

# THE 29<sup>TH</sup> ANNUAL McDONALD LECTURE IN CONSTITUTIONAL STUDIES

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## The Constitution as Muse? Four Poets Respond (Tacitly) to the World-View of *The British North America Act (1867)*

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*Although no less an authority than the classical Greek philosopher Plato inveighed against poets as being too dreamy to be trusted with philosophy and political science, poets are citizens, and so Canadian poets have responded, tacitly, to the fundamental law of the nation, that is I say, originally, the BNA Act. This paper asserts that poet Duncan Campbell Scott, understanding that, as a federal bureaucrat, he ranked above mere “Indians,” could advocate for and institutionalize the culturally genocidal Residential Schools program. Then, realizing that the BNA Act prefers Anglophones to Francophones, Scott could also romanticize the silencing of Francophones. For her part, E. Pauline Johnson responds to Scott by advocating for Indigenous peoples as constituting nations who have a right to repel Canuck Caucasian imperialism. But she also analyzes the way in*

*Bien que non moins d’une autorité que le philosophe classique grec Platon inveectivât contre les poètes comme étant trop rêveurs pour qu’on leur confie la philosophie et la science politique, les poètes sont des citoyens, ainsi les poètes canadiens ont réagi, tacitement, à la loi fondamentale de la nation, c’est-à-dire, à l’origine, l’Acte de l’Amérique du Nord britannique. L’auteur de ce résumé soutient que le poète Duncan Campbell Scott, comprenant que, en sa qualité de bureaucrate au niveau fédéral, il fut supérieur aux simples « Indiens », il pouvait préconiser et institutionnaliser le programme des pensionnats indiens, génocidaire sur le plan culturel. Et puis, se rendant compte que l’Acte de l’Amérique du Nord britannique préfère les anglophones aux francophones, Scott pouvait également romancer le fait qu’on fait taire les francophones. Pour sa part, E. Pauline*

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which white authors, in concert with Scott's perspective, limn a "tragic" Indigenous woman whose only escape from broken love affairs with white males is suicide. A.M. Klein, a Jewish-Canadian poet from Montreal, envisions a multicultural Canada, prophetic of the Charter of Rights and Freedoms, in his poetry, that also offers a defense of First Nations. Finally, Anglo-Québécois poet F.R. Scott, in his role as a professor of constitutional law and through his mentorship of Pierre Elliott Trudeau, became one of the architects and proponents of the Charter of Rights and Freedoms, whose necessity his poetry foresees.

concert avec le point de vue de Scott, esquissent une femme autochtone « tragique » dont la seule façon d'échapper aux liaisons amoureuses brisées avec des hommes blancs est le suicide. A.M. Klein, un poète canadien juif de Montréal, imagine un Canada multiculturel, prophétique de la Charte canadienne des droits et libertés, dans sa poésie, qui présente aussi une défense des Premières Nations. Enfin, le poète québécois anglophone F.R. Scott, dans son rôle de professeur de droit constitutionnel et par le biais de son mentorat de Pierre Elliott Trudeau, est devenu un des architectes et partisans de la charte des droits et libertés, dont la nécessité est prévue dans sa poésie.

Although Socrates seems categorical about restricting poets' roles in *The Republic*, banishing them from his ideal state,<sup>1</sup> and though poets have not been summoned to Ottawa to help carve out constitutional amendments or broker agreements,<sup>2</sup> it is naïve to think that Canadian poets have not responded to the foundational law of the nation-state. Indeed, there can be no "Canada," in European terms, if there is no Constitution. Thus, on July 1, 1867, this new nation began to coalesce, under governance provided by a quaintly prosaic document: *The British North America Act*.<sup>3</sup> Admittedly, this founding law of the new nation lacks the elevated, philosophical poetry of the American equivalent. It's practically lacklustre, a workaday, compromise document, intended to enable three once-distinct, self-governing colonies — Canada, Nova Scotia, and New Brunswick — to surrender their colonial sovereignty (their independent relationships to Great Britain) to a new, domestic, central, and supra — empowered government. Such clauses as that awarding provinces jurisdiction over "The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions . . . , other than Marine Hospitals,"<sup>4</sup> are, clearly, impervious to poetry. In staid opposition to the American sum-

1 Plato, *The Republic and Other Works*, translated by B Jowett (New York, NY: Anchor Books 1973).

2 One must make a slight exception for F.R. Scott (1899-1985), who Prime Minister Pierre Elliott Trudeau asked, in 1978, to write a draft version of what became *The Canadian Charter of Rights and Freedoms*: Sandra Djwa, *The Politics of the Imagination: A Life of E.R. Scott* (Toronto: McClelland and Steward, 1987) at 434.

3 *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 [*BNA Act*].

4 *Ibid*, s 92.7.

mons to promote “Life, Liberty, and the pursuit of Happiness,”<sup>5</sup> the *BNA Act* states merely that the Canadian legislatures will “make Laws for the Peace, Order, and good Government” of the realm.<sup>6</sup> Bearing in mind that “Peace” and “Order” were lofty ideals to espouse on a continent where the U.S. Civil War (1861-65) had just been fought to free the Republic of the scourge of Slavery, one may deem these abstractions implicitly poetic. Even so, the bias of the language of the *BNA Act* is toward sober — if not sombre — realism, an insistence on fail-safe, Enlightenment clarity as opposed to visionary fancy: more Burke than Shelley; more Milton than Blake.

Yet, the society that came into being between 1867 and 1982 (the moment of the promulgation of The *Canadian Charter of Rights and Freedoms*<sup>7</sup>) represented the fleshing out — both positively and negatively — of the *BNA Act*, legal arguments over it, and Canadian Supreme Court or British Privy Council interpretations and/or decisions. Moreover, poets, being citizens, responded to the evolution of Canadian mores and values, as the basic law came to be interpreted and reinterpreted, in flux with shifting attitudes and principles. Thus, poets did, from time to time, offer their own assessments of the world-views and State-ideals maintained by the *BNA Act*, if only tacitly.

An immediate example is a 1911 poem by the now persuasively maligned Duncan Campbell Scott (1862-1947), entitled, “Fragment of an Ode to Canada.”<sup>8</sup> The poem is an odd one for him, for his stock-in-trade was pseudo-Darwinian ditties about Métis and First Nations peoples scheduled to disappear from Canada before long due to their unchristian beliefs and supposedly primitive behaviours.<sup>9</sup> Though Scott’s patriotic poem is Romantic, Victorian gushiness, lyricizing “fruit, fine-flavoured with the frost” (a prophecy of ice wine, perhaps) and rivers, “Straining incessant everyway to the sea,”<sup>10</sup> it turns at times, with foreboding, to world affairs. Thus, one reads the poet’s prayer to that “Power, that ’stablishest the Nation”<sup>11</sup> to teach Canadians “That freedom brings the deepest obligation”<sup>12</sup>: Aye, so that we “lead the van of Peace,”

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5 *Declaration of Independence*, (1776).

6 *BNA Act*, *supra* note 3, s 91.

7 Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

8 Duncan Campbell Scott, “Fragment of an Ode to Canada” in *The Poems of Duncan Campbell Scott* (Toronto: McLelland & Stewart, 1926) 11 [Scott, “Fragment of an Ode to Canada”].

9 Arguably, Scott exploited “Indians” for material as much as William Henry Drummond (1854-1907) made use of French Canadian “Habitants” — peasants — in his popular, rollicking, Dixie-style, minstrel-English poetry.

10 Scott, “Fragment of an Ode to Canada,” *supra* note 8 at 11.

11 *Ibid* at 12.

12 *Ibid*.

or, “in some day of terror for the world, / When all the flags of the Furies are unfurled, / When Truth and Justice ... / Shall turn for help to this young, radiant land,”<sup>13</sup> we will make war.

Though Scott doesn't name God as the “Power, that 'stablishest the Nation” nor Great Britain as the guardian of “Truth and Justice,” the fact is, these entities are interchangeable. After all, the “Power” that brought Canada into being was not “God” *per se*, but the British Raj in its North American power-play to frustrate American “Manifest Destiny.” Similarly, “Truth and Justice” belong to God or, rather, His Britannic, mortal ambassador, who would be, in 1911, none other than George V, King of the Dominion of Canada and Emperor of India, etc. In any event, what makes this pairing of abstractions adamant, and determinative of Canada's purported role in preserving “Peace” or defending “Truth and Justice,” is the preamble to the *BNA Act*. Certainly, the preamble's first paragraph affirms that Canada, New Brunswick, and Nova Scotia are to be “federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland”; the next paragraph clarifies that the new “Dominion” would “conduce to the welfare of the Provinces and promote the Interests of the British Empire.”<sup>14</sup> In other words, Canada is engineered, in part, to further British geopolitical and economic arrangements. In this sense, Scott was right in 1911 to admonish his readers to pray for peace but prepare for war, for such would be inevitable if Britain — our parent “Power” — deemed it necessary to sally forth and crush the alleged foes of “Truth and Justice.”

Scott is mindful of British imperialism. He tells Canucks that we possess “the consciousness that we inherit / What built the Empire out of blood and fire”<sup>15</sup>: Canadians, being British subjects, hold a warrior heritage: the guts and backbone, the spunk and spirit to “smite” foes “in passion and with ire.”<sup>16</sup> Nevertheless, Scott seems to feel that Canadians have not been respecting this heritage, for he also prays to God — or Great Britain — to “Give [us] great Ideals to bridge the sordid rift / Between our heritage and our use of it.”<sup>17</sup> Given that the poem was written in August 1911, it was likely occasioned by the bitter debate among: those Canadians who wanted a navy to assist Great Britain to confront a Germany building its own battleships; those others — principally Québécois — who eyed a Canadian navy warily as being a cat's paw for British

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13 *Ibid.*

14 *BNA Act*, *supra* note 3, Preamble.

15 Scott, “Fragment of an Odd to Canada,” *supra* note 8 at 12.

16 *Ibid* at 12.

17 *Ibid.*

imperialism; and, those who didn't want a domestic navy, but were British imperialists. In addition, Scott was anticipating the pro-imperialist propaganda of scribes like Sir Rudyard Kipling:

On September 7 [1911], the Montreal *Star* published a front-page story with an appeal to all Canadians from the imperial poet and novelist Rudyard Kipling. "It is her own soul that Canada risks today," he wrote. "Once that soul is pawned for any consideration, Canada must inevitably conform to the commercial, legal, financial, social and ethical standards which will be imposed on her by the sheer admitted weight of the United States."<sup>18</sup>

Not only does "Fragment of an Ode to Canada" summon English-Canadians to back the Empire, "our" heritage, so does it erase the presence of Indigenous people in tidy, settler fashion. The "glory of the gift" of Canada was supposedly granted to Canucks by God (and/or Britain); and this nation is a "young, radiant land."<sup>19</sup> However, it can only be truly "young" in conception if the multi-millennial, Aboriginal presence is evacuated. In any event, section 91(24) of the *BNA Act* which classifies First Nations peoples as "Indians" living on "Lands reserved for the Indians," aids Scott in effecting an erasure. Almost an afterthought, this clause follows "Copyrights"<sup>20</sup> and precedes "Naturalization and Aliens."<sup>21</sup> Also preceding is a clause allowing the Federal Parliament authority over "the fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada."<sup>22</sup> If he took his lead from the *BNA Act*, Scott would have been correct in thinking that, as a Federal Civil Servant — the first actual persons named in the catalogue of Federal powers — his authority, backed by the purse of the Treasury and the produce of the Royal Canadian Mint, gave him jurisdiction over mere "Indians."<sup>23</sup> As Commissioner of Indian Affairs, 1913-1932, Scott became a constitutionally recognized Civil Servant with the power to oversee "Indians," who were also a constitutional category, but merely as a responsibility: a ward of the Federal government. As his righteously savage critics have alleged, Scott was a Final-Solution-type bureaucrat, advocating the assimilation or cultural genocide of Indigenous peoples, most effectively through the institution of the residential school system, which was his creation.

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18 Patrice Dutil & David MacKenzie, *Canada 1911: The Decisive Election that Shaped the Country*, (Toronto: Dundurn, 2011) at 211.

19 Scott, "Fragment of an Ode to Canada," *supra* note 8 at 12.

20 *BNA Act*, *supra* note 3, s 91(24).

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

In his consideration of Scott, John Coldwell Adams insists, “The Canadian government’s Indian policy had already been set before Scott was in a position to influence it, but he never saw any reason to question its assumption that the ‘red’ man ought to become just like the ‘white’ man.”<sup>24</sup> Scott himself opined, “I want to get rid of the Indian problem. I do not think as a matter of fact, that the country ought to continuously protect a class of people who are able to stand alone... Our objective is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department...”<sup>25</sup> I iterate that Scott’s perspective, objectionable though it is, is grounded in the ethos of the *BNA Act* and its division of powers that ranks Dominion Civil Servants above “Indians” and classes Indigenous people as practically chattel, of less immediate import than “Beacons, Buoys, Lighthouses, and Sable Island.”<sup>26</sup>

Nevertheless, the critical view that Scott is conflicted, or that his poetry voices a red-man Romanticism that the buttoned-down bureaucrat eschews, cannot be credible. Rather, the so-called “Indian poems” depict an othered race that verges on extinction, or is already moribund, dislocated, degenerate. Thus, the opening line of “Indian Place-Names” asserts, “The race has waned and left but tales of ghosts”<sup>27</sup>. Assuredly, “gone are the dusky folk,” and “their vaunted prowess” at fishing and hunting and tracking: “all is gone.”<sup>28</sup> Instead, “all the land is murmurous with the call / Of their wild names that haunt the lovely glens / Where lonely water falls, or where the street / Sounds all day with the tramp of myriad feet.”<sup>29</sup> European colonization of Aboriginal Canada has hollowed out their original habitations, leaving a façade of First Nations presence, after virtually eradicating Indigenous cultures. In this sense, place-names like Toronto or Ottawa or Kamouraska or Saskatchewan or Manitoba all become sign-posts of successful, European implantation and a concomitant process of Indigenous die-off by cannon, gun, pen, and penis. Scott’s poem is superficially Romantic; it is actually Gothic.

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24 John Coldwell Adams, “Confederation Voices: Seven Canadian Poets” (2007), Canadian Poetry Press (blog), online: <<http://www.canadianpoetry.ca/confederation/John%20Coldwell%20Adams/Confederation%20Voices/preface.html>>.

25 Testimony of Duncan Campell Scott (1920) to the Special Parliamentary Committee of the House of Commons, online: <[https://tc2.ca/sourcedocs/uploads/images/HD%20Sources%20\(text%20thumbs\)/Aboriginal%20History/Residential%20Schools/Residential-Schools%2010.pdf](https://tc2.ca/sourcedocs/uploads/images/HD%20Sources%20(text%20thumbs)/Aboriginal%20History/Residential%20Schools/Residential-Schools%2010.pdf)>.

26 *BNA Act*, supra note 3, s 91(9).

27 Duncan Campbell Scott, “Indian Place-Names” in *The Poems of Duncan Campbell Scott*, supra note 8, 22 at 22.

28 *Ibid.*

29 *Ibid.*

Yet, the process of cultural erasure was mandated, in theory, by the promulgation of the Dominion of Canada as a North American palimpsest of “the United Kingdom of Great Britain and Ireland.”<sup>30</sup> Politically, Canada erected an “Indian” façade for its ongoing project of British and European, anti-American, anti-republican, kingdom-building across the northern reaches of North America, while herding Indigenous peoples onto reserves, from which they were intended, in due course, to disappear. Given this perspective, it is sensible that Scott’s 1916 poem, “The Height of Land,” declares, “Now the Indian guides are dead asleep,”<sup>31</sup> an image that links organic narcosis to full-body necrosis. Furthermore, the poem’s speaker deems “uncouth” the “pictograph / Scratched on the cave side by the cave-dweller,” at least for “us of the Christ-time.”<sup>32</sup> The line collapses together traces of primitive humans and the art of Indigenous peoples, but this effect occurs just after we read, “The presage of extinction glows on [stars’] crests.”<sup>33</sup> True: The poem gestures toward mysticism, or Transcendentalism, perhaps as a means of voiding the unending carnage of supposedly civilized nations gassing each others’ soldiers across wastes of the No-Man’s-Land battlefields of Belgium and France. However, allusions to DNA-degenerate races and a cave-man teleology accent grim pre-occupations.<sup>34</sup> Yes, Scott’s speaker is on a would-be Thoreauvian venture to the “height of land” — or the division between two drainage basins. The journey is one-part introspection, one-part adventure. However, the paddling and/or portaging poet smells “pungent fume / Of charred earth burnt to the bone” and dreads “the fatal shore” of “bush fire,” while the “lakelet” breeds “weedy growths / And slimy viscid things” — images of death, destruction, decay.<sup>35</sup> “The Height of Land” reads more like Conrad’s *Heart of Darkness*<sup>36</sup> than it does Thoreau’s *Walden*.<sup>37</sup> Incipiently extinct are Indigenous peoples, more or less, but a similar fate may await globe-ruling Europeans, who are presently, wantonly, slaughtering each other.

Scott worries the theme of a Native die-off, not only in poems about toponyms and topography, but in notorious lyrics that view *métissage* as a Canadian

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30 *BNA Act*, *supra* note 3, Preamble.

31 Duncan Campbell Scott, “The Height of Land” in *The Poems of Duncan Campbell Scott*, *supra* note 8, [Scott, “The Height of Land”] at 46.

32 *Ibid* at 50.

33 *Ibid* at 50.

34 Cf Oswald Spengler, *Der Untergang des Abendlandes*, (München: Deutscher Taschenbuch Verlag, 1918). Later published in English as *Decline of the West*, translated by Charles Francis Atkinson (New York: Oxford University Press, 1932).

35 Scott, “The Height of Land,” *supra* note 31 at 49.

36 Joseph Conrad, (Portland: Tin House Books, 1899).

37 Henry David Thoreau, *Walden, or Life in the Woods*, (Boston: Ticknor & Fields, 1854)

form of what racist Americans labelled *miscegenation*: race-mixing. So, “The Onondaga Madonna”<sup>38</sup> (1898) pictures a new mother, unwed, Indigenous, who represents “a weird and waning race,”<sup>39</sup> and who has given birth to a wan baby, who is “The latest promise of her nation’s doom,” being “Paler than she,” and a putative, Darwinian throwback as a “primal warrior.”<sup>40</sup> When Scott’s speaker wagers this pagan Madonna incarnates “[t]he tragic savage,”<sup>41</sup> he parrots American critics, black and white, attendant to the spectre of the Tragic Mulatto,<sup>42</sup> a stock figure in Dixie racial melodrama, whom, being part-black and part-white, is distrusted and/or rejected by all. The poem does not tell us the circumstances of this Onondaga woman’s impregnation by a Caucasian, but rape is a distinct possibility. Certainly, if the Métis boy’s father was the woman’s lover, he is now long gone. In any event, his siring of a half-breed bastard foretells doom for the Onondaga nation — *not* the usurping power of Europeanized Canada. Surely, the *BNA Act* spells this fact out: not only in its blunt presentation of the Dominion of Canada as an appendage of Great Britain, but also in its relegation of “Indians” to a position tantamount to being considered “Crown lands” as opposed to independent states sharing sovereignty by treaty.

To turn to Scott’s “The Half-Breed Girl” is to find a prophecy for what happens to the Métis child once she, in this case, matures.<sup>43</sup> This girl is “free of the trap and the paddle,”<sup>44</sup> so she is presumably ripe for reeducation in one of Scott’s Residential Schools. Despite being tutored somewhat in Caucasian Christendom, the girl still has “savage life” and “Shadows trouble her breast.”<sup>45</sup> Apparently, she is caught between her father’s Scottish heritage of “The gleam of lock and shealing, / The mist on the moor”<sup>46</sup> and the fact of her “stifling wigwam,” where the overhead stars — or “dying embers” — resemble “the eyes of dead souls.”<sup>47</sup> This girl is, as is usual for Scott’s Indigenous characters,

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38 Duncan Campbell Scott, “The Onondaga Madonna” in *The Poems of Duncan Campbell Scott*, *supra* note 8, 230.

39 *Ibid* at 230.

40 *Ibid*.

41 *Ibid*.

42 See Johanna L Grimes-Williams, “Character Types” in William Andrews, Frances Smith Foster & Trudier Harris, eds, *Oxford Companion to African American Literature* (New York: Oxford University Press, 1997) 127.

43 Duncan Campbell Scott, “The Half-Breed Girl” in *The Poems of Duncan Campbell Scott*, *supra* note 9, 55 [Scott, “The Half-Breed Girl”].

44 *Ibid* at 55.

45 *Ibid*.

46 *Ibid*.

47 *Ibid* at 56.



on the verge of the grave. In fact, the penultimate stanza suggests the girl is contemplating self-murder:

A voice calls from the rapids,  
Deep, careless and free,  
A voice that is larger than her life  
Or than her death shall be.<sup>48</sup>

In addition to this conditional summons to suicide, we learn that the girl's "fierce soul hates her breath,"<sup>49</sup> a statement that also seems to posit self-destruction as a resolution to her plangent alienation. "The Half-Breed Girl" was published in 1906, the year after Scott became "one of the Treaty Commissioners sent to negotiate Treaty No. 9 in Northern Ontario."<sup>50</sup> Scott's thought seems to be that Indigenous people will perish via bureaucratized genocide or despair-prompted suicide, unless Caucasian Christian charity is invoked. Scott's gambit was the Residential School System. Yet, more than a century after Scott's poem appeared, Canada is gripped by a double epidemic: Suicide among First Nations' peoples (the young) and the unsolved homicides and disappearances of Indigenous women and girls. One set of statistics is stunning, alarmingly so:

According to a 2000 report by the Canadian Institute of Health, the rate of suicide among First Nation males was 126 per 100,000 (compared to 24 per 100,000 non-Indigenous males), while it was 35 per 100,000 for females (compared to 5 per 100,000 non-Indigenous females).<sup>51</sup>

The count of murdered and missing Aboriginal women and girls in Canada, though disputed, is also appalling. Amnesty International Canada cites a 2014 Royal Canadian Mounted Police report that declares, "1,017 women and girls identified as Indigenous were murdered between 1980 and 2012 — a homicide rate roughly 4.5 times higher than that of all other women in Canada."<sup>52</sup> Scott's "Half-Breed Girl" is a case-study of an at-risk Indigenous youth. She is at risk of suicide and, as a Métis woman, she is at risk of being sucked into street life

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48 *Ibid.*

49 *Ibid.*

50 Dean Neu & Richard Therrien, *Accounting for Genocide: Canada's Bureaucratic Assault on Aboriginal People* (Black Point, NS & New York, NY: Fernwood Publishing & Zed Books, 2003) at 91. See also John F Leslie, "Treaty 9" (15 June 2016) *Historica Canada* (blog), online: <<https://www.thecanadianencyclopedia.ca/en/article/treaty-9/>>.

51 Allison Crawford, "Suicide Among Indigenous Peoples in Canada" (22 September 2016) *Historica Canada* (blog), online: <<https://www.thecanadianencyclopedia.ca/en/article/suicide-among-indigenous-peoples-in-canada/>>.

52 Jackie Hansen, "Missing and Murdered Indigenous Women and Girls: Understanding the Numbers" *Amnesty International* (blog), <<https://www.amnesty.ca/blog/missing-and-murdered-indigenous-women-and-girls-understanding-the-numbers>>.

and its dangers: namely, homelessness (or exposure to the elements), substance abuse, sexual assault, battery, and homicide. Scott's depiction of "The Half-Breed Girl" spells out that her in-between status imperils her life. This poem is a precursor to George Ryga's tragic play about a Native woman, *The Ecstasy of Rita Joe*.<sup>53</sup> In constitutional terms, too, in the *BNA Act*, the Métis people merit no recognition. Thus, should the "Half-Breed Girl" choose her Native heritage over her Scottish lineage, she becomes a disappeared person. Yet, to assert her Scottish heritage is also to repress her Indigenous culture. Given these mutually unpalatable fates, is suicide itself so unpalatable?

Scott's apocalyptic racialism (*not* Romanticism) is palpable, but one other female portrait is relevant here, and it is Scott's "Portrait of Mrs. Clarence Gagnon,"<sup>54</sup> which was penned at Sainte-Pétronille, Québec, near Ville de Québec, on July 25, 1919. Presuming that Mrs. Clarence Gagnon was a very live, Caucasian Québécoise, and most likely Lucile Rodier, the newlywed wife of the Québécois artist, Clarence Gagnon (1881-1942), who fraternized with D.C. Scott, the poet extends to a French Canadian the same aura of incipient decay that he cites in his female, Native characters: "Beauty is ambushed in ... her / Gold hair" where light "slides"; "A glow is ever in her tangled eyes, / Surprise is settling in them"; "Her curvèd mouth is tremulous yet still, / Her will holds it in check..."<sup>55</sup> *La belle Québécoise*, this sylph-like MILF, is portrayed as having suffered some form of disturbance. We cannot know what it is. Could it be the news of a death, or an attempt at seduction? Married on June 10, 1919, Lucile Rodier was still a newlywed, and still honeymooning, when Scott attempted his word-portrait.<sup>56</sup> Still, all her beauty is at risk of vanishing if she allows herself to speak. In that case, "Words would brim over in a wild betrayal" and beauty itself would desert the world, save for "Some vestige of a vanished loveliness."<sup>57</sup> (220).

The French-Canadian woman is not as "at risk" as Indigenous women are, but even she, though married, is subject to loss: of beauty, perhaps of youth, perhaps of reputation. She is a Francophone woman married to a bilingual Québécois painter, but her title is Anglicized, "Mrs.," and her gender is masculinized as "Clarence Gagnon." Thus, the salient possibility is that Mrs.

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53 George Ryga, *The Ecstasy of Rita Joe*, (Vancouver: Talonbooks, 1970).

54 Duncan Campbell Scott, "Portrait of Mrs. Clarence Gagnon" in *The Poems of Duncan Campbell Scott*, *supra* note 8, 219 [Scott, "Portrait of Mrs. Clarence Gagnon"].

55 *Ibid* at 219-220.

56 The most direct possibility here is that Scott is describing a Gagnon painting of his wife, Lucille Rodier. See, for instance, Gagnon's 1919 canvas, *Lucille Rodier Gagnon, Olive and Edna Pretty, at Saint-Petronille, Isle D'Orléans* (Gagnon).

57 Scott, "Portrait of Mrs. Clarence Gagnon," *supra* note 54 at 220.

Gagnon represents the suppression of Francophones, the effect of being muted, of not being readily permitted speech. Although the *BNA Act* allows “[e]ither the English or the French Language” to be used in the Parliament of Canada and in the Legislature of Québec,<sup>58</sup> in reality, French was suppressed, even within Québec, at least until the onset of the Quiet Revolution in the 1960s. According to sociologist John Porter, although “the French participated in Confederation, Canada’s political and economic leaders were British and were prepared to create a British North America,”<sup>59</sup> just as the original title of our 1867 Constitution verifies. Nevertheless, the *Québec Act* of 1774,<sup>60</sup> passed by the British Parliament, granting French Canadians complete religious freedom and restoring the French form of civil law, established the basis for two official, language-based cultures of the (nascent) Canadian state. Theoretically, at least, the *Québec Act* enthrones aspects of French civilization, just as constitutional recognition of the nominally WASP Monarch, presents the Anglo Monarch as the “natural” ruler of the state. If we read the *Official Languages Act* of 1969 alongside the notion of “two founding peoples,” what is posited, really, is the *de facto* presence of two linguistically-anchored, ethnically-composed societies, both presented as naturally empowered and decisive in their respective jurisdictions in defining who may be “Canadian” and even what employs they should be expected to take up.<sup>61</sup>

Nevertheless, at the moment that “Portrait of Mrs. Clarence Gagnon” is penned, the *Official Languages Act* is still fifty years ahead; and, despite some vital, constitutional provisions, French Canadians are also considered a secondary population after the enthroned power of WASP Canadians. Recall that Daniel Coleman has pointed out “the privileged, normative status of British whiteness in English Canada,”<sup>62</sup> exploring the ways in which various authors have advanced a British/Scottish/Nordic/European vision of Canada as the Christian “white man’s country,” loyal to Crown values/virtues, and superior to the American rabble’s “turbulent” republicanism. In tracing the anxious desire of White, “British”-identified, Canadian intellectuals to establish their modernity, their liberality, their “Christian” goodness, and their claims to “civilization,” entitlement, prestige, property, and power, Coleman urges, “the

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58 *BNA Act*, *supra* note 3, s 133.

59 John Porter, *The Vertical Mosaic: An Analysis of Social Class and Power in Canada*, (Toronto: University of Toronto Press, 1965) [Porter, *The Vertical Mosaic*, (1965)] at 62.

60 *Québec Act, 1774* (UK), online: <<https://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/collections1/collections1/Québec-act/>>.

61 *Official Languages Act*, SC 1969, c 54.

62 Daniel Coleman, *White Civility: The Literary Project of English Canada* (Toronto: University of Toronto Press, 1961) at 6-7.

example [of dominant-group oppression] most fundamental to the constitution of Canadian settler culture is surely the treatment of First Nations people throughout Canadian history.”<sup>63</sup> We have Duncan Campbell Scott’s poetry to ponder in relation to this coast-to-coast-to-coast-to-coast chronicle of *a priori* crimes.

Turning to the work of E. Pauline Johnson (1861-1913), who also utilized her Mohawk name, Tekahionwake, one encounters the antithesis to Duncan Campbell Scott and the antidote to his pernicious, yet constitutionally astute, views. Whether consciously or unconsciously, Johnson positions herself as the spokeswoman for First Nations versus the British imperial offshoot that is Canada. Johnson’s editors, Carole Gerson and Veronica Strong-Boag, reprint an 1890 letter in which Johnson declares one of her literary motives to be “to upset the Indian Extermination and noneducation theory — in fact to stand by my blood and my race,”<sup>64</sup> a statement that reveals her consciousness of — and opposition to — the constitutional thought and stance of men like Duncan Campbell Scott. Even so, Gerson and Strong-Boag opine that Johnson “should be understood as a patriot who regarded the dominion as the rightful heir of a powerful empire. Her ideal Canada and Britain were high-minded and fair-dealing, forming an inclusive international community that valued both Natives and Europeans.”<sup>65</sup> In 1903, as Gerson and Strong-Boag divulge, Johnson took a kind of Martin Luther King perspective, appealing to her “pale-face compatriot” and her “dear Red brother” to credit that “White Race and Red are one if they are but Canadian born.”<sup>66</sup>

Yes, that was the sentiment, the ideal, the hope. But Johnson’s verse, lofty in aspiration though it is, has to keep addressing Machiavellian, malevolent, sadistic statecraft. An early poem, “A Cry from an Indian Wife,”<sup>67</sup> sets down bluntly — if melodramatically — this disjuncture. The speaker in this dramatic monologue is reluctantly seeing her husband off to war against the shock troops enforcing Sir John A. Macdonald’s suppression of the 1885 Northwest Rebellion and its desperate sponsors: the Plains First Nations and Métis. Johnson’s speaker is clear that her husband, the “Forest Brave” and “Red-skin

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63 *Ibid* at 13.

64 Carole Gerson & Veronica Strong-Boag, “Introduction: ‘The Firm Handiwork of Will’” in Carole Gerson & Veronica Strong-Boag, eds, *E. Pauline Johnson, Tekahionwake: Collected Poems and Selected Prose* (Toronto: University of Toronto Press, 2002) xiii [Gerson & Strong-Boag, “Introduction”] at xvi.

65 *Ibid* at xviii.

66 *Ibid* at xix.

67 E Pauline Johnson, Tekahionwake, “A Cry from an Indian Wife” in Gerson & Strong-Boag, *supra* note 64, 14 [Johnson, “A Cry from an Indian Wife”].

love” and his allied, “little band”<sup>68</sup> will make war as a “nation” — albeit “our poor nation lying low”<sup>69</sup> — against “the ranks that Canada sends out”<sup>70</sup>, “a soldier host.”<sup>71</sup>

Here, the Native wife appreciates the august majesty of the Crown, the State that monopolizes military power.<sup>72</sup> Thus, the Indigenous men are not so much in rebellion as they are undertaking a defensive, guerrilla war. Their weapons tell the tale. The wife hands her husband a knife, and he picks up a “tomahawk.”<sup>73</sup> But the Métis, Cree, and Assiniboine must brave cavalry, cannon, and machine-gun. They may be nations contesting imperialist Canada, but the latter fields the firepower: Artillery, and even a steamboat, versus the hand-to-hand-combat blades and the face-to-face-combat rifles of the Indigenous opposition. Johnson’s speaker is under no illusion that this will be a fair fight: she knows that her husband will be “Endangered by a thousand rifle balls.”<sup>74</sup> The native wife describes the Canadian troops as a “stripling pack / Of white-faced warriors, marching West to quell / Our fallen tribe that rises to rebel.”<sup>75</sup> The Canuck stormtroopers campaign “from the East / To be our chiefs — to make our nation least / That breathes the air of this vast continent.”<sup>76</sup> Their duty is to bring Saskatchewan under the absolute jurisdiction of the Federal government, which was obligated constitutionally to support the interests of the British Empire, which has, globally, been intent on subjugation of all local opposition. (Consider the Indian Rebellion of 1857-58; and the failed attempt to pacify Zulus at Isandlwana, South Africa, in 1879.) Johnson’s poem is riven by Du Boisian double-consciousness:<sup>77</sup> The wife urges her husband

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68 *Ibid* at 14.

69 *Ibid* at 15.

70 *Ibid*.

71 *Ibid* at 14.

72 *BNA Act, supra* note 3, s 91(7).

73 Johnson, “A Cry from an Indian Wife,” *supra* note 67 at 15.

74 *Ibid*.

75 *Ibid* at 14.

76 *Ibid*.

77 WE Burghardt Du Bois, *The Souls of Black Folk: Essays and Sketches* (Chicago: AC McLurg & Co, 1903):

It is a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity. One ever feels his twoness — an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder at 5.

This famous passage formulates “double consciousness.” Johnson’s similar mentality lets her see herself as simultaneously Mohawk and conservationist of her race, yet also attuned to the British and the Canadian — and the modern.

to “go to war,” not “bend to greed of white men’s hands,” for, “By right, by birth we Indians own these lands”<sup>78</sup>, and she imagines that his tomahawk “will drink” the “best blood”<sup>79</sup> of an unlucky, chalk-faced Canuck. She reflects that Canadian governance has brought only “wars and graves,” and she bids her husband “strike for liberty and life, / And bring back honour to your Indian wife.”<sup>80</sup>

Simultaneously, however, the “Indian wife” commands her spouse, “Revolt not at the Union Jack.”<sup>81</sup> (14). Part of her accepts that Canada is the spawn of Britain and that ultimate “Authority” here is “vested in the Queen.”<sup>82</sup> Thus, to go to war with Federal emissaries massing “toward the North-West wild” is also to rebel against the Monarch and the Union Jack. The transcendent explanation for this unsettling state of affairs, that First Nations are “starved, crushed, plundered, ... low ...”<sup>83</sup> is that “Perhaps the white man’s God has willed it so.”<sup>84</sup> The only way for the Indian wife to both urge her husband into a likely defensive, bloody battle — kamikaze, guerrilla warfare — while, simultaneously, attempting to uphold the sanctity of the British Empire is to consider that this ungodly situation is the doing of a Caucasian deity strictly inimical to Indigenous survival as proud, equal nations. In a sense, Johnson ends up echoing Duncan Campbell Scott’s accidental alliance between divine “Power” and the down-and-dirty, secular British in his “Fragment of an Ode to Canada.”<sup>85</sup>

Johnson allows a similarly dismal, if patriotic, resolution in her poem, “‘Brant,’ A Memorial Ode.”<sup>86</sup> Herein the speaker accepts the D.C. Scott thesis that Indians are dying out. In the “new era” presently dawning for “Young Canada,” the sun will “only shine upon / [Canada’s] Indian graves...”<sup>87</sup> Indeed, now “fades the race / That unto Might and therefore Right gives place...”<sup>88</sup> The speaker so celebrates the rise of Canada that the vanquishing — vanishing — of Indigenous people seems cheered on. Yet, no sooner does the speaker endorse Caucasian Canadian settler triumphalism that she pulls back, somewhat, to argue that Canada’s “plumes” and “glories” are indebted to “thy Indian son”

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78 Johnson, “A Cry from an Indian Wife,” *supra* note 67 at 15.

79 *Ibid.*

80 *Ibid* at 14.

81 *Ibid.*

82 *BNA Act, supra* note 3, s 9.

83 Johnson, “A Cry from an Indian Wife,” *supra* note 67 at 15.

84 *Ibid.*

85 Scott, “Fragment of an Ode to Canada,” *supra* note 8.

86 E Pauline Johnson, Tekahionwake, “‘Brant,’ A Memorial Ode” in Gerson & Strong-Boag, *supra* note 65, 21.

87 *Ibid* at 21.

88 *Ibid.*

and also, specifically, “the Mohawk’s [military] arm”<sup>89</sup> as represented by Brant, “who linked his own [name], with Britain’s fame”<sup>90</sup> as a Loyalist ally during the American Revolutionary War. Johnson’s persona reads Brant’s alliance with Britain as a precursor to “common Brotherhood,” so that, even if decadent, Indigenous peoples may “love the land where waves the Union Jack,” even “though that home [is] no longer ours.”<sup>91</sup> Native dispossession and marginalization is salvaged by the loyalty of “The Six Red Nations” to “their Canada,” which is guaranteed by “a woman’s hand”: Empress Victoria’s, which is “firm and strong / Enough to guard us from all fear of wrong.”<sup>92</sup>

In her tortuous and torturous effort to praise Brant, rue the dissipation of Indigenous power if not Indigenous presence, recognize Canada as a conqueror, and appeal to fraternal sentiments about British justice, Johnson acts as if she could vomit her cake and eat it too. In a sense, her dissent is her surrender; her Indigenous descent is her resistance. She can be patriotic to the Empire, yet contradictorily elegiac for Indigenous peoples. By taking this double-consciousness approach,<sup>93</sup> Johnson is able to intercede in the White Supremacist, doomed-Native narrative, positing that, though Aboriginal people have been forced to accept white-settler government, a Caucasian-headed Christianity, and an oppressive school system, they are loyal subjects to a Crown that promises justice. If that Imperial, treaty-verified justice was ever realized, then Indigenous people could become full and equal (British) citizens.

One must turn to Johnson’s prose to find her most radical defence of racial identity. Her essay, “A Strong Race Opinion: On the Indian Girl in Modern Fiction,”<sup>94</sup> recoils against the cliché — a version of the Tragic Mulatto trope in American literature — that the “book-made Indian”<sup>95</sup> girl always pursues a white boy who spurns her or toys with her; is so enraptured with the cad that she is “treacherous to her own people” and makes herself “detestable and dishonourable;”<sup>96</sup> is “retiring, reticent, non-committal;”<sup>97</sup> is always named

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89 *Ibid.*

90 *Ibid.*

91 *Ibid.*

92 *Ibid* at 21-22.

93 Johnson notes that a “double motive” compels her verse: To resist genocidal policies, yes, but also to prosper as a writer, a fact which suggests her willingness to cooperate somewhat with British/Canuck imperialism: just enough so as to secure enough fame and fortune to allow her to travel — in style — to The Holy Land, for instance (Gerson & Strong-Boag, “Introduction,” *supra* note 64 at xvi).

94 E Pauline Johnson, Tekahionwake, “A Strong Race Opinion: On the Indian Girl in Modern Fiction” in Gerson & Strong-Boag, *supra* note 65, 177 [Johnson, “A Strong Race Opinion”].

95 *Ibid* at 179.

96 *Ibid.*

97 *Ibid.*

“Winona” but is “surnameless;”<sup>98</sup>; is “too unhealthy and too unnatural to live.”<sup>99</sup> In fact, these heroines, penned by white authors, are “possessed with a suicidal mania.”<sup>100</sup> Johnson scourges these paleface-crafted, “Indian” or Métis female characters as “all fawn eyed, unnatural, unmaidenly idiots,”<sup>101</sup> whose role is to assist foppish white boys to wed and bed white girls, while pining themselves away to the point of becoming skeletons. Johnson rightly rejects this depiction, for it accords too readily with the dominant, Darwinian narrative, extolled by Duncan Scott and others, that Indigenous peoples are moribund, retrograde, and can only persist as a residual strain of Caucasian and Amerindian admixture. One recalls that Scott’s “Half-Breed Girl” is tempted to drown herself, rather than live on as a two-faced, racial contradiction.<sup>102</sup>

To refute this constitutional politics of assimilationism and/or cultural genocide and/or “the real thing,” Johnson insists that, classically, Indigenous “self-destruction was unheard of.”<sup>103</sup> Even now, “suicide is an evil positively unknown among Indians,” save for “rare instances where a man crazed by liquor might destroy his own life.”<sup>104</sup> One wonders how Johnson would respond to today’s abysmal statistics, and how much blame she would place upon Scott’s Residential School option or upon the Church-and-Crown collusion in teaching Indigenous peoples that either they or their cultures (civilizations) must disappear. However, if Johnson is too categorical in denying the existence of suicide among “‘real live’ Indian”<sup>105</sup> girls or people, she rejects this trope that pleasures in the spectacle of Ophelia-esque suicides of “book Indians,”<sup>106</sup> for it vitiates the actual historical narrative wherein “many girls ... have placed dainty red feet figuratively upon the white man’s neck.”<sup>107</sup> Johnson pleads with white writers to realize “the Redman has lost enough, has suffered enough”<sup>108</sup> in reality, in history. They need not endure “additional losses and sorrows being heaped upon him in romance,” that is to say, in fiction.<sup>109</sup>

Johnson understands that supposedly innocent tales of love serve pernicious purposes: to accent defeatism, to promote a quiet disappearance of Aboriginal

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98 *Ibid.*

99 *Ibid* at 178.

100 *Ibid* at 179.

101 *Ibid* at 182.

102 Scott, “The Half-Breed Girl,” *supra* note 43.

103 Johnson, “A Strong Race Opinion,” *supra* note 94 at 179.

104 *Ibid.*

105 *Ibid* at 178.

106 *Ibid* at 181.

107 *Ibid* at 183.

108 *Ibid* at 183.

109 *Ibid* at 183.



peoples, either through miscegenation or suicide. Why else, Johnson asks, “should the Indian always get beaten in the battles of romances, or the Indian girl get inevitably the cold shoulder in the wars of love?”<sup>110</sup> Canadian creative writing must take its cue from the structures of the State, the Crown, which recognizes, federally, constitutionally, its military and bureaucratic suzerainty over First Nations’ peoples. For our purposes, in our own time, we might even collapse together the military and bureaucratic powers of Canada as mutually intertwined in failing to provide necessities to reserves (clerically) and failing to protect (police-wise) the lives of Indigenous people, particularly girls and women. Seen from this perspective, the Royal Canadian Mounted Police operates in tandem with Indigenous and Northern Affairs — the quasi-military police plus the colonialist bureaucracy — to maintain Canadian regulation of Indigenous peoples as Crown-law mandated. We should interpret E. Pauline Johnson’s poetry and prose, especially where she opts for the directly political mode over the indirectly pastoral, as articulating resentment for this constitutional arrangement.<sup>111</sup>

In the same article, “A Strong Race Opinion,” Johnson opines that white writers have no excuse for creating such self-homicidal, stock, female Native caricatures, for there were, she notes in 1892, 122,000 Indigenous “souls” in Canada. She argues that white authors could tap “this huge revenue of character” to create well-rounded, “flesh-and-blood” characters.<sup>112</sup> That term *revenue* is not “neutral” for me because it also connects to the constitutional authority of the Federal government to raise “Money by any Mode or System of Taxation.”<sup>113</sup> Given its authority over “Indians, and Lands reserved for the Indians,”<sup>114</sup> the Crown derives monetary revenue from this flesh-and-blood “revenue,” particularly when it has dealt away lands or resources on those lands to private interests, its own interests, or to non-Indigenous Canadians.

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110 *Ibid* at 183.

111 After all, the current (September 2016 debuted), Federal-government-mandated National Inquiry into Missing and Murdered Indigenous Women and Girls may pose a paralyzing collision between the Federal bureaucracy and the Federal — and local — police, who may be understandably reluctant to stand accused of institutional (let’s say, “constitutional”) racism due to their failures to investigate and prosecute those responsible for homicides against First Nations women. The salient example is the Helen Betty Osborne murder in The Pas, Manitoba, in 1971, which went unprosecuted for some 15 years.

112 Johnson, “A Strong Race Opinion,” *supra* note 94 at 178.

113 *BNA Act, supra* note 3, s 91(3).

114 *Ibid*, s 91(24).

In a sense, Johnson indicates that the “revenue” of Indigeneity contributes to the profitability, so to speak, of Canadian identity as “sold” in tourist commodities or packaged in the national imaginary. She does herself wonder whether the white Canadian use of Native characters is an attempt “to lend a dash of vivid colouring to an otherwise tame and sombre picture of colonial life.”<sup>115</sup> In other words, the revenue — the cultural capital of Indigeneity — helps offset (circa 1892) the apparent deficits — particularly in Anglo-Canadian identity — *vis-à-vis* the more culturally prestigious and globally robust American and British self-projections.<sup>116</sup> The utilization of the cultural capital of Indigeneity is the only certain way that Canadians may demarcate Canada from the United States and Britain, or, for that matter, France and Europe.<sup>117</sup> Thus, Johnson addresses yet one more exploitation of Indigenous peoples by a culturally insecure (English) Canada,<sup>118</sup> and the actual raising of substantial revenue by issuing stamps, postcards, collectibles, souvenir booklets, coins, and paper money inscribed with Indigenous-related images: not to mention the multitude of novels and poems (including Duncan Campbell Scott’s) that have exploited the “local-colour” of the so-called Red Indian; also not to mention the cultural industries based on merchandising inukshuks, moccasins, Hudson Bay blankets, soapstone carvings, and even the little, plastic Indian and Inuit dolls.<sup>119</sup> Johnson seeks the creation of characters that indicate the evolution of “individuality ungoverned by nationalisms,”<sup>120</sup> by which she means presumably ethnic or race-based stereotypes.

Yet, Johnson herself got marketed or sold as “a Canadian Boadicea and a Mohawk Princess,” say Gerson and Strong-Boag.<sup>121</sup> Her stage costume, in the first part of her public recitals, “was embellished with visible symbols of Native culture, including fur pelts, Iroquois silver medallions, wampum belts, and her father’s hunting knife.”<sup>122</sup> In the second half of her performances, she would wear “an elegant evening gown,” signaling her “hybrid inheritance of Canada

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115 Johnson, “A Strong Race Opinion,” *supra* note 94 at 183.

116 The Yanks have jazz; the Brits have Shakespeare; and we have Anne of Green Gables.

117 Note that France hosts an Indigenous North American nation, the Mi’kmaw, on its Basque-settled *outré-mer* territory of Saint-Pierre-et-Miquelon.

118 French Canada — Québec, Acadie, etc. — seems far more assured of its “right” to exist and its history and cultural achievements.

119 Recent furors over “cultural appropriation” might be *profitably* read as the constitutional insistence of white Canucks to raise revenue by exploiting “Indians, and Lands reserved for the Indians”: *BNA Act, supra* note 3, s 91(24).

120 Johnson, “A Strong Race Opinion,” *supra* note 94 at 177.

121 Gerson & Strong-Boag, “Introduction,” *supra* note 64 at xvii.

122 *Ibid.*

and the British Empire.”<sup>123</sup> No matter: Johnson is herself following the example set by the Crown and Constitution. If the Government of Canada has the right to “raise Money” (revenue) off the backs of Indigenous peoples, why should not Johnson be able to rightly prosper from the public proclamation of her heritage? Also of importance in Johnson’s performance of her heritage is that she continues to individually resist the erasure of Indigeneity that national, or tribal, surrender to white Authority otherwise seems to entail. To go further, one may theorize that every non-Indigenous assumption of constitutional or governmental *Authority* is a kind of masquerade, wherein the cultural capital of Indigenous people is used to buttress the legitimacy of the settler-state....

The next poet to consider is Abraham Moses Klein (1909-72), a Jewish-Canadian whose work engages with an aspect of the *BNA Act* that is only implicit. Klein refers to a concept that will only become explicit in the *Constitution Act* of 1982,<sup>124</sup> once the Constitution is patriated from the United Kingdom, with an entrenched Amending formula and The *Canadian Charter of Rights and Freedoms*.<sup>125</sup> I refer here to multiculturalism, which is one of the pillars of a particularly English Canadian identity — alongside the presence of major Francophone populations, the vivacity of Indigenous cultures, and the fetish of cops on studs. It is included in the *Constitution Act* as section 27 of the *Charter*: “This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.” This sentence suggests that, while multiculturalism is now inscribed within the Constitution, it has always existed as a “heritage of Canadians.”<sup>126</sup> Of course, that multiculturalism has always been a feature of Canada does not mean it has always been accepted as such; nor does it mean that various racialized and ethnic groups have not been suppressed due to their perceived ethnic, racial, or religious difference. It is this actual history of contestation that A.M. Klein’s poetry engages, challenging both French Canadian ethnocentrists and English Canadian bigots. Before I read a few of his poems, however, I want to review the *BNA Act*’s presentation of a feeble, yet hierarchical, multiculturalism.

The *British North America Act* was nearly a century old when John Porter revolutionized the study of Canada by establishing in his *The Vertical Mosaic* (1965) that the supposedly classless “Peaceable Kingdom” is actually “a steeply

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123 *Ibid.*

124 *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

125 *Supra* note 8.

126 *Ibid* at s 27.

hierarchical patchwork of classes and ethnic groups.”<sup>127</sup> In the Foreword to the 2015-issued, 50<sup>th</sup> Anniversary edition of Porter’s classic, Wallace Clement and Rick Helmes-Hayes explain that Porter’s stratified mosaic is based on individuals and peoples possessing variously valued “heritage” attributes, including “race, ethnicity, immigrant status, language, region, and religion.”<sup>128</sup> According to Porter’s research of 55 years ago, the dominant group in Canada was, essentially, ABC: Anglican, British, and Caucasian. Canadians belonging to this so-called charter group, or “founding people,” (have)<sup>129</sup> dominated business, politics, mass media, universities, law establishment, clergy, and most opinion-forming, legislative-proposing, policy-enacting, justice-enforcing, wealth-accumulating, and taxation/governmental-distributing regimens. They (have) achieved their power and influence through hobnobbing within interlocking networks of law schools, boards of directors, kinship ties, golf and social clubs, and *via* specific religious and ethnic affiliations. Porter also found that “French Canadians” (mainly Québécois) were very secondary — actually second-class — wielders of political authority and cultural influence. According to his sensibility, French Canadians are inhibited by their ascription to Catholicism and classicism as opposed to capitalism and modernism.<sup>130</sup> In Porter’s view, most other groups — meaning, mainly, European ethnicities, First Nations, and Asians — are perpetual outsiders, marginal, add-ons, mainly valued, enriched, and empowered insofar as they assimilate into the “Anglo” mainstream norms especially, or accept ethnically-identified occupations. He accounts for this process as such:

A given ethnic group [such as British Canadians] appropriates particular roles and designates other ethnic groups for the less preferred ones. Often the low status group accepts its inferior position. Through time the relative status positions, reinforced by stereotypes and social images ... harden and become perpetuated....<sup>131</sup>

Notably, Porter has little to say about gender — perhaps because 1960s Canada was so entrenched in patriarchy. Asians, too, are similarly invisible in Porter’s analysis. He gives them short-shrift as a West Coast-situated minority who built the railway and then were declared unwelcome, and he seems not

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127 John Porter, *The Vertical Mosaic: An Analysis of Social Class and Power in Canada*, 50th Anniversary ed (Toronto: University of Toronto Press, 2015) [Porter, *The Vertical Mosaic*, (2015)] at x (Forward by Wallace Clement & Rick Helmes-Hayes).

128 *Ibid* at x.

129 In describing evidently empowered ethnicities, I gesture toward using the present-perfect (or past-perfect) tense, for I doubt that such bastions of privilege and banks of capital have eroded significantly enough to permit un-self-conscious deployment of the past tense.

130 Porter, *The Vertical Mosaic*, (1965), *supra* note 59 at 92-99.

131 *Ibid* at 63.

to know that African-Canadians have a presence that goes back to the era of slavery and of abolition.<sup>132</sup> Despite his analytical shortcomings, however, Porter nonetheless effectively assesses the Canada constructed out of the *BNA Act*, which produced a hierarchical multiculturalism with three major components.

First, the Constitution and governments are modelled on, or are “similar in Principle to that of the United Kingdom,”<sup>133</sup> and executive power is “vested in the Queen.”<sup>134</sup> These provisions literally enthrone White Anglo-Saxon Protestant Christianity at the summit of the State. By virtue of this clause alone, white, British-descended Canadians enjoy a privileged status, for that is their *relation* who holds forever the symbolic supreme power as Monarch. Secondly, the Constitution confers distinct recognition upon Catholics and Protestants, to ensure that different Christian denominations may offer schooling congruent with their doctrines, which is the entire concern of section 93. Thirdly, although there is no distinct constitutional recognition of English and French as official languages and as minority languages until 1982, section 133 of the *BNA Act* states expressly that English and French may be used in the Parliament of Canada and in the legislature of Québec and in Canadian and Québécois courts. Fourthly, there is explicit recognition of “Indians” in section 91.24.

Taken together, these provisions (have) had the effect — despite racism and classism — of institutionalizing the multifaceted stance of the state *vis-à-vis* discrete configurations of Canadians: British, French, and First Nations by group; English and French linguistically; white and First Nations “racially”; and Protestant and Catholic in terms of religion. These different recognitions (have) had the effect of legitimizing, as Canadian, the existence of disparate groups, such as, let us say, Francophone Iroquois Catholics versus Anglophone Irish Baptists. Add to these differences the fact of regional variations, and, the different slants of the immigration system, favouring different groups at different times over others, and suddenly, Canada is — *naturally* — a hodgepodge of cultural groups, but all showing very different rates of ascription to either leisure-class or labour-class categories.

I do not argue here that racialized minorities have ever enjoyed anything approximating real equality in the colonial and post-Confederation periods. Indeed, so long as there persists a metaphysical symbiosis between a WASP Monarchy and WASP ascendancy in Canada (with some Gallic/Catholic and

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132 *Ibid* at 69.

133 *BNA Act, supra* note 3, Preamble.

134 *Ibid*, s 9.

other ethnicities allowed an associate affiliation), so will there be a sense that “the country’s two charter groups — the British/English and French” strive still “to preserve their dominant status and influence over Canadian society.”<sup>135</sup> They uphold a cultural, political, and economic hegemony dating back to “the French and British colonization of the pre-existing Aboriginal population.”<sup>136</sup>

Klein was the major mid-twentieth-century, Canadian poet aware of these disjunctures, partly because he was a lawyer and could see the divide between ideals and realities. But also because he was Jewish, and could perceive the threat, viscerally, of empowered racialism. His *Hitleriad*<sup>137</sup> is a preface to the liberal multiculturalism, cosmopolitanism, of the poems issued in *The Rocking Chair*.<sup>138</sup> Indeed, Klein’s critique of the Hitlerian formula, “Blood, Honour, Soil,”<sup>139</sup> attests that, for the Nazis, worship is due “the blood, in Aryans veined, / And in all others, preferably uncontained.”<sup>140</sup> Similarly, “as for Soil,” there’s “a simple ratio: / Nazis above, all others deep below!”<sup>141</sup> Klein appreciates that this racist nationalism (or imperialism) has its local expression too, namely, in the anti-Conscription speeches of Montréal mayor, Camillien Houde. Klein’s poem, “Political Meeting,” is dedicated, cheekily, to Houde. In the poem, an “Orator,” in the speaker’s view, plays a jocular “country uncle with sunflower seeds in his pockets,”<sup>142</sup> who then stirs his audience’s mood to shift from pleasure to anger, asking, “Where are your sons?”<sup>143</sup> The question suggests that “the clever English”<sup>144</sup> are scheming to ask French Canadian men to sacrifice themselves for the sake of British imperialism. In reaction to this insinuation, “The whole street wears one face”<sup>145</sup>: Critical individuality or individual criticality disappears as citizens become a mass animated by a violence-prone emotion. Thus faces, once resembling “flower[s],”<sup>146</sup> now become singular, and this visage is “shadowed and grim.”<sup>147</sup>

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135 Porter, *The Vertical Mosaic*, (2015), *supra* note 127 at xvii (Introductory Essay by Jack Jedwab & Vic Satzewich).

136 *Ibid.*

137 AM Klein, *The Hitleriad* (New York, NY: New Direction, 1944) [Klein, *The Hitleriad*].

138 AM Klein, *The Rocking Chair and other Poems* (Toronto: Ryerson Press, 1948) [Klein, *The Rocking Chair*].

139 Klein, *The Hitleriad*, *supra* note 137 at 13.

140 *Ibid.*

141 *Ibid* at 14.

142 AM Klein, “Political Meeting” in Klein, *The Rocking Chair*, *supra* note 138, 15 at 15.

143 *Ibid* at 16.

144 *Ibid.*

145 *Ibid.*

146 *Ibid* at 15.

147 *Ibid* at 16.

Worse, the massed *hoi polloi*, while “the darkness rises,” becomes more animalistic, exuding a rank smell that signals an atmosphere of anti-intellectualism, namely, “the body-odour of race.”<sup>148</sup> “Political Meeting” domesticates Klein’s earlier satirical attack on the Nazi slogan of “Blood, Honour, Soil,” in *The Hitleriad*. Instead of Hitlerians worshipping the blood, we witness the Houde-like, Québécois politico hectoring his audience on the basis of shared blood. The “body-odour of race” is augured by the idea that Nazi sloganeering about “Honour” is “modified / By the dear temperature of one’s own hide.”<sup>149</sup> In both instances, citizens are made equivalent to animals. Similarly, just as “The bearded Hebrew cosmopolitan” becomes a “scapegoat” for the Hitlerites,<sup>150</sup> now the English are the villains in “Political Meeting.” In these two related poems, Klein exposes the dangers of ethnocentrism, especially that which enjoys state licence, whether the Nazism of the Third Reich or the municipal and provincial-animating herding or stampeding of anti-Conscription Québécois in that province, whose Francophone majority also perceive of themselves as a “nation.”<sup>151</sup> As a religious minority-group member, and as a Jew whose fellows and sisters have not only been persecuted, but have endured outright genocide, Klein rails against ethnocentrism in *The Hitleriad* and warns against it in “Political Meeting.” Arguably, he is also exposing and countering the subtle racialism of the *BNA Act* itself, whose preferred Canadians — élite Canadians — are British and French, Caucasian and Christian, European and royalist/imperialist. The reality of this constitutional, hierarchical arrangement of Canadians meant the promulgation of racist and/or anti-Semitic laws.

In his scholarly review of Canadian racist practices and anti-racist mobilization, “*Race, Rights and the Law in the Supreme Court of Canada*,” James W. St. G. Walker states that, in 1938, when Nazi Germany “sought advice on the introduction and implementation of racially discriminatory legislation,” one of the places “they turned to was Canada.”<sup>152</sup> While the Canadian government reacted to the German inquiry with a “not entirely candid” response, emphasizing, “that the laws of the Dominion and of the provinces do not make

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148 *Ibid* at 16.

149 Klein, *The Hitleriad*, *supra* note 137 at 14.

150 *Ibid*.

151 A major proponent of this view was Lionel Groulx, a priest and historian, who, says James Walker, presented “Canadian history as a contest between ‘races’: on the one side ‘a stock that is more princely than any on earth. We are of a divine race, we are the sons of God’; on the other ‘barbarians,’ aliens, the forces of cosmopolitanism and ‘hermaphroditism’”: James W St G Walker, “*Race, Rights and the Law in the Supreme Court of Canada: Historical Case Studies* (Canada: Osgood Society for Canadian Legal History & Wilfrid Laurier University Press, 1997) at 141.

152 *Ibid* at 23.

the race of a person a factor of legal consequence,”<sup>153</sup> “race” was “an inherent logic connecting federal and provincial legislation.”<sup>154</sup> Under the *BNA Act*, Walker points out, “civil rights were a provincial concern, whereas aliens and naturalization were federal matters.”<sup>155</sup> The impact of this division meant that provinces could enact laws “in explicitly racial terms” to apply all those within their jurisdictions; it also meant that the Federal government could apply racist restrictions in “immigration, military service and the franchise,” sometimes in response to “regional interests.”<sup>156</sup> Thus, Walker confirms, “the BC legislature in 1872 disfranchised Chinese in the province, adding Japanese and East Indians in 1895 and 1907, respectively”; “Saskatchewan followed BC’s example and disfranchised Chinese residents in 1908.”<sup>157</sup> Saskatchewan also banned the employment of white women by Chinese Canadian men in 1912;<sup>158</sup> Ontario enacted a similar law in 1927.<sup>159</sup> Provincial legislation in Ontario and Nova Scotia, in effect for a century and more, up to the Diefenbaker premierships, urged segregated education for African-Canadian pupils. Walker’s history also alerts us that “Residential separation” clauses, intended to restrict Jews, African-Canadians, and Asians to, or away from, particular neighbourhoods were perpetuated by provincial enforcement of “racial[ly] restrictive” covenants.<sup>160</sup> As Walker notes, “In Nova Scotia covenants were most often directed against blacks, in British Columbia against Asians”; in central Canada, Ontario and Québec, “covenants usually specified Jews...”<sup>161</sup>

Given the provincial role in enacting and enforcing racially-tinted laws affecting access to dining, education, employment, entertainment events, housing, and even voting, Klein’s decision to celebrate multiculturalism in his fine volume, *The Rocking Chair*, even at the level of blending languages into more-or-less English neologisms, is a lawyerly rebuke to provincialist histories of racism and anti-Semitism. Not only that, but poems in the volume anticipate, not only multiculturalism as a rejection of the ethnocentrism inherent in the *BNA Act* itself, but anticipate an instrument like the *Canadian Charter of Rights and Freedoms* to override and undercut the ethnic biases in the 1867 Constitution. So, Klein foresees the entrenchment of section 27 of the *Charter*, endorsing

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153 *Ibid* at 24 (quoting a letter from OD Skelton of External Affairs to the Germans).

154 *Ibid* at 24.

155 *Ibid*.

156 *Ibid*.

157 *Ibid* at 25.

158 *Ibid* at 51.

159 *Ibid* at 114.

160 *Ibid* at 190.

161 *Ibid* at 190.



multiculturalism. Yet, his poems, especially “Montreal,” project the mingling of tongues (and thus cultures) that is finally verified and guaranteed by section 22 of the *Charter*, which reads: “Nothing in sections 16 to 20 [guaranteeing the equality of French and English federally and in New Brunswick/ Nouveau-Brunswick] abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.” The effect of section 22 is to permit the *continued* use of “non-official” languages in daily life, in broadcast media as well as in print, on street signs and in song, thus promoting a polyphonous, Canuck context for art and culture, as well as in commerce, and, of course, in poetry, which Klein’s “Montreal” exemplifies:

O city metropole, isle riverain!  
Your ancient pavages and sainted routs  
Traverse my spirit’s conjured avenues!  
Splendour erabic of your promenades  
Foliate there, and there your maisonry  
Of pendant balcon and escalier’d march,  
Unique midst English habitat,  
Is vivid Normandy!<sup>162</sup>

This first stanza of the great poem also indicates that multiculturalism flowers linguistically out of bilingualism. So, the English *city* is modified by the French *métropole*, which is a word used in Parisian French to distinguish Paris from provincial and colonial cities. In other words, Klein is indicating, in 1948, that Montreal is the commercial and cultural (if not outright political) capital of Canada — including English Canada, a fact that he slyly disguises by spelling *métropole* as if it were an English word. Similarly, “riverain” is an English word denoting habitation on a riverbank, but it looks French, and if *rive* is isolated within it, one sees Montreal as a city abutting several riverbanks. The notion of “sainted routs” merits unpacking, for the word suggests both defeats, such as the conquest of Nouvelle-France by the British (or, for that matter, of First Nations by settlers), but also the fact that these defeats are remembered as in the nationalist slogan, “Je me souviens.” But “routs” also looks a lot like *routes*, and we soon read of Montreal’s maple-treed promenades and its unique architecture of “maisonry” — houses, sometimes of stone (given that the neologism combines *maison* and *masonry*) — that also boast balconies and twisting staircases, all importing aspects of Normandy, into a city that otherwise resembles an Anglo “habitat.” The multicultural context of bilingualism is further unfurled in the fourth stanza, where one reads of “multiple / The lexicons

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162 AM Klein, “Montreal” in Klein, *The Rocking Chair*, *supra* note 138, 29 at 29.

uncargo'd at your quays, / Sonnant though strange to me."<sup>163</sup> Even so, of chief import that the speaker cherishes, is the "Joined double-melodied vocabulaire / Where English vocable and roll Ecosic, / Mollified by the parle of French / Bilinguefact your air."<sup>164</sup>

Despite this beautiful love song to Montreal, discord and discrimination are present, as signified by the image of "the Indian, plumed" whose locomotion through the city is clandestine, a fact signalled by the neologism, "furtivate." Indeed, so downpressed is the Indigenous person that he seems a "phantom, aquiline," who must "Genuflect, moccasin'd," ironically, "behind / His statue in the square."<sup>165</sup> This singular image revisits E. Pauline Johnson's suggestion that Indigenous peoples are tapped as cultural capital — "revenue of character" — at the same time that they are relegated to the periphery of citizenship. Klein's image is itself prophetic of the eventual Indigenous rising, *via* protest, unreserved, to become central, pivotal, to the civic and national imaginary. Klein also indicates, well before the anti-racist discourse of African-Canadian poet M. NourbeSe Philip and others, that the celebration of multiculturalism cannot contain or abridge histories of racism, exploitation, marginalization, and toxic oppression. These spectres of the oppressed will continue to haunt our legislatures, theatres, courts, and markets until past wrongs have been... not reconciled, but *corrected*.

Klein's poem, "Indian Reservation: Caughnawaga," proffers a similar point, but far more distressingly.<sup>166</sup> The speaker recalls his romantic childhood fascination with figures that E. Pauline Johnson would describe as "book-made Indians"<sup>167</sup>: "Childhood, that wished me Indian, hoped that / one afterschool I'd leave the classroom chalk, / ... to join the clean outdoors and the Iroquois track."<sup>168</sup> There stood waiting, in fantasy, "always ... / ... that chief, with arms akimbo, waiting / the runaway mascot paddling to his shore."<sup>169</sup> However, the childhood fancy has yielded to adult recognition of the actual degradation of actual, Indigenous peoples:

With French names ...,  
their bronze, like their nobility expunged, —

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163 *Ibid* at 30.

164 *Ibid*.

165 *Ibid* at 29.

166 AM Klein, "Indian Reservation: Caughnawaga" in Klein, *The Rocking Chair*, *supra* note 138, 11 [Klein, "Indian Reservation: Caughnawaga"].

167 Johnson, "A Strong Race Opinion," *supra* note 94 at 179.

168 Klein, "Indian Reservation: Caughnawaga," *supra* note 166 at 11.

169 *Ibid*.

the men...[;]  
while for the tourist's  
brown pennies scattered at the old church door,  
the ragged papooses jump, and bite the dust.

Their past is sold in a shop ....

This is a grassy ghetto, and no home.<sup>170</sup>

Klein registers the results of dispossession and the usurpation of Indigenous culture and status by Caucasian politicians — a bunch of Grey Owl wannabes — as well as by the tourist-trade exploiters. Duncan Campbell Scott's implicit diatribes against miscegenation are here reformulated by Klein as Métis whose "living bones" are "bleached," while dead white settlers observe this *dégringolade* as "pious prosperous ghosts."<sup>171</sup> Certainly, Klein's portrait of Indigenous degeneration confirms that multiculturalism is no balm for the wrongs that First Nations (or other racialized groups) have endured. There is a hint of this fact in *The Canadian Charter of Rights and Freedoms*, wherein section 25 affirms that Aboriginal rights and freedoms are not nullified by rights and freedoms accorded to all Canadians. Specifically, their protected liberties include "(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired." In other words, the rights and freedoms of First Nations are not impinged upon by any privileges or protections offered multicultural-heritage Canadians.

Although Klein is cognizant of the settler crimes that cramp and cripple Indigenous cultures, he seeks still to uphold the liberal discourse of multiculturalism — as an antidote to the *BNA Act*-sanctioned ethnocentrism of Briton and Gaul, Caucasian and Christian. So, "The Provinces" concludes by uniting Prairie Slav, northern "albino,"<sup>172</sup> Ontario Anglo and Francophone Québec, and BC "the hunchback with the poet's face"<sup>173</sup> as picturing "unity / in the family feature, the not unsimilar face."<sup>174</sup> Elsewhere, a Prairie grain elevator occasions the use of Hebrew imagery and "Arabian" fantasy, references to "white Caucasian" rivers and "the grains, Mongolian and crowded," and the grain elevator itself, its contents being essential for bread, comes then to repre-

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170 *Ibid* at 11-12.

171 *Ibid* at 12.

172 *Ibid* at 2.

173 *Ibid*.

174 *Ibid* at 3.

sent “all the coloured faces of mankind.”<sup>175</sup> Then again, “The Québec Liquor Commission Store” inspires references to “Ali Baba,” Aladdin, and Ishmael — a figure both Hebraic and Islamic.<sup>176</sup> Likewise, in “Pawnshop,” the business may boast “bankrupt bricabrac,” but it is also a Greek-like “parthenon,” an Egyptian-like “pyramid,” a medieval-styled “cathedral,” a “platonic cave,” and even “our childhood’s house that Jack built.”<sup>177</sup> It is a repository of collected and priced woes — familial and financial, personal and pecuniary. But these sorrows transcend biographies and histories, refuting any claim of ultimate, cultural difference. Arguably, the pawn shop evolves, metaphysically, out of the Pandora’s Box of household, economic crises.

If Klein extends E.P. Johnson’s critique of the *BNA Act*, condemning Anglo and Franco ethnocentrism, provincialist racialism, and oppression of Indigenous peoples, F.R. Scott (1899-1985) represents the final inversion of Duncan Campbell Scott, in poetry, prior to the promulgation of the *Canadian Charter of Rights and Freedoms*. Crucially, Scott’s personal struggles with authoritarianism and legislated prejudice in Québec led him, as a professor of constitutional law, to suggest much of the reasoning and language that his intellectual ally and protégé, Prime Minister Pierre Elliott Trudeau, saw transferred later to The *Canadian Charter of Rights and Freedoms*.<sup>178</sup> It’s unlikely that F.R. Scott’s *Collected Poems*,<sup>179</sup> published in the very year that the *Charter* was drafted, had any presence in the debates that swirled around gender equality, the place of First Nations and Québec, and the necessity of the civil rights-opt-out, “notwithstanding clause.”<sup>180</sup> However, it is a fine, poetic coincidence that Scott’s ultimate verse collection iterates ideals and opinions that he had hoped would be realized in the patriated Constitution of 1982. Sandra Djwa registers that, as far back as 1948, F.R. Scott had insisted that “a Bill of Rights should be entrenched in [the patriated Constitution] because a mere statute could easily be repealed by the government of the day.”<sup>181</sup> Djwa sets down the “intriguing question [as to] the extent to which Scott, through his friendship with Trudeau and other key individuals involved in constitutional reform, and indirectly through the publication of articles..., specifically influenced debates

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175 AM Klein, “Grain Elevator” in Klein, *The Rocking Chair*, *supra* note 138, 7 at 7.

176 AM Klein, “Québec Liquor Commission Store” in Klein, *The Rocking Chair*, *supra* note 138, 27 at 27.

177 AM Klein, “Pawnshop” in Klein, *The Rocking Chair*, *supra* note 138, 22 at 22-23.

178 Djwa, *supra* note 2 at 431-432.

179 FR Scott, *The Collected Poems of FR Scott* (Toronto: McClelland and Stewart, 1981).

180 *Charter*, *supra* note 7, s 33.

181 *Supra* note 2 at 431.

in the seventies.”<sup>182</sup> As far as Djwa is concerned, “the historical evidence is persuasive.”<sup>183</sup>

In her excellent biography, *The Politics of the Imagination: A Life of F.R. Scott*, Djwa quotes F.R. as once quipping, “politics is the art of making constitutions.”<sup>184</sup> Her “Brief Chronology” on Frank Scott also reveals the Constitution to have been, for him, an obsession. Throughout the “1930s,” F.R. published “numerous essays” on subjects including “constitutional law [and] civil liberties.”<sup>185</sup> In 1940-41, a Guggenheim Fellowship took F.R. to Harvard where he planned to write “[a] book on [the] *BNA Act*.”<sup>186</sup> In 1961, after championing civil liberties in two major Supreme Court of Canada-heard cases, F.R. Scott made an “around-the-world trip on [a] Canada Council grant to study the making of constitutions in parliamentary democracies.”<sup>187</sup> In 1978, F.R. won the Governor General’s Award for Non-Fiction for his *Essays on the Constitution: Aspects of Canadian Law and Politics* (1977). As important as these occasions were for his scholarly/social activist interests, F.R. was also an influential teacher, serving as a constitutional law mentor to Pierre Trudeau, especially during a momentous, 1956 trip they made down the Mackenzie River.<sup>188</sup>

It is striking to realize that the Constitution that Scott wrestled with (namely, the *BNA Act*) was also one that he admired. Djwa observes that Scott “believed, in the widest sense” that the *BNA Act* “defined the form of an independent, just, and socially responsible Canada.”<sup>189</sup> A democratic socialist in politics and a conservative modernist in poetry (given his predilection for rhyme), Scott acted on his belief that the *BNA Act*, far from being outmoded, could be reinterpreted and amended to suit modern, Canadian society. Djwa asserts that the main problem with the *BNA Act*, as Scott saw it, “was that Canada needed the approval of the British Parliament to alter the *BNA Act* in ways that would allow moderate social changes.”<sup>190</sup> To prime Canadians to accept cogent reinterpretations and amendments, Scott issued a 1934 pamphlet entitled, “Social Reconstruction and the *BNA Act*.”<sup>191</sup> Herein, Scott maintained that a clause

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182 *Ibid* at 430.

183 *Ibid*.

184 *Ibid* at 120.

185 *Ibid* at VIII.

186 *Ibid*.

187 *Ibid*.

188 *Ibid* at IX.

189 *Ibid* at 120.

190 *Ibid* at 149.

191 *Ibid*.

granting emergency powers to the Federal government could be reinterpreted to apply even to the economic emergency that was the Great Depression.<sup>192</sup> Djwa's scholarship establishes that Conservative Prime Minister R.B. Bennett "borrowed Scott's pamphlet from the library in External Affairs, [and] did not return it, and Scott's arguments soon appeared in Bennett's text of his [1935] New Deal."<sup>193</sup> Further on in his career as a law-based, social activist and legal scholar, Scott "introduced to Canadian constitutional law," writes Djwa, "a concept based less on technicalities than on the history of British government and parliamentary democracy."<sup>194</sup> Djwa continues on to explain that, while most Canadian constitutional law pedagogy centered on the division of powers (*BNA Act*, sections 91 and 92), Scott elaborated a continuity between "the theory of the British constitution — the narrow escape from an absolute monarchy and the evolution of the English practice in Parliament and responsible government."<sup>195</sup>

By this approach, and thanks to his grounding in "both English Common Law and the Québec Civil Code,"<sup>196</sup> Scott was able to infer or detect in the *BNA Act* restraints on governmental authority *vis-à-vis* the individual citizen: in other words, the presence of guaranteed civil liberties, though never expressly stated. However, as an Anglo-Québecer socialist who believed that a strong, central government was preferable to a "balkanized" Confederation, Scott was sideswiped and sidelined by *La Révolution tranquille*, wherein progressive, Québec nationalists insisted that a wholesale transfer of powers from Ottawa to Québec City was the only way to ensure Québec's modern development within Confederation.<sup>197</sup> Djwa alerts us to the fact that "Scott was well aware of the grievances of Québécois, but his solution was based on British political traditions, especially those relating to civil liberties."<sup>198</sup> This put Scott on a collision course with Québécois who believed that their province-as-nation required greater autonomy, while Scott interpreted the possibility of enhanced, French-majority autonomy as an existential threat to Anglo-Québecers' minority language rights.<sup>199</sup> Although Scott celebrated the patriation of the Constitution in 1982, he deplored both the presence of the *Charter's* "notwithstanding

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192 *Ibid.*

193 *Ibid* at 150.

194 *Ibid* at 316.

195 *Ibid* at 316-17.

196 *Ibid* at 317.

197 *Ibid* at 402-03.

198 *Ibid* at 396.

199 *Ibid* at 397.

clause”<sup>200</sup> and also the April 17, 1982, Parliament Hill signing ceremony itself which utilized no English names.<sup>201</sup>

Djwa recognizes that, when Scott faced political stresses, he “turned back to his old love — poetry.”<sup>202</sup> In my view, Scott was always a poet, but one of a Confucian bent; that is to say, he was interested in the connections between government and creativity — citizenship and art. Crucially, he is a poet who does issue direct constitutional critique. See, for instance, “Some Privy Counsel.”<sup>203</sup> The context of this 1950 poem seems to be the Depression-era insistence of the Judicial Committee of the British Privy Council to rule Government of Canada remedial legislation — such as *The Employment and Social Insurance Act* — as “*ultra vires*” or outside the constitutional authority of the Federal government. According to the British Privy Council, these Government of Canada measures to provide relief to the poor, the unemployed, the exploited, and the elderly conflicted with imperial treaties and/or “provincial jurisdiction over ‘property and civil rights.’”<sup>204</sup> Frustratingly, the Government of Canada, elected by the people to serve their needs, could not do so because of imperial British legal interference. As a socialist and patriot, Francis Reginald Scott could only read these nullifying judgements as cold-hearted, capitalist brutality. “Some Privy Counsel” is an autobiographical restatement of Scott’s arguments to the Brits and their insistent plumping for do-nothingism:

Are we not surrounded by emergencies?  
The rent of a house, the cost of food, pensions and health, the unemployed [...]”  
But the only answer was “Property and Civil Rights” [...]”  
“Please, please,” I entreated, “look at my problem....  
Can provincial fractions govern the complex whole? [...]”<sup>205</sup>

The stymying of progressive, economic, and popular, democratic action, due to imperial, legal obstructionism, and the resulting frustration, would be enough to prompt revolutionary disturbance. I am reminded of Pierre Elliott Trudeau’s Lockean formulation, perhaps derived from F.R.’s experience, that “Society is made for man; if it serves him badly he is entitled to overthrow it.”<sup>206</sup> Clearly, something had to be done to rid Canada of the colonial subservience to British

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200 *Supra* note 7, s 33.

201 Djwa, *supra* note 2 at 436. Scott somehow ignored The Queen’s signature - yet hers is the #1 English name!

202 *Ibid* at 437.

203 See e.g. FR Scott, “Some Privy Counsel” in FR Scott, *The Collected Poems*, *supra* note 179, 80.

204 Djwa, *supra* note 2 at 151.

205 *Supra* note 203 at 80.

206 Pierre Elliott Trudeau, *Approaches to Politics* (Toronto: Oxford University Press, 2010) at 34.

— i.e., foreign — interference in our domestic politics. Otherwise, Canadian voters could not ever effect change domestically, thus rendering our democracy a sham. This poem iterates the need for patriation of the Constitution and the entrenchment of the Charter as a liberal, constitutional answer to the limits of the *BNA Act* and its overseas interpretation. No wonder, then, that when the Trudeau Liberal-dominated Government of Canada requested that the Parliament of the United Kingdom pass *The Canada Act 1982* the preamble makes two political assertions:

... WHEREAS it is in accord with the status of Canada as an independent state that Canada be able to amend their Constitution in Canada in all respects;

AND WHEREAS it is also desirable to provide in the Constitution of Canada for the recognition of certain fundamental rights and freedoms and to make other amendments to that Constitution....<sup>207</sup>

There is the shade of Scott here, protesting the imperial domination of Canada's "colonial" institutions, as well as the overseas, conservative nullification of Canadian, domestic legislation. This point is also expressed in "Ode to a Politician," wherein a Canuck colonial "learns the three Canadian things: / Obedience, Loyalty, and Love of Kings,"<sup>208</sup> then progresses to helm the nation as a Tory prime minister. "Once in the [P.M.] saddle, swift the whip he cracks. / The Mounties spring like thistles in his tracks."<sup>209</sup> Ultimately, his Fanonian, comprador status is made clear: "He ends the [career] journey — as a British peer."<sup>210</sup>

Although F.R. Scott came to see the need to update the *BNA Act* by bringing it home to Canada, and by entrenching civil liberties, he never abandoned its view that Canada is the home of two European "races" — French and English<sup>211</sup> — though he was also anti-racist in considering the treatment of multicultural others and Indigenous peoples. His famous critique of E.J. Pratt's epic poem, *Toward the Last Spike* (1952), entitled, "All the Spikes but the Last," reminds "Ned" Pratt and his readership of the poet's unconscionable omission of the Chinese labourers who actually constructed the national railway:

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207 *Canada Act 1982* (UK), 1982, c 11. Preamble.

208 FR Scott, "Ode to a Politician" in FR Scott, *The Collected Poems*, *supra* note 179, 68 at 68.

209 *Ibid* at 69.

210 *Ibid* at 70.

211 Thus, F.R. was pissed off when Prime Minister P.E. Trudeau's public, signing ceremony for the patriated Constitution, included "no *English* names": Scott was "indignant at the omission of his own racial past" (Djwa, *supra* note 2 at 436). I note again that The Queen's is a pretty significant English name on the document.



Where are the coolies in your poem, Ned?  
Where are the thousands from China who swung their picks with bare hands  
at forty below? [...]

Did they get one of the 25,000,000 CPR acres?<sup>212</sup>

The poem concludes wickedly: “Is all Canada has to say to them written in the Chinese Immigration Act?”<sup>213</sup> Scott thus registers the capitalist and racist exploitation of Chinese Canadian labour, and then the racist attempt to exclude Chinese people as potential immigrants to Canada.<sup>214</sup> All of these ills were possible under the *BNA Act*, due to its erection of a clear, yet subtle, racial hierarchy.

Scott’s 1956 poem, “Fort Smith,” revisits the *BNA Act*’s section 91 *de facto* hierarchy ranking Caucasian civil servants above “Indians.” On a visit to the Northwest Territories village (which became a town in 1966), Scott’s speaker observes the Canadian imperial-Indigenous colonial arrangement of the settlement:

We drove on sandy streets.  
No names yet, except “Axe-handle Road.”  
There was the “native quarter,”  
Shacks at every angle  
For Slave Indians and half-breeds,  
And overlooking the [Mackenzie] river  
The trim houses of the civil servants  
With little lawns and gardens  
And tents for children to play Indian in.<sup>215</sup>

This portrait ventures beyond A.M. Klein’s account of Indigenous degradation as a socio-political blot on an otherwise positive multiculturalism, to picture, instead, the placid, polite, bourgeois rule of pale faced bureaucrats over impoverished Indigenous peoples and Métis.<sup>216</sup> A more explicit poem of anti-racist

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212 FR Scott, “All the Spikes but the Last” in FR Scott, *The Collected Poems*, *supra* note 179, 194 at 194.

213 *Ibid.*

214 See Walker, *supra* note 151 at 27.

215 FR Scott, “Fort Smith” in FR Scott, *The Collected Poems*, *supra* note 179, 226 at 226-27.

216 *Ibid* at 227 (intriguingly, the poem ends with an image of “Pierre” — Trudeau — “Stripped,” amid rapids, “Firming his feet against rock / Standing white, in white water... / A man testing his strength / Against the strength of his country” at 227). Scott echoes here the last stanza of A.J.M. Smith’s 1926 poem, “The Lonely Land,” (The Fortnighly Reivew) which envisions, in the landscape, “the beauty / of strength / broken by strength / and still strong” at 428. More importantly, it gives Trudeau the stance of a racialized-French-“white” Colossus, an individual Apollo, among the racialized “superstitious” (says the Anglican minister), Indigenous inhabitants of “Canada’s colony” (*Ibid* at 226-227).

protest is, in fact, a found poem, taken “From inscriptions found in different rooms at the Indians of Canada Pavilion, EXPO ’67.”<sup>217</sup> The poem, entitled, “The Indians Speak at Expo ’67,” makes the point that the first Europeans — “the White Man” — to land in Canada depended upon “Indian” assistance for survival: “They could not have lived / Or moved / Without Indian friends.”<sup>218</sup> However, with the intrusion upon Indigenous peoples of Christianity — and/or their acceptance of the alien faith, plus “White Men [fighting] each other for our land” and the embroiling of Aboriginal peoples in “the White Man’s wars,”<sup>219</sup> there came this hellish outcome: “The wars ended in treaties / And our lands / Passed into the White Man’s hands.”<sup>220</sup> Scott’s found poem is an iteration of the protest voiced in E. Pauline Johnson’s “The Cry of the Indian Wife,” save that Scott feels no need to mouth Loyalist bromides to the British Empire. Pointedly, this re-arrangement of “Indian”-writ critique highlights “race” as the salient reason for Native dispossession, with cries of “paganism” and “savagery” serving as mere rationalizations for the self-serving, European exploitation of “Indians, and Lands reserved for the Indians.”<sup>221</sup> Similarly, in Scott’s critique of E.J. Pratt’s other epic poem, namely, *Brébeuf and His Brethren*,<sup>222</sup> F.R. stresses that whatever horrors Iroquois visited upon French missionaries to Nouvelle-France, the Catholic Church was just as nasty toward supposed “heretics” in Europe. Scott’s persona asks, “is priest savage, or Red Indian priest?”<sup>223</sup> The poem eviscerates the Caucasian, European propaganda versus Indigenous Canadians.

Scott’s efforts to reach out to Francophones, especially Québécois (his constitutional, European brethren and sistren) did bear fruit, given his tutelage of Pierre Trudeau and his numerous translations of Francophone poetry into English.<sup>224</sup> Yet, Djwa alerts us that F.R. was unhappy that patriation was achieved without “an English-Canadian name on the official document recording the event.”<sup>225</sup> I think this resentment stems from Scott’s ultimate sense that the British/Canadian monarchy was worthwhile, despite his own cogent critiques of the institution. Thus, in his 1953 poem, “Monarchy,” he expresses

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217 FR Scott, “The Indians Speak at the Expo ’67” in FR Scott, *The Collected Poems*, *supra* note 179, 277 at 277 n 1.

218 *Ibid* at 277.

219 *Ibid*.

220 *Ibid*.

221 *BNA Act*, *supra* note 3, s 91(24).

222 EJ Pratt, *Brébeuf and his Brethren* (Toronto: The Macmillan Company of Canada, 1940).

223 FR Scott, “Brébeuf and his Brethren” in FR Scott, *The Collected Poems*, *supra* note 179, 189 at 189.

224 Djwa notes that F.R. published two books of his English translations of French-Canadian poetry in 1962 and 1977: *supra* note 2 at VIII-IX.

225 *Ibid* at 436 citing FRS to Rosemary Walters (Cartwright), letter, 30 October 1982.

this ambivalence. The two-stanza poem dedicates the first stanza to questioning the value of a monarchy, “all the makebelieve around [it] thrown,” and wonders about the value of “our bonnie Prince” whom “we raise / Over all equals.”<sup>226</sup> However, the next and last stanza eyes the throne as the single unifier of “plural ... multitudes.”<sup>227</sup> From this perspective, the Canadian “Crown is round and without end or start / As each is universe though only part.”<sup>228</sup> Finally, the English-Canadian, Anglo-Québécois, social democrat, anti-imperialist, anti-racist, anti-censorship, pro-civil-rights agitator ends up rallying to the Anglocentric pinnacle of the Canadian Constitution: The British — or, let’s say, Canadian — Monarchy. In the end, then, ethnicity trumps reason, even for that arch-rationalist, Dr. Scott. This fact also signals, for me, the bankruptcy of the pretense that the Monarch — Anglo-Saxon, Anglican, Caucasian — is the embodiment of all Canadian citizens, especially if we register the historical practice of racist oppression conducted by the State — in the very excellent name of the Crown.

To move toward a conclusion, I hope I have demonstrated that the notion that the political structures of the State are meaningless Jabberwocky for the artist, the poet, whose inspirations are allegedly other-worldly (or magic-thinking or dream), is, in actuality, a ridiculous myth. Even the abstract entity that is a constitution is, simultaneously, the fount of the socio-political, economic, legal, and even cultural manifestations of the people, both for good and ill. As such, a constitution serves to sponsor modes or models of citizenship, including varieties of allegiance and protest. So, the American Constitution yields Walt Whitman and the Canadian gives us John McCrae.<sup>229</sup> I posit that the poems of Duncan Campbell Scott, Elizabeth Pauline Johnson, Abraham Moses Klein, and Francis Reginald Scott are, themselves, commentaries on the racial, linguistic, and gendered underpinnings of the Canadian Crown and State, despite the refusal of 75% of this quartet to ever name the *BNA Act* as a subtle intercourse with their intellects. Moreover, I want to suggest that most Canadian poets can be read productively, with our Constitution — including the Charter — as a touchstone. See, for instance, most pertinently, Dennis Lee and his *Civil Elegies*.<sup>230</sup>

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226 FR Scott, “Monarchy” in FR Scott, *The Collected Poems*, *supra* note 1179, 177 at 177.

227 *Ibid.*

228 *Ibid.*

229 *Leaves of Grass* (Auckland, New Zealand: Floating Press, 1855) versus the poppies of “In Flanders Fields” in *In Flanders Fields, and Other Poems* (Toronto: Ryerson Press, 1920).

230 Dennis Lee, *Civil Elegies and Other Poems* (Toronto: Anansi 1972).

Nor is the struggle for a proper Constitution concluded. By that, I mean, the search for one that will promote equality as much as “justice.” The single, but great, impediment is exactly what Porter saw 50 years ago: “elites feel that systems should operate as they, the present elite, have operated them. They see themselves as the guardians of institutional systems.”<sup>231</sup> Moreover, Porter avers, “Canada is a capitalist oriented society. All its elite groups accept the capitalist rules of the game.”<sup>232</sup> Their power and class privilege is affirmed by several estates, especially lawyers,<sup>233</sup> private school networks,<sup>234</sup> upper-class-congregation churches,<sup>235</sup> engineering schools,<sup>236</sup> and, of course, boards of directors, whether of corporations, universities, or charities, not to mention the more-or-less shared, cordial competition permitted in both politics and sports. In mass media, the punditocracy consists of the same related networks of “humanists, historians, economists,”<sup>237</sup> and columnists, editorialists, and talking heads, who offer prognostications as well as insights into “the values of tradition or rational expediency, and thus [produce] ... conventional wisdom, a catalogue of the correct things to do.”<sup>238</sup> Our governing, managerial class consists of “lawyers and businessmen with university degrees.”<sup>239</sup>

Well, section 91 of the BNA Act bade Parliament famously to “make Laws for the Peace, Order, and good Government of Canada.” I close by suggesting that this is unlikely unless Porter’s vertical mosaic becomes a horizontal, warm, cozy, patchwork quilt clasping all of our constitutive identities, all of them accepted as “Canadian,” and all of our legislation provably attentive to this fact. However, it is the poets who champion the enactment of such a revolution.

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231 Porter, *The Vertical Mosaic*, (1965), *supra* note 59 at 265.

232 *Ibid* at 270.

233 *Ibid* at 278.

234 *Ibid* at 285.

235 *Ibid* at 288.

236 *Ibid* at 304.

237 *Ibid* at 461.

238 *Ibid* at 461.

239 *Ibid* at 396.

## **Appendix: *The Results of a Sesquicentennial Constitutional Assembly — a Few Modest Amendments***

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As Canada's 7<sup>th</sup> Parliamentary Poet Laureate (1/1/2016-31/12/2017), I never accepted Plato's notion that poets should not be entrusted with any say over statecraft. Nor have I ever been satisfied with Percy Shelley's idea that poets are "unacknowledged legislators." What if we could be "acknowledged," eh?

Being a poet who has — to quote Shakespeare's Othello, "done the State some service," I want now to provoke some thought about what might yet be done to improve the Constitution.

In my role as a visiting Artist-in-Residence in November 2017 at the Peter Wall Institute for Advanced Studies (PWIAS) at the University of British Columbia (UBC), I was privileged to convene a "Constitutional Assembly," attended by approximately 20 UBC professors and students from Anthropology, Creative Writing, English, Environmental Sciences, and Law.

I got tasked with typing up the recommendations. (Admittedly, the most whimsical notions are my own.)

They demonstrate that matters are not settled! There is work to be done to flesh out the promise of 1982's patriation.

Bearing in mind that the PWIAS and UBC cannot accept either responsibility or credit for the ideas put forward, it remains my duty to report that the Constitutional Assembly produced the following amendments.

### **On Indigeneity**

- Recognize Indigeneity as the fundamental characteristic of Canada and interpret the Constitution in this light.
- Relocate sovereignty to a plurality of legal representations — in a plurinational state — inspired by Indigenous peoples and cultures.
- Recognize Indigenous languages as official languages.
- Add a fourth-level of government that acknowledges Indigenous self-government and self-determination.

- Dedicate 1% of all taxes collected to Indigenous peoples/First Nations as a perpetual “rent.”
- Transfer underlined title from the Crown to Indigenous trusteeship and stewardship and guardianship, according to Indigenous conceptions of citizen relationships to the land.
- Recognize Indigenous autonomy in regards to managing traditional and ancestral lands.
- Incorporate into the public education system the promotion of Indigenous mind-sets and ideologies.
- The Government of Canada must negotiate in good faith with Indigenous peoples, the administration of the National Capital Region.

### **On “Good”-to-Better Governance**

- Enshrine Proportional Representation as our electoral system.
- Designate major municipalities — of plus-500,000 population — as city-states, empowered to collect revenues and exercise autonomy over deployment of said resources.
- Devolve — with adequate funding — greater authority to municipalities.
- To ensure participatory democracy and supplementary, deliberative democracy, mandate greater use of referenda; plus, make voting mandatory.
- Abolish the Monarchy.
- Domesticate the Monarchy, by allowing the appointment of a new Royal Canadian Family, every decade, chosen by a lottery available to every adult citizen, save those who have criminal records or who have been hospitalized due to mental illness.
- Ban omnibus bills as unconstitutional (for they tend to decrease parliamentary oversight).
- Ban fixed election dates as unconstitutional (for they tend to increase the role of capital in influencing policy).
- Create a Constitutional Court for Canada.
- Establish an Independent Public Prosecutor.

## **On the Environment**

- Create a Canadian Charter of Environmental Rights and Responsibilities.
- Recognize the fundamental right to live in a healthy and sustainable environment.
- Include the “Rights of Nature” — to preserve, protect, and restore Nature’s beauty, diversity, and integrity.
- Protect — from “development” — at least half of Canada’s terrestrial and marine area.
- Establish an Office of the Public Advocate charged with preservation of the environment, ecosystem, and natural resources, to report annually to Parliament, and derive its funding from a 20% tax on all resource extraction activities in Canada.
- Provinces shall ensure that both public and private primary and secondary education programs dedicate at least 5% of class time to the study of environmental preservation.
- Public education curricula must foster positive relationships between citizens and Nature, with an emphasis on the morality of the inclusion of Nature in civil society.
- Abolish capitalism.

## **On New Charter Rights**

- Enshrine a right to health care (including publicly funded dental, vision, prescription drugs [including marijuana], family planning, and fertility treatments).
- Recognize the right to clean water as a human right.
- Recognize a right to public transportation.
- Recognize a right to public control of broadcasting.

## **On Multiculturalism**

- To break down or dissolve fiefdoms of privilege, legislate more affirmative action and/or employment equity programs targeting “visible minorities.”

- Instruct political parties to offer diverse lists of potential candidates, truly reflective of the diversity of the Canadian people.
- Recognize “third-languages” as official where numbers warrant; recognize Canada as a multilingual nation.

### **On Foreign Affairs**

- Identify Canada as a pacifist, demilitarized nation.
- Amend Section 146 to allow for the admission of new provinces, including territories not presently part of the territorial limits of Canada.
- Invest powers over declaration of war or negotiation of peace with the prime minister, subject to parliamentary oversight.

### **On Poetics**

- Establish a Ministry of Dreams that will guarantee every Canadian the right to access, experience, and enjoy creativity (including inventive engineering), aesthetics, and the arts.
- Commit all governments to preserve, promote, and support the creativity and innovative capacity of Canadians.