongst political elites, social activists and those immersed in Québec-Canada relations than amongst ordinary people.³⁶ If the demands of one part of the country are anathema to another part, what better way to resolve the issue than to say this arrangement applies only to this part of the country and another arrangement applies to another part. It is sensible, practical and works in personal relations, but does not have the simple elegance of the polarized alternatives — equality of the provinces or an independent Québec. As well, asymmetry has natural opponents in the provincial governments outside Québec which want to aggrandize powers for their own narrow reasons.

Québec-specific asymmetry has been the dominant policy choice of intellectuals and activists from the political left and it commands a solid following amongst constitutional experts in English-speaking Canada.³⁷ It is acceptable to many soft-nationalists in Québec.³⁸ Much preferred by people like Jean-Marc Piotte and Gilles Bourque, is a confederal union of two associate states. Asymmetry has little following amongst ordinary English Canadians, but has never been put to them in a serious way.

³⁶ Several polls have indicated that a solid majority of English-speaking Canadians are opposed to asymmetry. For example in 1994, seventy-four percent of Ontarians opposed giving Québec more powers than it already has. See W. Walker, "Ontarians in poll reject special status for Quebec" *Toronto Star* (13 August 1994) A10. Ralph Klein said Albertans were unlikely to accept any proposal that would grant Québec special status, but that they might accept a plan to protect Québec's distinctive nature. See T. Arnold, "Premier finds common ground" *Edmonton Journal* (19 April 2002) A6.

³⁷ David Schneiderman stated that asymmetrical Federalism had become the reigning ideal assumption of the intelligentsia in English-speaking Canada, but that it was not politically saleable at all. Interview with D. Schneiderman (2 January 1998).

³⁸ Shortly after the narrow defeat of the 1995 Québec referendum on sovereignty, prominent Anglophone and Francophone academics wrote a document proposing a "Third Way." It was entitled *Déclaration Commune*. Amongst other things, the Third Way initiative proposed asymmetric Federalism as part of the solution. The Third Way was signed by thirty-two prominent academics, almost equally divided between Anglophones and Francophones. The initiative was still gathering support amongst professors in English-speaking Canada when it collapsed because the Francophone supporters pulled out. On 2 April 1996, Jean-Marc Piotte, Gilles Bourque, Paul Chamberland and Marcel Fournier wrote Philip Resnick indicating that asymmetry did not represent a significant social current in Québec and that a confederal union was their preferred choice.

It is problematic for political forces outside of the corporate elite to champion a position with little popular support. The political left usually counters the power of corporate and other elites by mobilizing popular opinion. Lacking support in institutions with vested interests in the *status quo*, such as provincial governments, asymmetry proponents have been unable to popularize the concept in English-speaking Canada. The popular ideas have been put forward by Reform and now the Alliance, and their bed partners in Plan B's hard line against Québec: the federal Liberals.

It was Pierre Trudeau who first put Canada in a constitutional straitjacket by asserting the new principle of equality of the provinces. In his efforts to defeat Québec separatists at all costs, he halted the move toward formal and informal asymmetries for Québec. In the 1970s, Trudeau found an ally of sorts in Peter Lougheed, Conservative Premier of Alberta, who was a forceful advocate for the equality of the provinces from the perspective of Western provincial control over resources. The Trudeau-Lougheed team was replaced by the Jean Chrétien-Preston Manning duo, who in competitive interaction, pushed for Plan B's hard line against Québec. No special status for Québec, they said.

Québec sovereignty was not a public issue in English-Canada when Stephen Harper won the Alliance Party leadership in March 2002 and so he, and other politicians, said next to nothing about it. But Harper can be expected to carry on in the mould of Preston Manning and, if anything, take a harder line against "special status" for Québec if and when the issue flares up again. Harper, today the leader of the Canadian Alliance and leader of the opposition, was the Reform Party's first policy director, and wrote the party's platform. As a member of Parliament, he was the party's critic for national unity at the time of the 1995 Québec sovereignty referendum. As early as the Meech Lake debate in 1990, Harper argued that by standing against Québec's demands, the Reform Party in the 1990s had the potential to become the "party of English Canada."³⁹ As head of the Alliance Party, we can expect Harper to maintain a hardline, and in my view a very counter-productive position on positively accommodating Québec as a nation within Canada.

³⁹ In *Waiting for the Wave*, Tom Flanagan extensively discusses Stephen Harper's positions and disagreements with Preston Manning on Québec and other issues (Toronto: Stoddart, 1995) at 55–56, 65, 105. See also Daniel Schwartz's indepth news report on the Canadian Broadcasting Corporation's website; "Steven Harper" CBC Online, <www.cbc.ca/news/indepth/alliance_race/harper1.html> (date accessed: 3 August 2002).

Trudeau, Manning and the provincial premiers of English Canada proclaimed the equality of the provinces. For them, equality meant uniformity. This was the main stumbling block to recognizing the different needs of English-speaking Canada and Québec. To affirm their different needs, three constitutional goals should have been satisfied: first, to maintain adequate federal powers to promote the social union and a sense of shared Canadian citizenship, and a unified Canadian economy and resistance to absorption by the United States. Second, to provide greater influence in Ottawa for regions outside central Canada; and third, to recognize that Québec is a sociological nation requiring greater powers as a province and less influence in the federal government.

Trying to combine *distinct* or *unique* society with the equality of the provinces is the kind of bad compromise that denies what each side wants. Recognizing Québec as a distinct society is a cowardly affirmation of Québec as a nation. This affirmation is immediately taken away when Québec is denied a different set of powers because of the “equality of the provinces” concept. Recognizing this equality weakens the first goal of maintaining a strong federal government. Whatever powers Québec may demand and might be given would also be demanded by all other provinces. Finally, equality of the provinces fails to give a greater voice to the regions outside central Canada in the strongest federal institution: the House of Commons.

The idea of asymmetry takes off from Trudeau’s question, referred to above, of how you can give Québec greater powers than other provinces without reducing Québec’s power in Ottawa. The answer is that greater powers to Québec would be counterbalanced by a commensurate decline of French-speaking power in Ottawa. At its heart, Québec-specific asymmetry involves a transfer of influence and power from one group of Québec politicians to another — from Québec MPs in Ottawa to Québec MNAs in Québec City. The recent versions of Québec-specific asymmetry are different from the special status positions of the 1960s. The latter were seen by English Canada as Québec gaining more provincial powers but maintaining strong influence in Ottawa. Quebecers seemed to be having their cake and eating it too. Québec-specific asymmetry is potentially more appealing to English-speaking Canadians than special status because there is not a net transfer of powers to Québec politicians. At the same time, it is likely that asymmetry would satisfy most Quebecers.

Québec-specific asymmetry could also benefit the West and other regions outside of central Canada that have always felt their voices in Ottawa were marginal. For these regions, gaining power at the centre holds more appeal than greater provincial powers. In the 1993 federal election Preston Manning’s

Reform Party rocketed from nowhere to fifty-two seats, using the slogan “The West Wants In.”⁴⁰ How would Québec-specific asymmetry bring the West and Atlantic Canada to power in Ottawa? If Québec’s seventy-five MPs were absent from many of the decisions in the House of Commons, outer-Canada would for the first time command a majority of seats in Ottawa. With the redistribution after the 2001 census, the West, North and Atlantic provinces (outer-Canada) have 123 seats compared to Ontario’s 106. If Québec-specific asymmetry were to be constitutionalized, the imbalance of seats between Ontario and the other provinces in English-speaking Canada would likely not hold. With roughly half of the Canada-outside-Québec population, Ontario would undoubtedly demand a redistribution of seats in the House of Commons to reflect representation by population. Even if this did happen, fifty percent of the House of Commons seats for outer-Canada would be a major gain from the present forty-one percent of seats.⁴¹

Québec-specific asymmetry holds much promise, but is under-conceptualized. If implemented as a bad compromise that combines distinct society with equality of the provinces, it would be fraught with dangers to the coherence and survival of English-speaking Canada. Negotiations could careen out of control and greater powers could be given to all the provinces.

I have argued elsewhere that there are three ways to grant Québec-specific asymmetry:⁴²

1. Reduce the number of Québec MPs for all matters, roughly in half to thirty-five or forty MPs from the present seventy-five. This proposal was made by the Council of Canadians in 1991.⁴³
2. (a) Scrap the existing and useless unelected Senate and turn it into an elected legislature for Canada-outside-Québec. The reformed Senate

⁴⁰ Flanagan, *ibid.* at 47.

⁴¹ Redistribution of seats based on the 2001 census is scheduled to give Ontario 106 seats, up from 103, Alberta 28, up from 26, and British Columbia 36, up from 34. Outer-Canada will have 127 seats, forty-one percent of the enlarged 308 seats in the House of Commons. See Elections Canada Online, General Information, online: <www.elections.ca> (date accessed: 13 March 2002).

⁴² G. Laxer, “Constitutional crises and continentalism: twin threats to Canada’s continued existence” (1992) 17:2 *Can. J. Socio.* 199; G. Laxer, “Distinct Status for Quebec: a Benefit to English Canada” (1992) 3 *Const. For.* at 57–61 [hereinafter “Distinct Status”].

⁴³ Council of Canadians, *The Canadian Constitution*, Brief for presentation to the Special Joint Committee on a Renewed Canada (2 December 1991).

would have entirely separate powers vis-à-vis the House of Commons, not concurrent ones. The powers of the reformed Senate would be the same as the extra powers granted to Québec.

(b) Alternatively, the Senate could be transformed from its current role as the house of patronage to an elected second House with concurrent powers to the House of Commons. Québec would have zero or reduced representation in the Senate, in return for greater powers as a province. To achieve this compromise, there would have to be a trade-off between the West's desire for greater representation in the Senate (Triple E Senate⁴⁴) and Québec's desire for greater powers as a province.⁴⁵

3. The third alternative, and one I favour, would require a Triple A Senate: abolish, abolish, abolish. Establish the principle that for each unique power that the Québec National Assembly gains, Québec's federal members of the House of Commons lose the right to vote on those matters in the House of Commons. It would mean two parliamentary sessions, one to deal with all-Canada issues and separate sessions to handle Canada-outside-Québec business.

The first two alternatives would make for a neater legislative solution, but pose major political difficulties. Reducing the number of Québec MPs for all issues would decrease the influence of Québec over the federal government on a scale roughly equivalent to the greater powers the National Assembly would gain. It has the advantage of maintaining all MPs with the same capacities. However, it would be unfair in two ways. The smaller number of Québec MPs would still vote on matters that applied only to issues outside Québec. On the other hand, Québec would not have its fair share (about one-quarter) of federal MPs when it came to business such as foreign affairs, defence and other matters that affect all of Canada.

The clear functional separation of the Senate from the House of Commons, alternative (2a), has merit. A Senate without Québec senators would, for the first

⁴⁴ The Triple E Senate has a great deal of official and popular support in Alberta and is the brainchild of Bert Brown, an Alberta farmer. The triple E stands for elected, effective and equal.

⁴⁵ Reg Whitaker suggested this compromise in "The Dog that Never Barked: Who Killed Asymmetrical Federalism?" in K. McRoberts & P.J. Monahan, *The Charlottetown Accord, the Referendum, and the Future of Canada* (Toronto: University of Toronto Press, 1993) 113 [hereinafter Whitaker].

time, allow English-speaking Canada an institutional voice and become the focus for the development of an English Canadian identity. Québec MPs would have exactly the same powers as MPs outside Québec, so that the House of Commons would operate in an uncomplicated fashion. The disadvantage is that the arrangement would create yet another level of government — one for English Canada. English-speaking Canadians would then have four levels of government: Canadian, English Canadian, provincial and local. That is the major flaw of this alternative. No one wants four levels of government.

The best alternative appears to be the third. It has a ring of justice, understandable to all. For each extra power Québec gains provincially, its federal MPs lose the right to vote on those issues. As well, Québec would not be allowed to choose any powers it wants in return for giving up federal representation. The federal government would retain enough powers over all of Canada to maintain a viable country.

Alternative three would create complications in the workings of Parliament and unless resolved satisfactorily, could doom the scheme. The removal of Québec MPs from sessions dealing only with outside-Québec jurisdiction would create MPs with different capacities. However, it would not mean the creation of another level of government.

In order to work there would have to be adjustments to the way the House of Commons operated.⁴⁶ First, the House of Commons would need separate sessions: an all-Canada session and an outside-Québec session. These sessions could be held on the same day or on alternate days. Bills would be grouped according to whether they applied to Canada or Canada-outside-Québec. Second, only the Canada or the Canada-outside-Québec sessions could be a confidence chamber, where the government would survive or fall in votes of confidence. Confidence votes could not be held in each chamber or there would be two levels of government. If the confidence chamber was the Canada sessions, it would still be the government even if it had only a minority in the Canada-outside-Québec sessions. The Chrétien governments elected in 1993, 1997 and 2001 would have had majorities in the Canada and the Canada-outside-Québec chambers. The Mulroney government of 1988 to 1993 would have had a majority in the Canada but a minority in the Canada-outside-Québec sessions. Under alternative three, mentioned above, the Mulroney government would have had to act as a minority government in the outside-Québec sessions and make alliances with at least one other party in order to pass bills. Joe Clark's short-

⁴⁶ The following section is derived from *Distinct Status*, supra note 42 at 60.

lived government of 1979 would have been in the reverse position — a minority in the Canada sessions but a majority in the Canada-outside-Québec sessions. As these proposals increase the likelihood of minority governments, they would have the positive effect of increasing the power of MPs in relation to the Cabinet and forcing cooperation and alliances that are familiar to many European Parliaments.

What extra powers would Québec get? At a minimum: immigration, broadcasting, culture, social services and perhaps increased jurisdiction over the economy. Nevertheless, Québec would not simply be given all the extra powers it asked for in return for reduced influence in Ottawa. For one thing, the extra powers that Québec gained would determine the powers of the Canada-outside-Québec sessions. In this sense, there is symmetry to this version of Québec-specific asymmetry. English-speaking Canada, especially the outer-Canada part, would have its own list of powers it would want the Canada-outside-Québec sessions to have which would not likely coincide with those Québec would want. Outer-Canada's grievances have traditionally been economic: interest rates, control over resources, transportation and regional development policies. To set the extra powers that Québec and the Canada-outside-Québec sessions received, there would have to be negotiations. The federal government would also have to retain enough power to maintain a viable country. At a minimum, the Canada sessions should have exclusive or primary control over foreign affairs, defence, international agreements on corporate rights and trade, citizenship, Aboriginal affairs and monetary policy. As well, the federal government should retain substantial but not exclusive powers over the economy and regional development.

I could go on about the concept of Québec-specific asymmetry, but major questions remain to be worked out. The main ones are:

1. Could Parliament work effectively when Québec MPs and senators are involved in only part of its operations? How would votes of confidence work? Would they reside in the Canada sessions or in the Canada-outside-Québec sessions?
2. Could the influence of Québec cabinet ministers be effectively curbed in areas of jurisdiction that applied only outside Québec? Would this restriction apply to a Prime Minister from Québec? Would there ever be a Prime Minister from Québec?

3. How attached to Canada would Quebecers feel in this new arrangement? Would they feel more or less attached than now?
4. How would federal powers be transferred to Québec — through devolution of powers or through the use of concurrency with provincial paramountcy?
5. How would federal programs transferred to Québec be paid for — through tax points transferred to Québec, block grants or other means?
6. What about equality of the provinces? Should the offer of extra powers in return for reduced federal influence be offered to other provinces too?⁴⁷ Would they turn down the offer and by doing so legitimate Québec-specific asymmetry? If some provinces accepted greater provincial powers for less federal influence, what would this do to the viability of English-speaking Canada?
7. Is there a conflict between Aboriginal people's inherent right to self-government and an asymmetric shift of powers to Québec? Would greater powers for Québec differentially affect Aboriginal self-government compared to the situation in other provinces?

POSSIBLE SCENARIOS FOR THE REVIVAL OF QUÉBEC-SPECIFIC ASYMMETRY

Outside of Québec, close observers saw the rise of sovereigntist support over several decades and took it seriously, especially after the defeat of the Meech Lake Accord in 1987. On the other hand, most English-speaking Canadians were in denial. For most, the response had been that Quebecers were whiners. They would not really do it. The Québec media and politicians fooled ordinary Quebecers. In this naïve and ungenerous view, ordinary Quebecers were deemed to be easily manipulated, whiney children.

The 1995 referendum result shocked English Canada. At last, they took Québec secession seriously and the reaction was one of anger, rather than acceptance of Québec's right as a nation to choose its own future. The dominant mood was certainly not reconciliation and accommodation. Asymmetry was not presented to English-speaking Canadians then, but the mood was hostile to

⁴⁷ See B. Cameron, "Asymmetrical Federalism" in *Finding Our Collective Voice*, *supra* note 30.

special status for Québec. It was love it or leave it. In other words, take Canada on English-Canadian terms, or leave. Scare the hell out of Quebecers.

Reform articulated this position before the 1995 Québec referendum and the federal Liberals denounced them as negativists.⁴⁸ After the extremely close call for federalists in the referendum, the federal Liberals did a complete about-face, jumped on the Reform Party's hard line against Québec and called it Plan B.⁴⁹

From the vantage point of September 2002, I will list the changes in political fortune that would be necessary to put Québec-specific asymmetry and reformed Federalism back on the table. The requirements are pretty steep and hence my lack of optimism at this time. The situation could look a lot rosier in five or ten years.

The Retirement of Jean Chrétien. Success for Québec-specific asymmetry requires a firm alliance between soft Québec nationalists and the supporters of a strong federal government in English Canada — that is, the Canadian nationalists of the political left and centre. The great danger is that given the entrenched institutional power of the provinces and their historical role in constitutional negotiations, asymmetry talks could be taken away from an English-Canadian centralist–Québec nationalist axis, and shifted to a provincial rights–Québec nationalist axis. In the latter case, the extra powers offered to Québec as asymmetry would be offered to other provinces as well. It is quite possible that several provinces would take up these powers or demand some of them. The big three rich provinces of English-speaking Canada — British Columbia, Alberta and Ontario would be likely candidates to demand such powers. In this case, English-speaking Canada would be worse off, with the

⁴⁸ Through 1994 and up until October 1995, the Chrétien government's strategy was to keep very, very quiet about the sovereignty referendum. Chrétien boasted about not giving the Québec question five minutes worth of thought. Lee states that in 1994, Mr. Manning was considered by federalists to be a dangerous lunatic, irresponsibly shouting "fire!" See R.M. Lee, "Reform was alone in asking tough Quebec questions" *The Globe and Mail* (21 October 1995) D2.

⁴⁹ The Reform Party unveiled its tough "Twenty Realities of Secession" in 1995, advocating partition, a corridor through Québec, etc. The Chrétien government outlined Plan A and B shortly after, in the winter of 1996. Plan A was the carrot side, carrying on a good news campaign about Federalism, passing a distinct society resolution and a toothless federal veto bill. Plan B was very much like the Reform's "Twenty Realities." Plan B threatened an independent Québec with partition, removing Aboriginal lands from Québec and other bullying measures. See Conway, *supra* note 5 at 225–28.

federal government and national standards for social programs considerably weakened.

To counter a provincial rights–Québec nationalist alliance would require leadership from a Prime Minister firmly committed to Québec-specific asymmetry and to its political base — a centralist English Canadian–Québec nationalist alliance. The last time we saw anything like this was from Liberal Prime Minister Lester Pearson in the 1960s. It is not a coincidence that such an orientation came from the last elected Liberal Prime Minister from English-speaking Canada.

The lead up to the Charlottetown Accord taught us that Québec-specific asymmetry could thrive in constituent assemblies made up of individuals, not politicians, from all over Canada. The 1992 Halifax conference in particular gave it strong support. Although, as Reg Whitaker argued, as soon as the provincial premiers took over from the constitutional conferences, asymmetry was discarded.⁵⁰ Thus, to be successful, the constituent assembly route would have to be taken much farther. A constituent assembly could be asked to recommend a solution, which would be put to a cross-Canada referendum, before the premiers put their hands on it. This strategy would require a skilful Prime Minister committed to Québec-specific asymmetry.

The initiative would have to be taken by a Prime Minister from English Canada. Prime Ministers from Québec are too close to the polarized Québec debate and in any case lack the legitimacy in English-speaking Canada to sell what would be widely seen as a pro-Québec solution. This rules out Paul Martin, who represents a Montréal riding. A Québec government is also very unlikely to propose asymmetry. A Québec Liberal government might eventually support it, but could not take the initiative because it would look too weak.

Thus the first requirement for the politics of support for Québec-specific asymmetry, the retirement of Jean Chrétien, is scheduled to occur in February of 2004. Will Stéphane Dion and other Francophone anti-Québec nationalist warriors also retire?

The Revival of the Conservatives to Official Opposition or Government. According to Susan Delacourt, Joe Clark was surprised at the January 1992

⁵⁰ Whitaker, *supra* note 45 at 114.

Halifax constitutional conference which proposed asymmetry.⁵¹ The idea had been raised in Mulroney's cabinet in 1991 and simply dismissed. After Halifax, Clark got on the phone and called politicians across the country. "I really thought we had something here," he is reported to have said. "But I kept going around, and I could not find anybody ... including NDP leaders in the provinces, and Liberal Opposition leaders, Conservative opposition leaders." The conversation was generally brief: "What about asymmetry? Could you buy it?"⁵²

After the defeat of the Charlottetown Accord Clark said, "There may well come a time when people will say that [asymmetry] makes sense ... [b]ut it's not a case I think is viable now."⁵³ Clark showed his continued commitment to renewed Federalism rather than confrontation in the fall of 1999, when he courageously opposed Chrétien's imposition of hardline federal rules on Québec separation.

It is conceivable that under the right circumstances the Conservative leader who will succeed Joe Clark could be convinced of the need for an asymmetrical solution and carry it out in an alliance with Liberal leader Jean Charest or Mario Dumont, Leader of the Action Democratique du Québec whichever one becomes Premier. Charest was the previous leader of the federal Conservative Party and Dumont broke with the Québec Liberals in the early 1990s after they rejected the *Allaire Report* calling for radical decentralization of powers to the provinces.

The Conservatives may not be the ideal champions for Québec-specific asymmetry, but if they displaced the Alliance Party and became the Official Opposition, a Liberal government could more easily moderate its confrontational position on Québec. The new Conservative leader could conceivably play a role for asymmetry similar to that played by Clark, but that is far from certain.

Decline of the Canadian Alliance. The Alliance Party is the major road-block to Québec-specific asymmetry in English Canada. The Chrétien government followed the Reform/Alliance's lead on many policies — the debt, tax cuts and cuts to social spending. The Liberals also adopted Reform's combative strategy against Québec after the 1995 referendum and called it Plan B. Much of the Alliance Party's strength is dependent on mobilizing hostility to Québec in the West. Analysing the Reform Party's prospects in 1996, Ted Byfield, a founder

⁵¹ S. Delacourt, *United We Fall: The Crisis of Democracy in Canada* (Toronto: Viking, 1993) at 136.

⁵² *Ibid.*

⁵³ *Ibid.* at 137.

and former publisher of the right-wing *Alberta Report* wrote that Reform's fortunes depend on either the fiscal problem or the Québec problem blowing up:⁵⁴

[Reform] became the party that would represent the interests of English Canada against the oncoming ambitions of the separatists. It knew this would quash any hopes it might have in Quebec. But if the Quebec problem did blow up, English Canada would almost certainly unite behind the one party that undividedly championed English Canadian interests. [This] would bring [Reform/Alliance] to power.

Byfield added that the Chrétien government's ability to contain the separatists (and the fiscal problem), doomed the chance of Reform coming to power. "Its immediate fate, in other words, is in the hands of Lucien Bouchard."⁵⁵ When the visceral level of hostility towards Québec declines, the Alliance Party will lose much of its *raison d'être* and momentum. The Alliance's strength hinders the Liberals from taking a more accommodating position on Québec.

A major step towards creating a space for Québec-specific asymmetry is the weakening of the Alliance Party. The party is weak in Eastern Canada and this is likely to hurt the Alliance in its Western base. A Conservative government would not be possible without the collapse of the Alliance Party. Conservative revival is also dependent on a steep decline of the Bloc Québécois. Reform/Alliance and the Bloc rose after the defeat of the Meech Lake and Charlottetown Accords in the main bases of Tory support — Alberta and Québec. These parties represent the politics of polarization on Québec-Canada questions. Their decline is necessary if a politics of accommodation is to recur.

Defeat of the Parti Québécois Government. Obviously a Péquisté government would not support Québec-specific asymmetry. Quebecers might like it too much. At the time of writing, opinion polls suggested the defeat of the Parti Québécois in the next election.⁵⁶

⁵⁴ T. Byfield, "Suppose the Liberals preserve calm, what will happen to the Reform Party?" *Alberta Report* 23:43 (7 October 1996) at 52.

⁵⁵ *Ibid.*

⁵⁶ At the time of writing (September 2002), the Action Démocratique du Québec seemed well positioned to win the next provincial election.

Knife-at-the-Throat. Reg Whitaker suggested a fifth necessary condition — Professor Léon Dion's knife-at-the-throat strategy.⁵⁷ This strategy asserted that English-speaking Canada would negotiate renewed Federalism with Québec only when threatened by separation. Without the knife, English Canada would again fall asleep. Such a threat is credible only if it appears that a Québec government would carry through on the threat to separate if it did not get, for example, asymmetry. Whitaker argues that Liberal Premier Robert Bourassa's threat to separate after the death of the Meech Lake Accord quickly turned into a knife at Bourassa's own throat. It became: if English Canada does not negotiate to the satisfaction of Québec's demands, it will be political suicide for me. "Your money or your life" is a much more effective negotiating tactic than, "Your money or my life."⁵⁸ I'm not sure the knife-at-the-throat strategy is a necessary condition for the success of Québec-specific asymmetry. It may be. It is hard to see this scenario unfolding in a credible way again.

In sum, four or five major political changes would be necessary to put Québec-specific asymmetry back on the table. We have to get through the politics of polarization first. It could happen in the next few years. Meanwhile, it is important to think through alternatives to the extremes of secession versus the *status quo* straitjacket.

As Louis Balthazar stated, "it is difficult to conceive of any *raison d'être* for Canada apart from it being an alternative to the United States. The very existence of this country is predicated on its refusal to join the U.S.A."⁵⁹ For Canada's three national groupings — Québec, English-speaking Canada and the First Nations, Canada is still a place in which to work out a more collective provision, a broader public life and respect for deeper diversity than in the corporate melting pot to the south. Whatever arrangements we work out amongst ourselves, the nations on the northern part of North America are small and always in danger of being pulled into the Washington Consensus. To counter corporate globalism and life as measured by pure market values, some form of tri-national alliance is needed. The chance may yet come to build fruitful alliances that meet, rather than deny, the different needs of Canada's partners.

⁵⁷ Professor Léon Dion suggested the "knife-at-the-throat" strategy when he appeared before the Bélanger-Campeau Commission on 12 December 1991. "Give Canada last chance, Grit adviser tells Quebec" *The Globe and Mail* (13 December 1991) A1.

⁵⁸ Whitaker, *supra* note 45 at 111.

⁵⁹ L. Balthazar, "Quebec and the Ideal of Federalism" McGill Institute for the Study of Canada, online: <www.arts.mcgill.ca/programs/misc/baltha.htm> (date accessed: 8 April 2001) [unpublished working paper].