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SEEING RED:
THE CHALLENGE OF COMPETING CLAIMS ON CANADIAN IDENTITY

Sarah Cox

A Thesis
in
the Department
of
Political Science

Presented in Partial Fulfilment of the Requirements
for the Degree of Master of Arts at
Concordia University
Montreal, Quebec, Canada

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ABSTRACTSeeing Red: The Challenge of Competing
Claims on Canadian Identity

Sarah Cox

We are leaning, more and more, towards an exclusionary approach in our individual and group behaviour and the consequence is a focus on unique identities at the expense of a collective Canadian community. Canadian public policy, including the Canadian Charter of Right and Freedoms and the Multiculturalism Act, has encouraged this lack of consensus, has promoted divisiveness, and has contributed to the erosion of a national identity.

Nationalism and identity have emerged as strong forces among Native nations across the country. Native peoples are a significant and essential part of Canadian society. If we have failed in the last 200 years in developing a serious rapprochement between Native peoples and original European settlers, how can we claim credibility in dealing today with a multitude of new "settlers?"

There is no doubt about the continuation of identity group claims and their persistent challenge to Canadian identity. Our tradition of developing and implementing ambiguous policy, a quintessentially Canadian feature, may have worked in the past, but it is inadequate in dealing effectively with the dilemmas we face currently, and will continue to face in the future.

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I live in a wonderful and peaceful home, which isn't my own. Mars Hoppen, my cousin, sacrificed enormously by letting me live with her for too many months so that I could pursue this thesis undividedly. We didn't anticipate it taking over a year, and I owe her a great debt financially and emotionally.

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My parents have instilled in me a passion for political and social issues and demanded that I learn how to defend my convictions. This thesis is the product of years of heated debates with my strongest allies and my fiercest foes: my Mum and Dad. They have provided support in so many ways, and over so many years...ready for my PhD? I adore them both and have loved their involvement in this process. Unfortunately, my father still doesn't understand why "Daddy" is not an appropriate footnote at this academic level...sorry Dad.

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We are experiencing on a massively universal scale a convulsive ingathering of people in their numberless groupings of kind—tribal, racial, linguistic, religious, national. This phenomenon followed the collapse of the great empires in 1918 and 1945 and the breakdown or inadequacy of all the larger coherences or systems of power and social organization. The old larger coherences have not been replaced: what we are experiencing...is not the shaping of new coherences but the world breaking into its bits and pieces, bursting like big and little stars from exploding galaxies each one straining to hold its own small separate pieces from spinning off in their turn.

Daniel Patrick Moynihan
Pandaemonium: Ethnicity in International Politics
 p. 65

Introduction

The Canadian Charter of Rights and Freedoms and the Multicultural Policy, the rise of ethnonationalism and the emergence of identity politics, particularly in the case of Quebec and Native peoples in Canada, have placed the notion of Canadian identity into a vacuum from which it may be difficult to emerge with any strong sense of national sovereignty.

Canadians must now face the problems that we have set in motion through our adherence to a liberal democracy. We are constantly enlarging the constitutive component of our community and the basis of citizenship, which is a fundamental and natural element of liberalism. This enlargement of the criteria of citizenship also places us at a juncture where we must make tough choices. We must decide if we are genuine in our convictions about multiculturalism

and the concurrent recognition of identity groups in Canada. Perhaps nationalism and liberal democratic ideals are antithetical. We are left with a variety of contradictory and competing forces within our community and this is partially as a result of classical liberalism. It is critical at this point to recognize that so far, few Canadians are prepared to make room within this nation for those people or groups articulating a different voice. It is also relevant to point out that new Canadians must also reflect upon these same considerations, albeit from a different perspective. This will be examined at a later stage in this work.

We are leaning, more and more, towards an exclusionary approach in our individual and group behaviour and the consequence is a focus on unique identities and not on a collective Canadian identity. The globalization of our community has thrown our population into a social, economic and political quagmire. This is one of the moving forces behind people seeking "shelter" in their smaller communities. Fast-paced changes, which are basically out of people's control, lead to walls being erected and fiercely defended. We are ultimately confronted with the limitations of our political and social system. Eventually, we will be forced to determine whether we can build on a foundation of commonality.

The task of our governments would appear to be a

daunting one, given that Canadians are in a bitter struggle to determine what our nation represents in terms of what it means to be a Canadian. According to Globe and Mail columnist, Michael Valpy, ethnic, or, identity groups are not alone in feeling culturally insecure.

Ironically, Canada is also suffering from a version of cultural insecurity. The cultural fear is a product of resurging anxieties—particularly anglophone anxieties—about eroding Canadian identity. It is about the lack of sufficient Canadian homogenous tribalness to form national consensus on public policy directions. (It is a belief to which all levels of government in Canada contribute by demolishing historic Canadian—to be sure, primarily Euro-Canadian--symbols...the old Canada and its mythologies are slipping away.¹)

Valpy's point is particularly interesting because our society has become almost exclusively focused on the difficulties experienced by identity groups. It is important to recognize that "anglo saxon" Canadians are also undergoing cultural "complications."

There is no longer a consensus on what nationalism means to us as Canadians. A natural presumption following this premise is that cultural policies or legislation that seek to be representative of a Canadian nation will repeatedly fall short of satisfying a majority of its citizens.

Canadians must first determine if they are prepared to embrace multiculturalism and emergent identity groups, but

¹Michael Valpy, "A fear of losing the old Canada", The Globe and Mail, March 11, 1994, p. A4.

so too must ethnic, gender, religious and other groups decide if they are willing to embrace some sort of shared Canadian vision. Certainly, once that is established, we can expect that our public policy will better reflect values, which would be based on some foundation of commonality amongst the diverse groups constituting the Canadian nation.

On October 27, 1995, I attended the rally in Montreal which was held three days before the Quebec referendum on sovereignty. I was among tens of thousands of Canadians who came from provinces across the country, as well as from Quebec itself, in support of a unified Canada. The level of emotion that emanated from the rally was like nothing I had ever witnessed. Thousands of people stood for the national anthem, and wept while they sang.

Love and pride of one's country springs from the heart and the soul, and does not need intellectual justification. When we talk about Canada, its identity, its heritage, and a commitment to it, rationality and intellectual superiority pale in comparison to the value of passion and pride. Unfortunately, it is my view that sincere perspectives about Canada and its problems, particularly in terms of identity groups' claims, are often interpreted as being "politically incorrect." This tends to deprecate the views many Canadians hold about their country, but are no longer comfortable enunciating them. Must we apologize for being passionate and emotional about Canada?

I am constantly being challenged to define Canadian heritage and identity. Implicit in this question, is the suggestion that Canada has no identity. Canadian identity means different things to different people. It may reflect our rugged and vast landscape, our bitter and long winters, our internationally peaceful role, our desire to be an accommodating nation, our national sport, hockey. and/or our social welfare system.

What stands out specifically, are our historic Canadian institutions, which are critical to our well-being, but largely ignored by our politicians. What is more, we are living in a particularly "neo-conservative" era in which the direction of every party, from Liberal to Reform, appears to be devoted to tearing down these institutions, in a number of cases, by privatizing them. Our institutions have played a fundamental role in shaping the identity and character of Canada, for example, the Canadian Broadcasting Corporation, the National Film Board, and our parliamentary system.

William Thorsell, Editor-in-Chief of The Globe and Mail makes the following observation:

Our quality as a nation is tied to the quality of our indigenous media, and that quality is tied to public broadcasting. In Canada, private broadcasters will never provide the forums or support the diverse intellects that so enrich the lives of Canadians who listen to the CBC. Only the CBC itself can keep it that way.²

²William Thorsell, "CBC's commitment to the life of the mind helps make us Canadian." The Globe and Mail, 16 March 1996, p. D6.

It is my belief that identity group politics has placed the notion of Canadian identity into a precarious position. We must look at the weaknesses of Canadian policy and legislation in order to better understand what steps must be taken to find some resolution. Our society is paying so much attention to the variety of divisions within itself, that it has become our national obsession. As a result, there are few resources left with which to work in a more constructive manner to ensure that Canada remains a successful and remarkable country. In other words, there is too much discussion of what is wrong with Canada, and not enough attention paid to what is right with this country.

This thesis is my attempt to better understand the dilemmas inherent in identity group politics in Canada. My goal is to clearly identify the problems which stem from this domain, and to determine how public policy has failed to come to grips with these issues.

Chapter one will provide a conceptual framework for the discussion of identity groups in Canada. Identity, and identity groups, cannot be considered without the historical context of nationalism. I will briefly examine the theories of three scholars who have developed a contemporary analysis of nationalism. The work of Charles Taylor will assist in putting the discussion into a Canadian context.

Our public discourse reveals a steady decline in Canadian nationalist sentiment over the last few decades, as

well as continued, and, perhaps, growing ambiguity in terms of a cohesive Canadian identity. There has been a concurrent rise in ethnonationalism and group challenges to Canadian policies. These issues will also be discussed in the first chapter.

I maintain that Canadian public policy, while conceivably well-meaning in its development, has served to promote community divisiveness at the expense of Canadian identity. It has generally proven to be ambiguous to the point of promoting dichotomous interpretations from a host of competing groups. Canada's Multiculturalism Act is one such example and has been forcefully criticized by a diversity of collectivities. Ironically, the policy intended to embrace ethnic Canadian contributions to the development of Canada, has been hailed and identified as a distinguishing feature of the nation, and condemned for endangering the cohesion of Canada. Has multicultural policy in Canada advanced any sort of resolution or consensus on how to manage multiculturalism in our society? The "multicultural experience," and the challenge it poses to Canadian identity will be considered in Chapter two.

Chapter three will provide yet another example of "ambiguous policy" by reviewing the dilemmas that we face as a result of the implementation of the Canadian Charter of Rights and Freedoms. It has been argued that the Charter has enhanced Canadian identity. In fact, I submit that the

opposite is true. The Charter has fostered an environment of competition amongst groups, causing further division in Canada. It also appears to be used, more and more often, as an instrument to enhance the status of identity groups who can afford to have their "cases" heard by the judiciary.

Additionally, the Charter has served to provide judges with a substantially expanded role in what was formerly, Canadian public discourse. The increased responsibilities of the judiciary produces another possible dilemma: are Canadian judges equipped to make lasting contributions to public policy issues? Finally, does the Charter serve individual rights or group rights? Given some of the judgments that have been rendered in Canada recently, one might argue that group rights have superceded individual rights in Canada. These issues will be analyzed in Chapter three.

Chapter four will provide a case study of the Mohawks of Kahnawake, focusing on the politics of membership. The Mohawks have adopted a blood quantum criteria as one of the determinants for band membership. Blood quantum is an extreme example of the lengths to which the Native people in Kahnawake feel that they must go in order to preserve their unique culture and race. It provides a peculiar challenge to Canadians, as well as the federal government because it is potentially viewed as a "racist" policy, and therefore condemned. Conversely, many Mohawks argue that federal

policy, through the Indian Act, has provided them with a "model" of blood quantum criteria. Additionally, the federal government has pushed them to the brink of extinction and, consequently, extreme measures are required.

Canada's tradition of ambiguous policy can be applied to the treatment of Native peoples as well. Moreover, Canadians may be averse to self-government because it is often viewed as a direct threat to Canadian sovereignty. No lasting solution has emerged in Canada to date, but it is clear that Native claims present a serious challenge to Canadian identity as we know it.

While it is not sufficient to hold Multiculturalism or the Charter wholly responsible for the current dilemmas in Canada, I will argue that they have contributed substantially to fostering an environment of conflict and competition within our society. The federal government faces what appears to be an unlimited series of challenges from a diversity of groups across the country, ranging from Native peoples, emergent identity groups, and the "anglo saxon" rooted collective as well. The government's task will be a difficult one.

**Chapter 1 - Autopsy of a Crisis:
A historical overview of nationalism and identity**

A "moral crisis of democracy"

Regional, ethnic and cultural problems which have arisen in Canada can be set against a backdrop of a more fundamental problem which Charles Maier, Krupp Foundation Professor of European Studies at Harvard University, calls a moral crisis of democracy. In his essay, Maier attempts to determine the source of what appears to be a universal citizens' malaise and he cites illustrative examples of this discontent with unfulfilled national pledges such as Meech Lake, Maastricht, the North American Free Trade Agreement and the European Economic Community, none of which have, to date, realized their initial visions.

Maier makes some telling observations on the apparent erosion of societies:

Citizens become uneasy at the noticeable presence of the foreign-born, worry about the burdens on welfare and the pool of jobs, and view imported mores, languages and religious manifestations as a threat to national identity. Casual resort to deadly force seems to have become more acceptable...everyday life seems to confirm a general erosion of civility...³

Maier claims that this discontent is unlike any malaise we have seen before. This malaise cannot be interpreted as purely economic since traditional economic

³Charles S Maier, "The moral crisis of democracy," Foreign Affairs, Vol. 73, No.4, 1994, p. 49.

crises are manifested through symptoms such as high unemployment, high interest rates and poor economic performance. These elements are more symptomatic of what North Americans experienced in the 1980s and, while they have not necessarily been eliminated today, they do not encapsulate this particular crisis accurately enough. Nor, Maier posits, can it be labelled a crisis of polity. He suggests that political crises arise when there is a threat of civil war or dictatorship, or, in a more Western political context, when party lines are so deeply divided within a nation that government institutions are immobilized and unable to find resolutions.

While some of these interpretive elements are applicable to Canada, they are still inadequate in terms of providing an answer to all of the disenchantment permeating so many communities. "It is best described by the term 'civic discontent' or even 'moral crisis.' Moral crises can help generate political crises, and they reveal characteristic economic symptoms even if they do not originate in economic causes."⁴ The economic element focuses more on issues of distribution. In Canada, for example, numerous ethnic groups are demanding more funding for their cultural pursuits, institutions, or language preservation. Groups are continuing to prove that there exists inequality of pay standards based on ethnic or gender

⁴Ibid., 51.

discrimination. All of these elements point to the potentially unequal distribution of our economic cache, and not to particular problems of production. Maier makes the following elaboration of moral crisis:

'Crisis' is a strong and often overused term. Still, it is justified, for it signifies a precarious systemic state in which an organism or a society hovers between decomposition and a rallying of collective energy. Undergoing a crisis does not preclude a recovery of vitality, but it does suggest that the society and states that emerge after an extended period of turbulence shall have been transformed, not merely restored.⁵

Maier suggests that a moral crisis of democracy, although still an imprecise theory, can nonetheless be characterized by three specific shifts in public attitude. The first shift is a sudden sense of historical dislocation. This confusion can be felt in Canada by a large number of citizens who are struggling to define or redefine the notion of Canadian culture and, unfortunately, there has been little success to date.

The subsequent shift has led to a disaffection with the political leadership of all parties. The consequence of this disillusionment is the successful emergence of the Reform Party in Western Canada, and the Bloc Quebecois, a francophone separatist party, winning representation at the national level.

Finally, there emerges a recurring scepticism regarding

⁵Ibid., 51.

doctrines of social progress.⁶ This is evident in Canada, where the Multiculturalism Act (1988), the Charter of Rights and Freedoms and the notion of liberal democracy have all come under fire from a variety of groups.

There are two possible alternatives which emerge from the crisis. One possibility is that the focus is on social pluralism and policies such as multiculturalism, which promote "going with the fragmented flow." On the other side of the spectrum, the spotlight is on territorial populism, which includes fighting to maintain a bounded political domain by any means necessary, including encouraging xenophobia, the rejection of supranational economic interference and an appeal to ethnic exclusiveness. "Both stances recognize a sense of decomposition and the loss of a hitherto functioning civic myth."

(A moral crisis of democracy) touches ugly chords of prejudice, it raises nationalistic instincts that the West has not had to contend with for many decades, and it introduces an element of incalculability into each country's public life and into the relations of nations with each other. During moral crises and their aftermath, the advocates of cosmopolitanism and compromise, pluralism and rationality are never in full control.⁷

While Maier's observations are geared to the United States, they can be applied to the Canadian situation as well. In other words, the Canadian government must provide an alternative vision for citizenship, including a

⁶Ibid., 54.

⁷Ibid., 63.

commitment to "...civic inclusiveness, and not just ethnicity, encouraging projects and loyalties which go beyond ethnic or even cultural kinship" to encompass all of the country's diversity and distinctiveness.

Maier makes the following suggestion:

It is time for confederalism, cantonization and overlapping citizenship claims to receive more creative attention...frameworks for ethnic reaggregation—if only in regional economic institutions at first—will seem appropriate once again, and pressures toward reconstruction of units that are now merely battlegrounds will become pressing agenda items."⁸

Examining the roots of identity groups

As previously mentioned, identity politics has come to dominate the social and political scene in many countries around the world. It is worthwhile then, to examine briefly a variety of theories of nationalism and attempt to link them to the emergence of identity politics. Three sources will be used with the goal of analyzing a few contemporary definitions of nationalism.

Nationalism has been defined as:

a feeling of belonging to a group united by common racial, linguistic and historical ties, usually identified with a particular territory. A corresponding ideology which exalts the nation-state as the ideal form of political organization with an overriding claim on the loyalty of its citizens."⁹

⁸Ibid., 64.

⁹Alan Bullock, Oliver Stallybrass & Stephen Trombley, eds. The Harper Dictionary of Modern Thought (New York: Harper & Row Publishers, 1988), p. 559.

There are three particular historical time frames in terms of the development of nationalism. The first originates in the earlier part of the nineteenth century, when democracy and liberalism were associated with nationalism.

The second period was in the latter half of the nineteenth century when a more aggressive and intolerant form of nationalism appeared. It was an integrative nationalism and was identified with imperialism and the expansion of territories at the expense of other, smaller and less powerful, nations.

Finally, in the twentieth century, nationalism was identified with two types of political action: fascism and totalitarianism, as was the case in Germany; and the use of nationalism as a driving force in the liberation of colonial peoples. It was also taken up as a banner by those smaller nations or national minorities who felt threatened with subjugation by larger and more powerful states, or an aggressive national majority.

Nationalism has taken on a number of possible definitions.

- 1) Territorial nationalism, which generally arises from states created through colonization.
- 2) Ethnic nationalism, which we can see in the former Yugoslavia, Belgium, Germany and, to a lesser degree, Quebec.

3) Pan- or superstate nationalism as illustrated by Canada and its involvement in the North American Free Trade Agreement (NAFTA), or the European Community (EC). Both NAFTA and the EC appear to be facing some measure of resistance and condemnation from a variety of groups.

In Western culture, ethnic nationalism appears to have taken root more deeply than any other form of nationalism. Regionally concentrated cultural or linguistic groups are challenging their nation-states (Canada, France, Spain and Belgium, for example). Nationalism has become the most powerful political force in terms of promoting mass emotion and this is what many political analysts and sociologists are attempting to understand.

Everywhere, the historical timing of the rise of nationalism was associated with the appearance of the vernacular newspaper, job market education, industrial production and consumption, and mass migration by railway, steamship and motor vehicle. Anthony Smith and Ernest Gellner, both political thinkers and writers on nationalism who will be reviewed in this work, agree on this point.

The impact of nationalism is illustrated by the explosion of minority claims, which began in the 1970s in Canada, and by the Scottish and Welsh in Britain, the Basque and Catalan in Spain, the Flemish in Belgium and many others.

In the 1980s revived nationalism was breaking up

Stalin's Eastern Europe, and the 1990s saw the disintegration of Yugoslavia as well as the former Soviet Union, which has become the Commonwealth of Independent States.

The search was under way to develop an understanding of nationalism "guided by an awareness of its modernity and astonishing rapid spread across the globe through dozens of different cultures, social orders and political economic systems."¹⁰ Furthermore, there was a contemporary twist to this new form of nationalism. "Why were so many 'ordinary people' willing to lay down their lives for nations of whom their grandparents had never heard?"¹¹

A functionalist approach

Ernest Gellner takes an interesting approach to nationalism and the "nation."

Critics of nationalism who denounce the political movement but tacitly accept the existence of nations, do not go far enough. Nations as a natural, God-given way of classifying men, as an inherent though long-delayed political destiny, are a myth; nationalism, which sometimes takes pre-existing cultures and turns them into nations, sometimes invents them, and often obliterates pre-existing cultures: that is a reality, for better or worse, and in general an inescapable one.¹²

¹⁰Joel Krieger, ed. The Oxford Companion to Politics of the World (New York: Oxford University Press, 1993), p. 615.

¹¹Ibid.

¹²Ernest Gellner, Nations and Nationalism (Ithica, New York: Cornell University Press, 1983), pp.48-49.

Gellner, like so many other political thinkers, postulated that nationalism rose out of the chaos of dislocation caused by modern industrial society. In addition, new, highly centralized and standardized institutions of indoctrination were developed, some of them agencies of the state, others of the mass market in general. He suggested that industrialization destroyed traditional, often intimate rural communities and drove millions of people from their homes and into factories and urban slums. They were left with no community and no sense of identity.

Industrialization also imposed a new set of rules on citizens. For example, rigid working hours, production rates, quality controls and transportation schedules, all of which were daunting to traditional cultures. Simultaneously, the state implemented programs of standardization and hierarchical education for everyone within its reach. The focus of education became training people for the job market instead of educating them to be "civilized human beings" through classical schooling, which included the study of philosophy, art, language and history.¹³ Mass communication emerged with the goal of illuminating this new style of modern life and it also undertook to create an illusion of a vast, new citizenry.

Gellner theorizes that there were three intertwined agents of change. First, the uneven spread of industrialism

¹³Ibid., 37.

produced historically unprecedented economic inequalities, huge population shifts, as well as regional and cultural disparities within each monarchical area.

Furthermore, the standardization, centralization and proliferation of the state's activities brought traditionally isolated, self-contained communities into far closer, and often disagreeable, contact with one another.

Finally, it introduced a new, universal approach to education, coupled with an entirely different goal from what previously existed: training for economic purpose rather than intellectual purpose. He refers caustically to the educational system in the following way:

The task with which that system is entrusted is to turn out worthy, loyal and competent members of the total society whose occupancy of posts within it will not be hampered by factional loyalties to sub-groups within the total community; and if some part of the educational system, by default or from surreptitious design, actually produces internal cultural differences and thereby permits or encourages discrimination, this is counted as something of a scandal.¹⁴

These were the primary reasons behind the rise of nationalism in Gellner's functionalist approach. While he broadened the understanding of the historical sociology and political economy of nationalism, he failed to delve into the reasons for the passion it aroused and continues to arouse; he neglected to consider the depth of sacrifice it evokes or the sense of antiquity which it surprisingly conjures up within entire communities.

¹⁴Ibid., 64.

A cultural counter-attack

Anthony Smith, also a political thinker, attempted to provide a more complex understanding of the emotional and philosophical underpinnings of nationalism. He turned to the religious, cultural and political roots of nationalism and investigated the processes whereby ethnicities or identity politics emerged, particularly in advanced industrialized societies.

While Smith agreed with Gellner that mass society fostered impersonal relations with fellow citizens and the state, he claimed that this was inadequate in terms of understanding the emotional appeal of nationalism. Smith postulates that there are two specific problems which have led to the rise, appeal and complications of contemporary nationalism. First, today's governments must deal with the demands of an ever increasing number of minority groups. In addition, they must consider the central dilemma of social cohesion where those same minorities are challenging the core values and political credibility of democracy and liberalism.¹⁵

Moreover, the resurgence of nationalism in the West, particularly from the emergent identity groups that demand freedom, recognition and the right to differ from the traditional norm, "represents a protest against the status

¹⁵Anthony Smith, Nationalism in the Twentieth Century, (Oxford: The Chaucer Press, 1979), p. 151.

quo"¹⁶ and the institutions set up and maintained by the majority. Whereas protests were traditionally launched against dynastic or imperial tyrannies, the targets today are established democratic states who are accused of perverting democratic ideals. This, Smith suggests, does not fit into the Left-Right spectrum of mass society theory to which Ernest Gellner adheres.

Smith claims that the goals of today's ethnic nationalists or identity groups, are autonomy, group cohesion and group identity. Furthermore, these groups have three organizational advantages which have been developed as a result of liberal democracy. Central governments are economically more prosperous than they used to be and this, minority groups would point out, has been made possible by sacrificing the smaller, and poorer regions.¹⁷

Secondly, there is an anti- over-centralization movement. "The modern state has become too rationalised, (and) too bureaucratic, to meet man's social and political needs."¹⁸ This is apparent not only in Canada, but in the United States and many countries in Europe as well.

Finally, there exists a cultural "counter-attack" on perceived assimilation, which has been turned against governments who have set out to achieve this goal. National

¹⁶Ibid.

¹⁷Ibid., 154.

¹⁸Ibid., 155.

minorities and identity groups are, as a result, much more inspired to hold on to ancient or revived languages, religion, culture, traditions or distinctive institutions.¹⁹

There are clear dissimilarities between the historical and contemporary nationalist movement. Smith posits that whereas, historically, the minority demand was for sovereignty, the pattern today has shifted to autonomous or federal status within the larger unit. This point is open to debate since what we can identify today, is, in fact, a number of demands for independent states. For example, francophone Quebecers, some Native groups in Canada and ethnic groups in the former Yugoslavia, to mention but a few, do not appear to be pursuing a place within the larger unit.

Nonetheless, Smith concurs that contemporary nationalist movements do conform to the basic pattern of nationalism: "It is always collective autonomy, collective solidarity and collective identity which is being sought and found, in the hope of ethnic regeneration and fraternity which is embodied in the concept of 'nationhood'."²⁰

Ultimately, Smith agrees with Ernest Gellner in terms of the negative impact of a secular, rationalist and a new, scientific approach to culture, which has led to the erosion

¹⁹Ibid., 156.

²⁰Ibid., 157.

of religious beliefs and traditions. However, Smith delves more deeply into the emotional and philosophical causes of the re-emergence of nationalism, and the crisis of minority or group identity, that is currently plaguing so many nations.

Smith, among a number of political thinkers, submits that the biggest challenge facing democracy and governments today is the crisis of social cohesion. Moreover, we have seen the consequences of attempts to suppress nationalist sentiment: deeper entrenchment and the promotion of a level of emotional fervour heretofore unprecedented.

Smith refers specifically to "ancient customs" and "revived languages," and a number of authors continue to attempt to discover why nationalism has such a profound emotional effect on citizens. Authors have also begun to examine why traditions or dialects that appear to be more or less obsolete, suddenly take on great symbolic significance in the context of nationalism.

Benedict Anderson, in Imagined Communities, concludes that nationalism is an "invention."

Out of the American welter came these imagined realities: nation-states, republican institutions, common citizenships, popular sovereignty, national flags and anthems, etc., and the liquidation of their conceptual opposites: dynastic empires, monarchical institutions, absolutisms, subjecthoods, inherited nobilities...and so forth.²¹

²¹Benedict Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism, (New York: New Left Books, 1993) p. 81.

Anderson claims that specific "tools" have been used to invent nationalism. First, communications technology, especially radio and television, provides the means for a more widespread reach than ever before. "Multilingual broadcasting can conjure up the imagined community to illiterates and populations with different mother-tongues."²² Gellner and Smith discuss the same example, mass communication, but Anderson brings a unique dimension to its use in the context of nationalism. He states that twentieth-century nationalism is based on "more than a century and a half of human experience and three earlier models of nationalism."

Anderson asserts that nationalism can be used by leaders as a "self-protecting" tool. "Self," in this case, refers to a particular nationalist group.

Nationalist leaders are thus in a position consciously to deploy civil and military educational systems modelled on official nationalism's; elections, party organizations, and cultural celebrations...Above all, the very idea of 'nation' is now nestled firmly in virtually all print-languages; and nation-ness is virtually inseparable from political consciousness.²³

The next logical step to Anderson's claim that nationalism is an invention, is that identity is an invention as well. He submits that language has been the key element in terms of fostering the notion of identity. He takes a cynical view of the role and symbolism of language.

²²Ibid., 135.

²³Ibid.

What the eye is to the lover - that particular, ordinary eye he or she is born with - language - whatever language history has made his or her mother-tongue - is to the patriot. Through that language, encountered at mother's knee and parted with only at the grave, pasts are restored, fellowships are imagined, and futures dreamed."⁴

Anderson's observations about the invention of nationalism may remove much of the romanticism which surrounds nationalist sentiment and symbols, such as anthems, flags and cultural festivals. On the other hand, while these may be inventions, they are very real to most people and continue to promote serious divisions within many societies. Perhaps Anderson's conclusions provide a heretofore unimagined depth to the study of nationalism, unfortunately, it does not reduce the conflicts which result from nationalism and identity, which "ordinary" citizens continue to grapple with.

The great "historical misunderstanding"

A discussion of nationalism and citizenship, specifically in Canada, would be incomplete without some analysis of the work of Charles Taylor.

Taylor, professor of philosophy at McGill University, espouses a communitarian approach to the discussion of nationalism and identity politics and delves into what he refers to as the "historical misunderstanding" that has led us to the current predicament.

⁴Ibid., 154.

Similarly to Gellner and Smith, Taylor holds the view that identity was historically defined by the church and the institutions which comprised Canada. In fact, citizens relied guilelessly upon the state to define their identity. In Canada, for example, we have had a traditional allegiance to British roots. This is manifested in our institutions, such as a parliamentary government, which were modelled after the British tradition. Until 1982, we also recognized the British monarchy as having a position in the Canadian landscape. In other words, British tradition has strongly influenced what we might call our "anglo saxon" identity. Undeniably, this holds no allure for many contemporary immigrants. In fact, respect or a commitment to adhere to these Canadian adoptive traditions is regularly labelled as "colonial," and has become politically incorrect in the eyes of those who do not support them. "The surest way to make a Canadian flinch nervously is to refer wistfully to the British colonial heritage of Canada. In the age of multiculturalism, it has somehow become offensive to mention such things."²⁵

Taylor suggests that there are different "strands of allegiances" which are held by Canadians of non-British origin. This is as a result of "Canada's exceptional status as a haven where a certain freedom, dignity, and economic

²⁵Kirk Makin, "How Canadians' roots became ethnic walls," The Globe and Mail, 27 June 1994, p. A4.

opportunity is, at least in principle, open to everyone, in strong contrast to the conditions prevailing in other parts of the world."²⁶

In Reconciling the Solitudes, Taylor primarily discusses the difficulties that confront francophone Quebecers in their struggle for recognition of their distinct identity in Canada. Nonetheless, he poses questions that are central to the dilemma of emergent identity groups and the rise of nationalism throughout Canada.

This analysis raises of course the problem of identity, the problem of how individuals or members of a group see themselves - or, as we say, what they identify themselves as. Educated French Canadians, like their counterparts anywhere else in North America, have to deal with people not only from their own circle, not only from their own part of the country, but from all kinds of backgrounds and from everywhere. Like everyone else, they expect a normal degree of recognition from those they deal with; and like everyone else, they hope that they compare well with these people in their own eyes. To compare oneself with anyone else raises the problem of identity. How does one differ from one's interlocutor? In the name of what does one ask him to respect one?²⁷

The analysis which Taylor develops in the above quote is not restricted to French Canadians. Unquestionably, identity groups across Canada are more and more often focusing on the issue of recognition, and whether they have been provided with the same opportunities as the historically dominant culture in Canada. We face the current

²⁶Charles Taylor, Reconciling the Solitudes: Essays on Canadian federalism and Nationalism (Toronto: McGill-Queen's University Press, 1993), p. 103.

²⁷Ibid., 13.

dilemma of identity as a direct result of identity groups posing these very same questions and concluding, we assume, that the answers are not acceptable. In other words, perceived inequalities are not restricted to Canada's formal national minority, French Canadians, but now extend to a multitude of cultural groups across the country.

Taylor claims that we have never had any consensus in terms of defining a Canadian identity:

Up to this day there has never been a commonly understood formula of national identity in Canada. Various political arrangements have been negotiated, and something like common understanding of what these involve has existed among those political elites who negotiated them, but no common formula has ever been accepted across Canada by the population at large.²⁸

One of those common understandings in terms of a national identity was the concept of "two founding nations" which was meant to reflect the contributions of both English and French Canadians. But this concept was not without its own set of problems. "...One hears Westerners saying that Canadian duality is an irrelevancy to them, that their experience of Canada is of a multicultural mosaic...This important axis of difference is under threat again."²⁹

We return, once again, to the same quandary: there are many Canadians, of ethnic origin specifically, who do not view Canada from the same perspective. The predicament of developing a new Canadian identity thus becomes even more

²⁸Ibid., 102.

²⁹Ibid., 182.

complex in the contemporary context.

Taylor also laments over what he suggests has influenced Canadian politics over the last century: "the great historical misunderstanding." French and English Canadians have been unable to put themselves in the shoes of the other in terms of their divergent experiences and yet the expectation is that each side will understand the other. This not only continues to be a capricious expectation, but one that has become even more complicated as a result of our expanded cultural community. "Each side (or, every side) would require the other to be something it is not in order to fit the formula within which it can itself be comfortable."³⁰

Guy Laforest, Political Science Professor at Université Laval, concurs with Taylor regarding the difficulty of finding resolutions within such a diverse environment.

The crisis shaking our country is not made any simpler by the multiform face of the aspiration to equality - an aspiration of individuals as citizens of one and the same political system; of language groups; and of groups representing people of diverse cultural backgrounds, societies, nations, and peoples. In short, everybody aspires to equality and nobody wants to be pushed aside or subjected to any form of discrimination.³¹

In Multiculturalism: Examining the Politics of Recognition, Taylor draws our attention to a powerful paradox. It exists between the politics of universalism and

³⁰Ibid., 102.

³¹Guy Laforest in Introduction to Ibid., x.

the politics of recognition, or, to better illustrate the paradox, the politics of difference. He observes that Western culture underwent a dramatic change when it adopted a "politics of universalism, emphasizing the equal dignity of all citizens, and the content of this politics has been the equalization of rights and entitlements."³²

The second shift occurred as a result of the modern definition (or lack thereof) of identity, and through the emergence of the politics of difference, which has become central to our current political and public discourse. There is a universalist basis for the politics of difference but it is shrouded in confusion.

Everyone should be recognized for his or her unique identity. But recognition here means something else. With the politics of equal dignity, what is established is meant to be universally the same, an identical basket of rights and immunities; with the politics of difference, what we are asked to recognize is the unique identity of this individual or group, their distinctiveness from everyone else. The idea is that it is precisely this distinctiveness that has been ignored, glossed over, assimilated to the dominant or majority identity. And this assimilation is the cardinal sin against the ideal of authenticity.³³

Surely one would imagine that recognizing difference is antithetical to the doctrine of universalism, but there we have it. The politics of difference demands that everyone be given universal equality but certainly not that everyone be

³²Charles Taylor Multiculturalism: Examining the Politics of Recognition ed. Amy Gutman, (New Jersey: Princeton University Press, 1994), p. 37.

³³Ibid., 38.

viewed in the same way. Taylor describes the politics of difference in the following way:

...It asks that we give acknowledgement and status to something that is not universally shared. Or, otherwise put, we give due acknowledgement only to what is universally present—everyone has an identity—through recognizing what is peculiar to each. The universal demand powers an acknowledgement of specificity...The politics of difference grows organically out of the politics of universal dignity through one of those shifts with which we are long familiar, where a new understanding of the human social condition imparts a radically new meaning to an old principle.³⁴

It would seem that our dictionaries have not managed to catch up with the contemporary definition of discrimination. "Traditional" discrimination meant "making a distinction in favor of or against, a person based on the group, class, or category to which that person belongs rather than on individual merit".³⁵ The politics of difference redefines discrimination to its polar opposite by asserting that it occurs when we overlook the differences among people or groups. In other words, unless we make distinctions on the basis of dissimilarity we will never eliminate discrimination.

In the face of what appears to be a radical deadlock between the politics of universal dignity and the politics of difference, Taylor manages to pick out some threads of commonality in order to bring what appears to be ideological

³⁴Ibid., 39.

³⁵Webster's Encyclopedic Unabridged Dictionary of the English Language (New York: Gramercy Books, 1989), p. 411.

nemeses closer together.

...what is picked out as of worth here (in terms of universal dignity) is **universal human potential**, a capacity that all humans share. This potential, rather than anything a person may have made of it, is what ensures that each person deserves respect...In the case of the politics of difference, we might also say that a universal potential is at its basis, namely, the potential for forming and defining one's own identity, as an individual, and also as a culture. This potentiality must be respected equally in everyone.³⁶

Taylor's communitarian approach is hopeful but complex. While it may hold appeal for intellectuals or educated elites, how would we go about implementing policies which reflect the politics of dignity, or the politics of difference? It would not be an easy task, nonetheless, it provides us with an encouraging means of looking at diversity in Canada.

The decline of Canadian nationalism

A new interpretation of contemporary nationalism may be required since many of the previous definitions appear inadequate in terms of capturing the incentive of group behaviours in a number of countries.

As previously mentioned, nationalism comes in many forms including territorial nationalism, ethnic nationalism and pan or superstate nationalism. Canada, in fact, can be categorized to some extent, under all of these three models of nationalism. Territorial nationalism applies to a lesser

³⁶Taylor, Multiculturalism, Ibid., 41-42.

degree and primarily in historic terms, but ethnic nationalism is clearly illustrated, not only in Quebec, but also by various Native tribes across the country who are struggling to establish themselves as distinct groups. Superstate nationalism is currently applicable to Canada as a result of our involvement with the North American Free Trade Agreement.

Ethnic nationalism has appeared as the central focus of nationalist groups in Canada. Regionally, linguistically or culturally concentrated groups are challenging governments at every level, and demanding recognition, even "special status," as unique associations. Whether, however, many of these groups are seeking recognition within the Canadian nation, has yet to be determined, but it is central to the discussion of Canadian identity. It is interesting to note that the notion of being recognized as a Canadian citizen may no longer be a primary concern of many Canadians.³⁷

Canadians, due in part to the Canadian Charter of Rights and Freedoms, have chosen to focus on individual rights to such an extent that we are losing any sense of civic responsibility and commitment to our respective communities.

One of the most often discussed notions in many countries today is how to establish a notion of citizenship that makes room for the increasingly multiethnic and multicultural character of the

³⁷It has become commonplace to hear people placing the emphasis of citizenship on their ethnic background and not on their "Canadian-ness", eg. "I am a Greek-Canadian", or "I am an Italian-Canadian".

population. Such a problem has long existed in North America, but satisfactory solutions have yet to be found. The difficulty seems to lie in the need to create unity without denying multiplicity. How might one combine an effective pluralism as far as culture, linguistic, ethnic, religious and other identities are concerned while constructing a common political identity around an allegiance to shared political principles? This is the contemporary challenge associated with citizenship.³⁸

Today's governments must resolve the central dilemma of social cohesion where there are a plethora of minorities who are challenging the core values and political credibility of democracy and liberalism. Further, this resurgence of nationalism in the name of freedom and the right to differ, especially in terms of identity group rights, is a direct confrontation to the status quo and the traditional institutions that we see in contemporary Canadian society. This nationalism is a protest against what people feel is a failure on the part of old established institutions and the ideology of liberal democracy, to recognize minorities as unique groups within the larger nation. At the core of this demand is the link between individual rights and dignity with the autonomy and individuality of a particular ethnic community.

Many of these groups are launching a cultural attack on what they perceive to be attempts at assimilation by governments. As a result of perceived suppression, minority groups become inspired to hold on to ancient or revived

³⁸Joel Krieger, ed. Oxford Companion to Politics, Ibid., 138.

languages, religion, culture, traditions or institutions.

There has been a shift in contemporary nationalism towards autonomist or federal status within the larger state, or, in fact, complete independence. For example, in Canada we have the continuous struggle of Quebec separatists or "sovereignists" and a diverse number of Native groups, some of whom are seeking autonomy while others are seeking recognition as one of the founding peoples of Canada. Western provinces have contemplated the idea of separation and, of course, there are a host of ethnic or regional groups which also have, at one time or another, demanded their place "within" the Canadian state. The crisis of social cohesion within Canada continues to expand. It has also become evident that attempts to suppress nationalist tendencies of identity groups has only helped to entrench them further and promote a higher level of emotional commitment.

It is ironic that the growth of interdependence was thought to eliminate mere tribal chauvinism when, in fact, the opposite appears true. The world today is unified, at one level, more than ever before as a result of trade agreements and transnational corporations and yet, paradoxically, an outcome of this globalization is a greater emphasis placed on the sovereignty of a nation, or its distinct parts.

Ethnonationalism in the Canadian context

There has been a surge of scholarly writings over the past decade on the theme of ethnicity, or, ethnonationalism, which may provide some insight into the difficulties now inherent in international and domestic politics.

Ethnicity refers to group associations based on any number of communal characteristics, including religion, language, ancestry, or region, all of which are taken to illustrate the distinctiveness of a group.³⁹ The contemporary political arena is being challenged more and more by ethnonationalist groups who insist on recognition, for example, in the form of self-government or special status within the state.

The imposition of a dominant culture over minority ethnic groups often serves as a driving force behind ethnonationalists, or, identity groups. A lack of equal access, application or opportunity in regard to those fundamental rights to which citizens are entitled, more often than not, leads to a rising consciousness of an ethnic group. The result will most likely be stronger cohesion among the group's members and this reinforces their sense of distinctiveness within the larger society.⁴⁰

These characteristics clearly apply to identity groups in Canada. We have also witnessed an exponential growth in

³⁹Ibid., 281.

⁴⁰Ibid., 283.

group awareness and demands over the last decade.

The increasing prominence of ethnic loyalties is a development for which neither statesmen nor social scientists were adequately prepared...the study of ethnic conflict has often been a grudging concession to something distasteful, largely because, especially in the West, ethnic affiliations have been in disrepute..."

Discussions of ethnonationalism and identity politics appear to focus on a central theme in the Canadian context: Canada's current constitutional, political and social arena does not lend itself to dealing with ethnonationalism in an equitable manner. University of Alberta anthropologist Michael Asch, discusses what may be considered the crux of the liberal-democratic perspective. While he is considering the issue in terms of Native claims for self-government, it applies equally to identity groups.

Canadians are at a pivotal moment in our constitutional history...now is the time when we must begin to act on resolving the crisis of community that besets us...the crisis of community is itself a crisis in our constitutional approach to resolving one major dilemma of the modern nation-state: the relationship between the collective political rights of minority collectivities with political rights based on the principle of majority rule."

Asch denounces the North American principle of universalism, in other words, recognition solely of the individual and not ethnonationalist groups, and insists that

⁴¹Daniel Patrick Moynihan, Pandaemonium: Ethnicity in International Politics (New York: Oxford University Press, 1993), p.157.

⁴²Michael Asch, "Aboriginality Self-Government and Canadian Constitutional Identity: Building Reconciliation," Ethnicity and Aboriginality (Toronto: University of Toronto Press, 1993), p.29.

it promotes an assimilationist approach and cannot ultimately deal with the question of multicultural recognition in an unprejudiced manner.

His thesis clashes with the philosophy behind Canada's multiculturalism policy and, in fact, devalues the legitimacy of its guiding principle. How then, he would suggest, can multiculturalism be realized if Canadian society is based on a philosophy of universalism? This predicament is illustrated by our current rights discourse, which will be analyzed in the third chapter, and our inability to resolve the struggle of individual rights over collective rights. The issue of universalism "versus" multiculturalism will be examined in the proceeding chapter.

Daniel Salée, a professor at the School of Community and Public Affairs at Concordia University, articulates a similar theme as those repeatedly stated in a number of ethnonationalist essays. While he is referring more specifically to the situation between Natives and some Quebeckers, it is relevant to the general Canadian quandary. It is a recognition of the disagreement that we have arrived at given our current constitutional ideology:

The survival of an identity cannot hinge on pious wishes and good intentions. It implies a struggle for the means and the resources essential to the affirmation and the consolidation of identity. To the extent that Aboriginal communities will most likely continue to reinforce their autonomous ambitions, and to the extent that the Canadian constitutional regime will remain unchanged, at least in the foreseeable future, there is a strong chance that the disputed claims which separate Aboriginal and non-Aboriginal

peoples of Quebec can only continue to fester."³

Conclusion

In Canada, we face profound challenges from a plethora of multi-ethnic, multicultural, and multilingual groups who all demand attention and recognition of what they consider to be their fundamental "rights." This relatively new rights-oriented force in Canada can be attributed primarily to the Charter of Rights and Freedoms, and perhaps to a lesser degree, to the Multiculturalism Policy. While the creation of both of these policies has obvious advantages, for example, the entrenchment of individual rights and the recognition of ethnic groups, it has also dramatically altered the Canadian perception of citizenship and identity.

The Charter in particular has introduced Canadians to a new political culture, a new way of thinking about government, citizenship and how we are prepared (or not) to deal with relations within our diverse communities. We are left to consider where we will take our community, what sort of values and norms we wish to have guiding our citizenry, and, finally, how we will be influenced by group and individual rights potentially taking precedence over a Canadian collective.

³Daniel Sal  e, "Identities in conflict: the Aboriginal question and the politics of recognition in Quebec", Ethnic and Racial Studies Vol. 18, No. 2 (Britain: Routledge, April 1995), p. 306.

The Canadian Charter of Rights and Freedoms has served to promote, or at least, reinforce this shift in the Canadian consciousness. It has given us momentum to focus on individual, or group rights while showing very little concern for some representation of a "Canadian community." Canada may eventually consist of Aboriginal "nations," a French-Canadian state, some delineation for Western territories and within that context, gender, ethnic, regional or racial groupings as well. Or we must develop public policies that will enable us to have some shared vision of a Canadian nation.

Nonetheless, we should carefully consider the consequences of supporting a philosophy that does not merely suggest that group rights are paramount to the Canadian collective, but that may actually pit individual or group rights, against the collective. The difficulty of reaching a compromise is compounded by the fact that to find commonality in such diversity is an arduous task, specifically because groups are becoming less willing to make concessions, since this may be perceived as implying some sacrifice on their part.

Why, at this juncture, do we see a resurgence of identity claims in the form of nationalism? What is the impact on, and the role of, Canadian public policy in this process, particularly the Canadian Charter of Rights and Freedoms? Canada's Multiculturalism Policy was, at the

outset, seen to embody the Canadian vision of diversity. Today, it has become the object of scorn from members of both sides of the ideological spectrum. Has it also played a role in the emergence of identity politics or is this simply a symptom of revived nationalism? And finally, can we develop a set of policies which will resolve these dilemmas and appeal to the diversity of groups that constitute the Canadian nation?

Charles Maier, once again, synthesizes the current predicament and has some encouraging ideas in terms of containing the perilous path of tribalism which is appearing all over the world. Perhaps, he would suggest that we bring these suggestions down to a national level in Canada, in order to provide all of its citizens with a sense of belonging. On the other hand, it would require that identity groups accept the doctrine of universal equality. This may be too ambitious a goal.

To grant every people its own sovereignty is not feasible, but they can have their representation, their cultural institutions, a share of the public purse and a delegation in international overarching structures such as an enlarged European Union, CSCE or analogous institutions that might be constructed elsewhere. Indeed, the formation and strengthening--the widening and deepening--of such international networks might eventually help democracies combat the anomie that has permitted indifference, tribalism and fragmentation to advance. This recovery will not be quick or easy;

moral crisis of democracy tend to be protracted and contagious. They will only be reversed by a commitment beyond borders and across frontiers."

"Maier, "Moral crisis," Ibid., 64.

Chapter 2 - Swallowing Illusions: The case of multiculturalism in Canada

At bottom, the case for Canada has always been a moral one. Whatever else its sources, a nation is above all a moral community, a body of people who, though unknown to one another, still care about one another's fate. It is the same fate we owe to all humanity but never quite manage; the nation is the largest act of empathy of which we are yet capable.

Such a collective state of mind may be hard to sustain, but a workable federation is impossible without it. It is not achieved through gooey profusions of sentiment, but in the institutions of the nation, in the words and deeds of its leaders, in all a habit of discourse that instills in its citizens a reflexive sense that they are members of a single self-governing body.

This does not demand that we foreswear all narrower allegiances, only that we keep sight of what we have in common. It is not the idea of identity — ethnic, sexual or other — that makes identity politics so crude: It is the insistence on one identity to the exclusion of all others. Each of us belongs to many such groups. To reduce all these to one is to indulge in an endless game of rock-scissors-paper, as rival identities trump one another in turn.

Andrew Coyne

"A nation in danger of relativizing itself to death,"
The Globe and Mail, 23 October, 1995, p. A12.

Introduction

The term multiculturalism has rapidly gained currency in North American political discourse. It was formally introduced in the House of Commons as policy in 1971 with little fanfare. Nonetheless, in recent years, it has become a topic of great debate and a source of increasing consternation for many Canadians.

It is important to delineate the broader conceptual term of multiculturalism and the Multicultural Policy of Canada. As Augie Fleras and Jean Leonard Elliott suggest in

their book, The Challenge of Diversity: Multiculturalism in Canada:

A term that encapsulates many levels of meaning and perspectives, **multiculturalism** connotes a doctrine for managing ethnic and racial diversity in a manner consistent with pluralistic principles. Multiculturalism recognizes the existence of diversity, upholds its benefits to society, and acknowledges the contributions of minorities to the social and cultural order.⁴⁵

The concept of multiculturalism in Canada is held by many as a visceral ideal. Some would suggest that multiculturalism, the concept and the policy, helps to identify and distinguish Canada as a nation, and has finally given ethnic minorities in Canada equal footing from which to live and pursue their goals.

On the other hand, multiculturalism has been condemned by many as promoting serious ethnic and cultural divisions within our community and as endangering the cohesion of Canada as a nation as a result of its specific focus on the differences expressed by, rather than the similarities shared by, cultural, linguistic and religious groups.

The politicization of multiculturalism through the Multicultural Policy of Canada (1971) led to the establishment of "an ideological framework that legitimizes and justifies a variety of government initiatives on minority issues, ranging from admitting increased numbers of

⁴⁵Augie Fleras and Jean Leonard Elliott, The Challenge of Diversity: Multiculturalism in Canada (Scarborough, Ontario: Nelson Canada, 1992), p. 317.

Third World immigrants, to the passage of employment equity laws and programs."⁴⁶

Over the passage of time, the Canadian government decided that this policy was insufficient in dealing with diversity and that Canada required a policy that was more ambitious in terms of meeting the needs of an increasingly pluralistic society.

In July 1988 Canada became the first country in the world to pass a multiculturalism law: the Multiculturalism Act. "The Multiculturalism Act sought to assist with cultural and language preservation, to reduce discrimination, to enhance intercultural awareness and understanding, and to promote culturally sensitive institutional change at federal levels."⁴⁷

Furthermore, a clearer framework for implementation of the Policy was developed, as well as a system of Parliamentary accountability, in terms of the successes and failures of the Act. Unfortunately, it is exceedingly difficult to gauge the success or failure of the Multiculturalism Act.

Canada's multiculturalism policy purports to represent everything that is thought to be quintessentially "Canadian". It is the culmination of a dream, perhaps, even an illusion, as a number of authors have suggested, in which

⁴⁶Ibid., 68.

⁴⁷Ibid., 75.

all Canadians walk arm-in-arm and transcend their differences; it is what we ought to be. This is what we are led to believe our Policy champions.

The Canadian Policy of Multiculturalism has come under strong attack by various groups, individuals and collectivities in Canada. Some have accused the government of not going far enough to ensure equality, recognition, and, in some cases, special status for particular minorities or ethnonationalist groups.⁴⁸

Conversely, there are many who suggest that the pendulum has swung too far in the opposite direction, that instead of fostering a broad and all-encompassing Canadian cultural community, the policy has encouraged and empowered minority groups to reject any possible commonality and focus exclusively on their own, distinct communities.

Another argument used by some proponents of multiculturalism to explain why it is rejected, is summarized by The Globe and Mail columnist Michael Valpy: "Superficially...(this is) a story of the dominant culture being urged to surrender certain controls and social

⁴⁸See editorial, "Common sense and holy days," 8 October, 1994, p. A2, Editorial, "Schooling by sect?" 4 February, 1995, p. D6, & Jeffrey Simpson, "Citizen pragmatism, not the courts, should determine school holidays," The Globe and Mail, 13 October, 1995, p. A18. Islamic Schools Federation of Ontario is seeking to have Islamic holidays recognized in Ottawa's schoolboard and a "multifaith coalition" composed of Jewish, Hindu and Sikh parents are seeking government funding for their children's private schools since Catholic schools in Ontario are publicly funded.

supremacy in order to accurately reflect Canada's multicultural composition."⁴⁹ Certainly the argument is more complex than this statement would suggest, but it is often used to discredit those who oppose multiculturalism.

Nor is the debate as simple as ethnic groups or immigrants speaking in defense of multiculturalism and the mainstream white, anglo saxon-rooted community speaking out against it, as one might surmise after a cursory glance. Ironically, criticism and praise emanate from every possible source within our diverse Canadian citizenry. Both views are fraught with philosophical and practical contradictions. Richard Bernstein, former correspondent for The New York Times, makes the following observation:

Multiculturalism...is a universe of ambitious good intentions that has veered off the high road of respect for difference and plunged into a foggy chasm of dogmatic assertions, wishful thinking, and pseudoscientific pronouncements about race and sex.⁵⁰

The goal of this chapter is to clarify some of these arguments.

We are, more and more, defining ourselves in particularist terms, for example, race, gender, religion, language or ethnic roots, and turning away from the notion of a general population which holds common ideals and

⁴⁹Michael Valpy, "Metis, moose and multiculturalism," The Globe and Mail, 11 October, 1994, p. A2.

⁵⁰Richard Bernstein, The Dictatorship of Virtue: How the Battle over Multiculturalism is Reshaping our Schools, our Country, our Lives (New York, New York: First Vintage Books, 1995), p. 8.

values. Do Canadians want a set of policies that will be all-encompassing for its citizens or will we reject a Canadian community and settle into separate and potentially hostile groups vying for the strongest positions politically and socially? The latter choice does not seem to be an ideal progression for a democratic society. Michael Ignatieff, author of Blood and Belonging, suggests that Canadians must choose how to proceed.

We can continue in our pursuit of civic nationalism where everyone can feel that they belong, or we will support ethnic nationalism where we will only accept leadership from our own. The narcissism of small differences can be inflated to monstrous proportions and the result is an exponential growth in the relationship between nationalism and violence. This violence is in the name of the motherland and it is tearing the new world apart.⁵¹

This chapter will discuss the concept of multiculturalism in Canada and examine why it has become a dominant part of our current political discourse. I will review the official policy of multiculturalism in Canada; its goals, its implementation and the disparity between the Policy itself and the reality of multiculturalism. I will also synopsise the arguments of three Canadian authors in the hope of clarifying the morass of multiculturalism in Canada.

Finally, where would we be without the Policy of Multiculturalism? Unlike the Canadian Charter of Rights and

⁵¹Michael Ignatieff, CBC 940am "Morningside," 18 August, 1994.

Freedoms, which, to a certain degree, encompasses specific goals, the Policy lends itself to creative interpretation. In what way has the Multiculturalism Policy helped those people or groups that it set out to help, or, in what way has it contributed to the erosion of a Canadian culture?

Multiculturalism: From folkloric focus to social justice?

Some measure of confusion and vagueness has always existed around the discussion of multiculturalism in Canada. This includes the origin and motives of our policy on multiculturalism as well as its specific meaning and the method of its implementation.

One could make the hypothesis that the government's interest in developing a multicultural policy emerged at the same time as an organized Quebec intelligentsia took up the banner of Quebec nationalism. In 1963 Ottawa set up the Royal Commission on Bilingualism and Biculturalism to pursue a more equal system of power sharing between Canada's "two founding nations." Eventually, as a result of pressure from those many Canadians who fell outside the boundaries of Canada's "two founding nations," as well as Native Canadians who were excluded, the Commission's responsibility expanded to include an examination of the contribution of ethnic minorities to the development of the Canadian nation.

In October 1971, the federal government accepted all of the recommendations of the Royal Commission on Bilingualism

and Biculturalism and, subsequently, the Multicultural Policy of Canada was adopted. The following is an attempt to encapsulate the goals and sentiment behind the multicultural philosophy developed by the Canadian government, and, more specifically, Pierre Trudeau.

I am sure, by all Canadians, that there cannot be one cultural policy for Canadians of British and French origin, another for the original peoples and yet a third for all others...A policy of multiculturalism within a bilingual framework commends itself to the government as the most suitable means of assuring the cultural freedom of all Canadians. Such a policy should help to break down discriminatory attitudes and cultural jealousies. National unity, if it is to mean anything in a deeply personal sense, must be founded on confidence in one's own individual identity; out of this can grow respect for that of others and a willingness to share ideas, attitudes and assumptions. A vigorous policy of multiculturalism will help to create this initial confidence. It can form the base of a society which is based on fair play for all...In conclusion, I wish to emphasize the view of the government that a policy of multiculturalism within a bilingual framework is basically the conscious support of individual freedom of choice. We are free to be ourselves. But this cannot be left to chance. It must be fostered and pursued actively. If freedom of choice is endangered for some ethnic groups, it is in danger for all. It is the policy of this government to eliminate any such danger and to "safeguard" this freedom.

- Statement by Prime Minister Trudeau in the House of Commons, 8 October, 1971.

While Trudeau's speech expresses some enchanting sentiments, two motives that are far from altruistic inform his position on the issue: first, this was Trudeau's method of neutralizing Quebec nationalists, and, second, he was attempting to diffuse English Canadian antagonism towards

official bilingualism in Canada.⁵² Multiculturalism won him two birds with one stone, perhaps even a third, since his speech also suggested that Canadians may pay too much attention to their French and English heritage, instead of focusing on the increasing diversity of the nation. Certainly this appealed to minority groups, who felt that they had finally received some recognition in terms of their role in the development of Canada.

However, the 1971 Policy was as vague and ethereal as Trudeau's speech. There is no evidence of a "vigorous" or "active pursuit" of multiculturalism in the policy that followed. Nor were there any fundamental precepts advanced through the policy that made its intentions clear.

It is ironic that he refers to "national unity" and the "breakdown of discriminatory attitudes" through the implementation of multiculturalism when, in fact, what comes through clearly in the discourse surrounding multiculturalism is that a) it is a tool used by the "Eurocentric establishment" to subtly integrate immigrants, or b) it promotes the erecting of ethnic walls and ghettoizes minorities. These are only two sides of the debate and there are a number of other perspectives which will be examined in the following pages. To be fair, Trudeau

⁵²For an extensive and critical discussion of the "Trudeau era," including his motives for developing the Multiculturalism Policy and the Charter of Rights and Freedoms, see Guy Laforest Trudeau et la Fin d'un Rêve Canadien (Sillery, Quebec: Septentrion, 1992).

was unaware of the impending recession that was to take hold in the early 1980s, and that Canada would witness two failed unity attempts — the Meech Lake Accord and the Charlottetown Accord — but it is clear that he could not have predicted the direction of the multicultural debate.

In the 1980s, the discussion surrounding multiculturalism escalated dramatically and the government responded through the Parliamentary Standing Committee on Multiculturalism (1987). "The multicultural policy of 1971 is clearly insufficient and out-of-date. It does not have the ability to meet the needs of today's multicultural society. There is a sense that this 15-year-old policy is floundering. It needs clear direction."⁵³

As previously mentioned, the Multiculturalism Act was passed in July 1988 and was the first time that multiculturalism became embedded in a statutory framework. Indeed, this law has become an integral component of the Canadian landscape, albeit negative to some and positive to others.

The Multicultural Act had as its goals "to assist with cultural and language preservation, to reduce discrimination, to enhance intercultural awareness and understanding, and to promote culturally sensitive institutional change at the federal level."⁵⁴ Parliamentary

⁵³Fleras & Elliott. Multiculturalism in Canada, Ibid., 75.

⁵⁴Ibid.

accountability was implemented in the form of the creation of a Minister of Multiculturalism and Citizenship (1990). The initiatives of this Act and Multiculturalism Canada were threefold:

1) **Canadian Society** Encouraging understanding and appreciation by all Canadians of the cultural diversity that comprises our society.

Promoting changes in Canadian institutions (law enforcement, health, legal, educational, government, among others) so that they respond to the needs of all Canadians.

2) **Cultural Heritage** Strengthening cultural retention to ensure that Canada's cultural life is rich and vibrant with the contribution of all Canadians and that Canada's **distinctive identity** (my emphasis) and its cultural institutions reflect fairly the heritage of all Canadians.

3) **Integration** Assisting immigrants and members of racial and ethnocultural communities to establish themselves as **full participants** (my emphasis) in Canadian life."

Terms like "distinctive identity" and "full participants" are illustrative of the ambiguities that surround multiculturalism in Canada. What is our distinctive identity? Does it involve the institutions that form the basis of our society, such as the Houses of Parliament, the Senate, Canada Post, the National Film Board, the Canadian Broadcasting Corporation and others? Perhaps it includes symbols such as our flag, our bilingual national anthem, our vast countryside and the knowledge that we are a peaceful, diplomatic and "caring" society. In other words, the alternative begs the fundamental question, "what constitutes

⁵⁵Multiculturalism Canada, Report of the Secretary of State-undated, from Fleras & Elliott, Ibid., 76.

our identity?," without answering it.

Furthermore, what does "full participation" involve? Some would suggest that this means taking part in the Canada Day parade every year, promoting a united Canada, the abandonment of one's motherland identity (in the case of immigrants) and believing in Canadian institutions and law. It is clear that many Canadian citizens are not prepared to adopt this course. Or could "full participation" also entail a passive element? Do not take the name of your country in vain, do not burn the flag of the Maple Leaf, do not consciously undermine your country or its laws. Full participation, then, might encompass the promise not to inflict any significant harm to the mother country.

On the other hand, many would suggest that some degree of "full participation" is only fair, if we are to maintain a unified and strong Canada, and ensure its successful future in the international arena. Surely it cannot be that difficult to, at least morally, support a country that has been designated by the United Nations as one of the best nations in the world in which to live. Unfortunately, as a result of lack of clarity, terms like identity and participation have become subject to individual and, often, competing interpretations.

The priorities of Multiculturalism Canada encompass five areas which include race relations, multiculturalism in the economy, multiculturalism in education, immigrants and

visible minority women, and finally, multiculturalism in broadcasting.⁵⁶

To illuminate the significance of the Multiculturalism Act (1988) we can look to Fleras and Elliott and their analysis of the progression of multicultural policy in Canada. For example, in their comparison of the Multiculturalism Policy of Canada (1971) and the Multiculturalism Act (1988), the authors point out that the goals of the government shifted from dealing with the "ethnic sidestream" to eliminating discrimination in a proactive manner. The new goals included institutional change in terms of "mainstreaming Canada's major institutions" so that Canada's diversity would become an inherent part of the governing body as well as the institutions that were involved in decision-making and agenda-setting. In this way, diversity would be represented within Canadian institutions, and not simply through policy pronouncements that emanate from a typically culturally homogeneous collection of politicians.

It is ironic that multiculturalism and citizenship are grouped in the same ministry. Undeniably, the issues and debates over multiculturalism and citizenship have grown

⁵⁶Multiculturalism in broadcasting has become an issue of great controversy and pertains directly to the Canadian identity. For a discussion on the topic see, among others, Media, Culture and Society: A Critical Reader, ed., Richard Collins, (London: Sage Publications, 1986) and Eric Thomas, "Canadian Broadcasting and Multiculturalism: Attempts to Accommodate Ethnic Minorities," Canadian Journal of Communication, Vol. 17 (1992), pp. 281-300.

exponentially over the last decade, and are often considered to be dichotomous concepts. Perhaps this peculiar grouping has in some way fuelled the emergence of identity politics in Canada. Within this federal department "attention is focused on a) what it means to be a Canadian citizen, b) the rights, duties, and obligations of citizenship in a multicultural society, and c) the necessity to highlight ethnocultural differences and human rights as essential ingredients of Canadian citizenship."⁵⁷

Undoubtedly, the approach to multiculturalism has steadily evolved from a modest attempt to reach out in some way to minorities to a broader inclusion of all Canadians in the process. The policy encourages Canadians to make a commitment to embrace a multicultural philosophy.

Two other initiatives are noteworthy in terms of the government's attempt to expand the parameters of multiculturalism and citizenship. On October 19, 1990 the Canadian Heritage Languages Institution was developed with the goal of "facilitating throughout Canada the acquisition, retention, and use of heritage language."⁵⁸ This also led to a great deal of debate in terms of what defines a "heritage language." In 1993, for example, the "Dutch Language Program" was awarded a grant by Multiculturalism Canada for \$15,000. This money was for a "seminar involving

⁵⁷Fleras & Elliott, Multiculturalism in Canada, Ibid., 79.

⁵⁸Ibid.

teachers and administrators for the purpose of networking, information gathering and exchange, and planning for the future."⁵⁹ Does this imply that Dutch is a heritage language in Canada or that a relatively small group seeks to make it a third or fourth national language?

Finally, in February 1990, Parliament announced the formation of the Canadian Race Relations Foundation which sought to "contribute to the elimination of racism and all forms of racial discrimination in Canadian society."⁶⁰ This initiative also fell in line with the goals of the Multiculturalism Act in terms of making the elimination of discrimination one of the central objectives of the Canadian government. As well, multicultural initiatives were formally undertaken at the provincial and municipal levels of most provinces.

Quebec stands alone in its opposition to federal multicultural policy because it views the policy as an attempt by the government to downplay the "distinct society" status sought by the Quebec government. Nonetheless, Quebec upholds a policy of interculturalism in terms of managing its diversity, which parallels Canada's official

⁵⁹Kirk Makin, "Benefiting from diversity," The Globe and Mail, 30 June, 1994, p. A2.

⁶⁰Fleras & Elliott, Multiculturalism, Ibid., 80.

multicultural policy.⁶¹

Multiculturalism: Policy versus practicality

The way I see it, all our brand of multiculturalism does is act as a make-work project for civil servants and ethnic lobbyists engaged in promoting the "cultural mosaic"; encourage ethnic groups to perpetuate rivalries exported from their native lands; and engender split loyalties among members of minority groups.⁶²

If we review the discourse in Canada regarding the Policy of Multiculturalism, we would conclude that it has met with little success, continues to be shrouded in confused messages and ambiguities, and, coupled with the Charter of Rights and Freedoms, has deepened the cultural divide in Canada.

There are a number of questions which are central to the debate surrounding multiculturalism in Canada. How does one define the policy's intention regarding the encouragement of cultural diversity? Are there any limits to what Canadians should embrace in terms of traditions that are imported from other countries?

"Ahmed," a Somali refugee, arrived in Toronto ten years ago, and on a good Saturday night now clears \$5,000 in profit. His chosen profession: smuggling Khat, an East African stimulant made infamous by manic child soldiers during the war in Somalia. In Canada, it is legal to

⁶¹For a synopsis of Quebec's handling of interculturalism, see Augie Fleras & Jean Leonard Elliott, Multiculturalism in Canada: The Challenge of Diversity, Scarborough, Ontario: Nelson Canada, 1992. Chapter eight, pp. 167-173.

⁶²Sonja Sinclair, "Why I've had it with multiculturalism," Facts and Arguments, The Globe and Mail, 5 October, 1994.

chew, but illegal to import Khat, a state of affairs that frustrates Ahmed. "We want to import it legally," he says, "but Agriculture Canada won't give us a licence. This is part of our culture- it's nothing bad. At home, everybody chews it. Here, we pay too much."⁶³

The example of "Ahmed," provides a glowing demonstration of the "merits" of multiculturalism in building a strong, distinct and enlightened Canadian society. Unfortunately, there are a multitude of similar examples, which illustrate the tendency of many to push the limits of multiculturalism, (assuming that limits exist), at the expense of a commitment to a more basic acceptance of Canadian traditions and legal values. Furthermore, the logic behind Canadian law, which has led to this stimulant, Khat, being illegal to import, appears to be lost on Ahmed.

There are a number of other areas which require some consideration. Shall we, for example, accept the Indian practice of **suttee**, in which female Hindu Canadians leap on to the funeral pyres of their husbands? Shall we accept genital mutilation of female children because in some African and Arab cultures it represents a rite of passage to womanhood? Shall we also acknowledge that elementary and high school children will carry daggers under their clothing because of their religious beliefs, despite the secular nature of our country?

Certainly these few cases represent the extreme side of

⁶³Saturday Night, March 1996, p. 79. (A collection of short items).

the debate and there are a multitude of examples which are embraceable and will enrich the lives of those who are unfamiliar with them. Nonetheless, how do we stake boundaries around those practices or traditions which we can accept as Canadians, and those we cannot?

Many Canadians are adamant that female genital mutilation will never be acceptable although it has been discovered that this practice is performed in Canada.⁶⁴ Opposition to infibulation is swift and many have argued that it is morally reprehensible, but it underlines the difficulty in drawing the boundaries of cultural values. Non-Westerners, for instance, might similarly interpret the Western female obsession with body image, and the growing number of botched breast implants and plastic surgeries, as a form of state-sanctioned mutilation.

It should be stressed, however, that infibulation counters one of the most fundamental governing sets of laws in Canada, the Canadian Charter of Rights and Freedoms.

Moreover, there are a number of Canadians who would not

⁶⁴Some illumination on the procedure of infibulation, as defined by the World Health Organization, is worthwhile.

The clitoris and labia minora are completely removed, as well as the inner surface of the labia majora. The two sides of the vulva are then stitched together with thorns or silk or catgut sutures so that when the remaining skin of the labia majora heals, it forms a bridge of scar tissue over the vagina. A small opening is preserved by the insertion of a foreign body to allow for the passage of urine and menstrual blood.

Editorial, "Culture, or torture?" The Globe and Mail, 3 October, 1994, p. A18.

accept children wearing religious daggers in school because of the inherent danger it poses and the competition it may inspire among children who are not part of this tradition. Surely we can insist that at some point, rights transcend culture. And yet, in some circles, positions of opposing cultural practices such as these would, at worst, be branded as discriminatory, and, at best, as "politically incorrect." Must we carefully guard against ourselves in terms of our convictions and ideals lest we be labelled as "racist"? Have we become intolerant to the point that we lose our voice if we are not a member of a minority group because that automatically implies that we cannot understand or learn about different experiences? How easy it has become to reject opposition by branding it "discriminatory" or, worse, "racist." While this is an exaggeration, it must also strike a chord with citizens who feel that it would be inappropriate to speak of their feelings about multiculturalism or even a Canadian vision. This undoubtedly conspires to make the already emotional debate over multiculturalism much more politically sensitive.

An opinion piece on multiculturalism that appeared in The Globe and Mail in 1994 provoked a series of responses and letters to the editor. A number of them were printed in subsequent editions and it appeared that most of the letters supported the article. This may well have been what the newspaper's editor chose to print. Nonetheless, because of

its widespread recognition, it bears mention here as it may reflects a prevailing position in Canada. Curiously, I was unable to find any "academic" sources which castigate multiculturalism from this particular perspective. The author of the article, Sonja Sinclair, is a freelance writer in Toronto and, judging from the responses from many Canadians, representative of some portion of the Canadian population.

"You can say it," my friends say to me. "We can't—we would be called racist."

The reason I can say it, it seems, is that unlike my friends I am a Canadian by adoption rather than by birth. And what I can say, and what many of us "ethnics" have been quietly saying for years, is that we are sick of newcomers demanding that Canada adopt their customs and languages, rather than the other way around.

At the risk of being politically incorrect, I believe that those of us who left their original homelands, whether by choice or necessity, have no business complaining because the country that offered us a refuge happens to be different from the one we left behind.

Is it possible that some "ethnic" Canadians have really forgotten why they came here to begin with? Surely not because we were hoping to find on this continent some sort of replica of Greece or India or Ukraine or whatever. Indeed many of us wanted to get as far away as possible from prejudice, persecution, rigid class distinctions, economic hardships or whatever else has driven us from our homes.

What attracted us to Canada was that it was the antithesis of what we left behind...

Canada is a more tolerant, cosmopolitan country than it was then, thanks at least partly to millions of immigrants. But these were changes by osmosis, by recognition that injustices and prejudices had to be corrected, that standards of morality needed updating, that some features of previously alien cultures were worth adopting...

But the multicultural pendulum swung out of control when politicians started wooing the ethnic vote with millions of dollars spent on teaching "heritage languages," organizing multicultural conferences and

staging dance-and-song festivals. Having been raised in cosmopolitan Prague, I never wore a national costume until coming to Canada and being enlisted in some cultural extravaganza...

...It is good and proper for people to retain a sentimental attachment to the country of their birth...

...But in the final analysis, we all have to know where we belong. If we want to continue enjoying the benefits of Canadian citizenship — and I have yet to meet an ethnic who is willing to surrender his/her Canadian citizenship — we'd better start promoting Canada rather than the country we left behind.⁶⁵

There are a vast number of interpretations that may be applied to Sonja Sinclair's article. It could be suggested that because she has "made it" in Canadian society and has reached (we assume) a comfortable style of living, she has become a "sell-out", unwilling to give up her lifestyle to pursue the "real" needs of new immigrants in an unjust society. On the other hand, Ms. Sinclair may also be illustrative of someone who left their native land to pursue a better life and having devoted herself to that cause, feels some resentment about those who would suggest that Canada does not adequately meet the needs of immigrants. Whatever the case, she articulates a particular view of multiculturalism in Canada that cannot be ignored. It is one vision of the numerous arguments that surround the discussion of multiculturalism.

Neil Bissoondath, a Canadian novelist and author of Selling Illusions: The Cult of Multiculturalism in Canada, has received a great deal of attention because of his

⁶⁵Sonja Sinclair, "Why I've had it with multiculturalism," Facts and Arguments, The Globe and Mail, 5 October, 1994.

position on multiculturalism. Bissoondath argues forcibly that multicultural policy in Canada "encourages people to hide behind ethnic walls."⁶⁶ Similarly to Sonja Sinclair's position, Bissoondath suggests that multiculturalism should not be used to pay for the promotion of different cultures, languages and festivals. This is a common criticism held by many Canadians. "...If a community feels its children ought to learn their language, that is fine and wonderful — get together and learn in a church basement, but it is not the role of government policy."⁶⁷

The perceived 'right' to multiculturalism can approach the status of religion. It confuses new and old Canadians alike about what constitutes appropriate behaviour...Multiculturalism has blurred the rules in English Canada. The British colonial centre was swept away by multiculturalism — but it couldn't replace it. The centre has disappeared. It has established an area where there are no rules.⁶⁸

Bissoondath's observation that there are "no rules" is an interesting one. In fact, it may represent the crux of the problem when discussing multiculturalism. The policy has no clear direction, and, boundaries to cultural practices are so vague that they are illusory. We are left to tip-toe through the minefield of distinct traditions, religions and customs, while keeping in mind that to question any of them may well imply a politically incorrect attitude.

⁶⁶Kirk Makin, "How Canadians' roots became ethnic walls," Ibid., A4.

⁶⁷Ibid.

⁶⁸Ibid.

Bissoondath and Sinclair are not alone in their beliefs. "Many established minorities are complaining about having had to make personal sacrifices to consolidate their communities in Canada when more recent arrivals are being handed money. Others resent being forever linked to their ethnic origins."⁶⁹

Bissoondath summarizes the current difficulties we face in the following way:

Open-ended political policy is, almost without exception, subject to an endless stretching of the envelope: there will always be someone - or some group - attempting to go further than anyone has gone before. Because we have failed to establish the limits of diversity, because we have so blithely accepted the mentality of division, we find ourselves lost in a confusion of values. Multiculturalism has made us fearful of defining acceptable boundaries; it has caused us to confuse the establishment of circumscription with a lack of respect. And so we find ourselves in danger of accepting, in its name, a slide into ethical chaos.⁷⁰

We will now turn to a more scholarly examination of the multicultural debate by examining the perspectives of two Canadian political philosophers. Their approach to these issues is more conceptual than the practical questions which have heretofore been raised on multiculturalism in Canada. They focus to a greater extent on the historical experiences of ethnic groups and minorities as well as the dilemma involved in contemporary cultural identity in Canada. Both

⁶⁹Ibid.

⁷⁰Neil Bissoondath, "I am Canadian," Saturday Night, October 1994, p.12.

provide interesting frameworks from which to approach the discussion of multiculturalism in Canada.

We will examine the perspective of Will Kymlicka, a liberal political theorist, and James Tully, a "post-imperial" political philosopher.

"The survival of nationhood"

Will Kymlicka, in Multicultural Citizenship, illustrates another side of the debate heretofore not mentioned. He claims that we must consider the larger issue of a minority group's historical experience. Whether a group or individual is part of a nation as a result of colonization, conquest or voluntary immigration, will clearly impact on what kind of relationship they seek with the larger society. Kymlicka concurs with Fleras and Elliott, who argue that discussions of multiculturalism often lack any critical depth.

Generalizations about the goals or consequences of multiculturalism can (therefore) be very misleading. Indeed, much of the public debate over multiculturalism suffers from this flaw. For example, opponents of multiculturalism often say that it ghettoizes minorities, and impedes their integration into mainstream society; proponents respond that this concern for integration reflects cultural imperialism. Both of these charges are over-generalizations...⁷¹

Kymlicka discusses two patterns of cultural diversity, the first of which develops as a result of colonization.

⁷¹Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (New York: Oxford University Press, 1995), p. 10.

Previously self-governing bodies which are incorporated into a larger state often become "national minorities." The goals of national minorities are frequently to maintain a distinct society status within the larger context. They often pursue self-government or some form of autonomy in order to guarantee their cultural survival.⁷² This is well illustrated by the Parti Quebecois' pursuit of sovereignty.

For the purposes of this discussion, the focus will be on the latter pattern which includes those members of ethnic groups who are in a country as a result of voluntary individual or familial immigration, and who often form loose associations with people of the same ethnic origin. His view of the behaviour of ethnic groups mirrors some of the goals identified by Multiculturalism Canada. He states that ethnic groups "typically wish to integrate into the larger society, and be accepted as full members of it. While they often seek greater recognition of their ethnic identity, their aim...(is) to modify the institutions and laws of the mainstream society..."⁷³

Kymlicka acknowledges that the original policy of the Canadian government (as well as the United States and Australia) up to the 1970s was assimilationist in approach. However, the 1970s saw the emergence of a more pluralistic policy and ethnic groups were encouraged to maintain some of

⁷²Ibid., 11.

⁷³Ibid.

their old customs such as language, food, and dress. He notes that "while immigrant groups have increasingly asserted their right to express their ethnic particularity, they typically wish to do so within the public institutions of the English-speaking society (or French-speaking in Canada)."⁴ This point is questionable, as some groups, such as Muslim Canadians, have articulated a desire to form their own schoolboards so that their needs and customs can be properly met. We can conclude that those who pursue this goal do not wish to pursue their goals through "the public institutions of the English-speaking society."

Kymlicka, rather than using the term multicultural, refers to Canada as a "polyethnic" nation because of its large volume of voluntary immigration. He finds that multiculturalism invokes too much ambivalence. For example, "...Ambiguity has led to unwarranted criticisms of the Canadian government's 'multiculturalism' policy...(which was) promoting polyethnicity rather than assimilation for immigrants."⁵ He also suggests that many people feared multiculturalism because they thought it meant supporting ethnic "nations" within Canada. The French Canadians, he asserts, stood against multiculturalism because they believed that it would draw their claims for "distinct society" too close to the level of immigrant ethnicity.

⁴Ibid., 15.

⁵Ibid., 17.

Kymlicka maintains that none of these fears are justified, but that they occur as a result of the misunderstanding surrounding the term multiculturalism. Kymlicka proposes that the new approach to multiculturalism in the 1970s was not, in fact, a complete shift away from assimilation or integration. It simply became a matter of how these new immigrants would integrate. While there is formal policy acknowledging and promoting the cultural heritage of ethnic groups, Kymlicka points out that these groups must still adopt the official language of the nation to which they have settled. Their native language is primarily spoken in the private sphere since business, education and government activity is all carried out in Canada's two official languages. In third-generation immigrant families, learning their grandparents' mother-tongue is like learning a foreign language. "Learning the old language may be rewarding as a hobby or business skill, but for the children of immigrants, it is the anglophone culture which defines their options, not the culture from which their parents uprooted themselves."⁷⁶ Language is a fundamental element of maintaining one's cultural integrity and without it, insecurity and protectionism emerge.

On a broader level, and of particular significance to the discussion of multiculturalism, Kymlicka discusses Charles Taylor's theory of "deep diversity" within a

⁷⁶Ibid., 79.

polyethnic nation, such as Canada. Kymlicka aptly points out that "in countries that are polyethnic..., cultural groups are not only diverse, but they have diverse images of the country as a whole. People not only belong to separate political communities, but also belong in different ways."⁷⁷ At the heart of the issue of multiculturalism is the following definition of deep diversity: "...the members of a polyethnic and multination state must not only respect diversity, but also respect a diversity of approaches to diversity."⁷⁸ Taylor suggests that an understanding and acceptance of deep diversity is the only method of making a united polyethnic state work.

Kymlicka concurs with the general direction of Taylor's thesis but is perhaps not as confident as Taylor in terms of the citizenship being willing to embrace deep diversity. Acceptance of deep diversity requires sacrifice, patience and long discussion in terms of how to accommodate and recognize different national, ethnic and other groups within a nation. This includes a gamut of national or ethnic groups such as francophone and anglophone Canadians, aboriginal peoples, Muslim, Dutch and Greek groups, to mention but a few, and the plethora of other associations based on such categories as gay and lesbian, religious and gender groups.

The problem, of course, is that this sort of allegiance

⁷⁷Ibid., 190.

⁷⁸Ibid.

...Is the product of mutual solidarity, not a possible basis for it. If citizens already have a fairly strong sense of identity towards the other ethnic and national groups in the country, they will find the prospect of sustaining their deep diversity inspiring and exciting. But a vague commitment to the value of cultural diversity, by itself, may not generate a strong sense of identification with the existing country, or the particular groups that cohabit it.⁷⁹

Will Kymlicka provides us with a conceptual framework from which to examine and understand the emerging dilemmas inherent in an increasingly pluralistic society. He acknowledges that multiculturalism is fraught with misunderstanding, but his approach is much more philosophical in nature and deals with the larger predicament of the survival of nationhood. He does not necessarily lead us to any specific conclusions regarding the policies of multiculturalism in Canada versus the difficult reality which we face daily. Nonetheless, he does acknowledge, as every scholar has, that this cultural perplexity will continue unabated.

...many people, of all political stripes, have hoped and assumed that ethnic and national identities were a transient phase of human history...Globalization has made the myth of a culturally homogeneous state even more unrealistic, and has forced the majority within each state to be more open to pluralism and diversity. The nature of ethnic and national identities is changing in a world of free trade and global communications, but the challenge of multiculturalism is here to stay.⁸⁰

⁷⁹Ibid., 191.

⁸⁰Ibid., 9.

"Post-imperialism" and multiculturalism

The question is not whether one should be for or against cultural diversity. Rather, it is the prior question of what is the critical attitude or spirit in which justice can be rendered to the demands for cultural recognition.⁸¹

I will examine James Tully's work in this chapter but primarily as a method of criticizing the work of Taylor and Kymlicka. It will be brief because Tully is also writing from a much broader perspective than the day-to-day concerns of multiculturalism. His work will also be examined in the following chapter.

What immediately stands out when looking at authors who have written on identity politics and nationalism is that they regularly examine multiculturalism, but rarely use the term itself. This may provide insight to the continued ambiguity of the term. Will Kymlicka prefers to refer to a "polyethnic nation" and James Tully, political philosopher, prefers to use the term "interculturalism." Tully's thesis focuses around the notion of a post-imperial philosophy. His claim is that while authors such as Kymlicka, Taylor and Anderson all have valid points to make in terms of liberal or communitarian political philosophy, they are not complete because they all have as their starting point assumptions handed down from a history based on European imperialism. Therefore, Tully has approached the topic of cultural

⁸¹James Tully, Strange multiplicity: Constitutionalism in an age of diversity (New York: Cambridge University Press, 1995), p. 1.

identity and multiculturalism from a post-imperial perspective.

Tully's definition of intercultural citizens is as follows: "Aboriginal peoples, members of suppressed and divided nationalities, linguistic and visible minorities, and citizens who seek constitutional recognition of international cultural relations among peoples."⁸²

Furthermore, he uses the term "intercultural demands," which include such pursuits as:

Schools and social services in one's first language, publicly supported TV, film and radio, affirmative action, and changes in the dominant curricula and national histories, so that they respect and affirm other cultures, to the right to speak and act in culture-affirming ways in public institutions and spheres.⁸³

Tully's terms and definitions appear to encapsulate quite clearly the issues and debates surrounding multiculturalism in Canada, but he suggests that multiculturalism has not advanced any sort of resolution or agreement in terms of what difference it brings to our society. Perhaps by developing his own terms, Tully hopes to dissociate his work from the lay perspective on Canadian multiculturalism.

He points out that, unlike the beliefs of Taylor and Kymlicka, the needs of intercultural citizens cannot appropriately be met by "stretch(ing) the dominant

⁸²Ibid., 53.

⁸³Ibid., 3.

traditions and institutions to comprehend their demands."⁸⁴

The first step towards a workable solution is what Tully calls "mutual recognition." While this is not a new term, he is quick to point out that it cannot fall under the auspices of "traditional nationalist recognition," which has always had assimilation or exclusionary tactics at its foundation. Mutual recognition will require that historically dominant groups radically rethink conceptions of diversity. Tully suggests that, traditionally, we have dealt with mutual recognition in terms of nation-states and that "every culture worthy of recognition is a nation, and that every nation should be recognised as an independent nation state...(this) simply cannot be extended for the demands for cultural recognition today."⁸⁵ It is precisely this lack of a contemporary and post-imperial framework for mutual recognition of cultures that prohibits us from moving from the current impasse. (It should be noted that Tully discusses this new framework from a constitutional perspective.)

Tully captures the current multicultural dilemma with great insight in the following passage, although he refers to it in terms of constitutionalism:

Not only do cultures overlap geographically and come in a variety of types. Cultures are also densely interdependent in their formation and identity. They

⁸⁴Ibid., 53.

⁸⁵Ibid., 8.

exist in complex historical processes of interaction with other cultures. The modern age is intercultural rather than multicultural. The interaction and entanglement of cultures has been further heightened by the massive migrations of this century. Cultural diversity is not a phenomenon of exotic and incommensurable others in distant lands and at different stages of historical development, as the old **concept of culture** (my emphasis) made it appear. No. It is here and now in every society. Citizens are members of more than one dynamic culture and the experience of 'crossing' cultures is normal activity.⁸⁶

This conclusion of Tully's brings us to the heart of what we must come to understand in contemporary pluralist societies. It also gives Tully, Taylor and Kymlicka some commonality in terms of their different theories because barring, perhaps, Tully's reference to "the old concept of culture," we can assume that Taylor and Kymlicka would agree with his remarks.

Another area of agreement between the three authors concerns what Taylor calls "deep diversity", which Kymlicka discusses in his work, albeit from a different perspective.

It requires more than the mutual toleration and respect that might have been sufficient...It requires that the citizens affirm diversity itself as a constitutive good of the association. This is not a change in conventions but in civic attitude.⁸⁷

Conclusion

Perhaps the most meaningful conclusion that we can draw from these three scholars is that until we are genuine about

⁸⁶Ibid., 11.

⁸⁷Ibid., 177.

embracing and respecting cultures other than our own, as well as recognizing that our own cultures overlap on a regular contemporary and historical basis, we will remain at a cultural, even national, impasse. And while their conclusions are profound, they lack any concrete solutions. We are not really provided with any conclusion per se regarding the Canadian multicultural policies except, perhaps, and we can make this conclusion independently, that they remain ambiguous and insufficient in terms of providing us with direction and purpose.

It is difficult to imagine what steps must be taken in order to achieve a genuine foundation of mutual recognition, possibly based on a form of multicultural policy. The policies espoused by the Canadian government remain ambiguous and insufficient in terms of providing us with clear direction and purpose.

Trudeau has given us cause to seriously doubt his government's motives in terms of developing a multiculturalism policy. Furthermore, the initial policy was so vague as to be devoid of any substantial strategies or procedures. One might argue that it was intended to be too well-meaning and was consequently lacking in any substance.

The Multiculturalism Act took much stronger measures in an attempt to eliminate discrimination, but it is still a long way off from addressing the practical issues that confront Canadians daily. It is also apparent that the 1988

policy was, and continues to be, the focus of attack by numerous groups in this country. Perhaps it is doomed to fail. If we amalgamate a few of the concepts which we have covered in this chapter, we can see the dilemma of developing a policy in the area of multiculturalism. It must encompass the philosophies embedded in the "politics of mutual recognition" and the "politics of difference" and it must shed its "colonial mindset." This is a lot to expect from policy.

We can presume that this goal will not be realized solely through policy pronouncements, but, instead, as a result of our "natural desire" as Canadians to fulfil this goal. So far, the battle rages on in Canadian political and public discourse.

It seems fitting to end this chapter with a quote from Charles Taylor specifically because he draws a similar conclusion to that of Andrew Coyne, quoted at the beginning of this chapter: in the final analysis, the debate surrounding identity and multiculturalism comes back to moral decisions on the part of all Canadians. Herein lies the difficulty of finding a workable solution because decisions based on moral codes or sets of values are subject to cultural experience. To date, reliance on moral decisions in Canada to resolve the crisis of identity that besets us has proven insufficient.

There is perhaps after all a moral issue here. We only need a sense of our own limited part in the whole human story to accept the presumption (of equal worth). It is only arrogance, or some analogous moral failing, that can deprive us of this. But what the presumption requires of us is not a peremptory and inauthentic judgement of equal value, but a willingness to be open to comparative cultural study of the kind that must displace our horizons in the resulting fusions. What it requires above all is an admission that we are very far away from the ultimate horizon from which the relative worth of different cultures might be evident. This would mean breaking with an illusion that still holds many 'multiculturalists'—as well as their most bitter opponents—in its grip.⁸⁸

⁸⁸Taylor, Multiculturalism, Ibid., 73.

Chapter 3 - Mixed messages: Assessing the impact of the Charter of "group" Rights and Freedoms

...(T)he fatally flawed Charter of Rights with its numerous clauses, codicils, and **non obstante** provision was foisted on the nation. The new Constitution with its charter was totally foreign to the time-tested tradition of case-by-case fine-tuning that nourished and shaped the previous supremacy of the common law. In effect sovereignty had been transferred in one massive sweep from the people's Parliament to the Supreme Court of Canada."⁹

Just as Canada's multiculturalism policies have emerged as a controversial and prevalent part of our public discourse, the role of individual and collective rights has also gained significant attention over the last decade. This debate, which has proven to be a divisive force in Canada, escalated with the introduction of the Charter of Rights and Freedoms in 1982. The adoption of the Charter was met with a great deal of opposition, unbeknownst to many Canadians, which will be discussed in this chapter.

Ironically, the Charter contains a powerful paradox: it focuses our attention on individual rights, yet compels us to understand the importance of collective rights. In other words, a discussion of individual rights is never complete without some call to its ideological nemesis: collective rights.

While an often persuasive case can be made for collective rather than individual rights, usually to protect

⁹Joe C.W. Armstrong Farewell the Peaceful Kingdom: The Seduction and Rape of Canada, 1963 to 1994, (Toronto: Stoddart Publishing Co., 1995), p. 74.

a minority against engulfment by the larger society, the fact remains that, historically, the predominance of collective rights over individual rights has a sorry record. For example, communism, which places the collective over the individual, has primarily been replaced by more democratic processes. Closer to home, the language laws in Quebec have been contentious because, while they serve the majority, they leave a large minority feeling disenfranchised.

Has the Charter, like Canadian multicultural policy, thus far, proven to be a divisive force in Canada, or, has it provided us with a legal framework within which to pursue equality for citizens?

Pierre Trudeau: democrat or autocrat?

In 1968, the Liberal Party won power and Pierre Trudeau, a hard-line federalist, became prime minister of Canada. He was responsible for the first policy of multiculturalism in Canada, as well as for the repatriation of the constitution, in the form of the Constitution Act (1982). These two pieces of legislation may well have set in motion much of the current debate on identity, identity politics and "rights talk" in Canada.

The period preceding 1982 was laden with a number of failed attempts to repatriate the Constitution; most provinces opposed repatriation on the grounds that it would undermine provincial rights. Initially, Ontario and New

Brunswick were the sole supporters of Trudeau's plan to repatriate the constitution. In Quebec, the political climate was heating up as nationalists continued to veto Trudeau's plans for repatriation. Eventually, a referendum was held, in 1980, on sovereignty-association. While the Parti Quebecois lost the referendum, it was evident that Quebec nationalism was gaining strength in the province.

In 1981, seven provinces sought arbitration in the Supreme Court regarding repatriation. The Court ruled that unanimity was not required to repatriate the constitution. Trudeau immediately went to work on the opposing provinces and by November 1981 he had the approval of nine of the 10 provinces; only Quebec held out. The result was the Constitution Act (1982). It included a renamed British North America Act, an amending formula and the Charter of Rights and Freedoms.

Embedded in a Canadian statutory framework was a set of fundamental freedoms.

- freedom of "conscience and religion" (s 2a)
- freedom of "thought, belief, opinion and expression, including freedom of the press and other media of communication" (s 2b)
- freedom of peaceful assembly (s 2c); and
- freedom of association (s 2d)⁹⁰

The Charter also prohibited discrimination based on colour, sex or creed. As well, section 7 introduced a set of legal

⁹⁰Jeremy Webber, "Tales of the Unexpected: Intended and Unintended Consequences of the Canadian Charter of Rights and Freedoms," The Canterbury Law Review, Vol.5 No.2, 1993, p. 209.

rights which protected "the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."⁹¹

Reaction to the Charter was swift and diverse. There was support from those who saw it as heralding a new Canadian era, particularly in terms of repatriation of the Constitution because of the entrenchment of rights and freedoms through the Charter. There were also individuals and groups who felt that the Charter could damage the Canadian political and social fabric.

James Tully, writing in opposition to the Charter, concluded that the Charter is "a recent example of presumed, culture-blind liberal constitutionalism," and that, furthermore, "rather than uniting the citizens on a constitution that transcends cultural diversity, it has fostered disunity."⁹² He insists that there was some level of resistance to the Charter from nearly every segment of the population.

Each province found that the Charter overlooked its distinct legal and political cultures and demanded a constitutional amendment. Quebec, of course, went much further, suggesting that it was another example of the Canadian government attempting to undermine Quebec's

⁹¹Ibid., 210.

⁹²James Tully, Strange Multiplicity, Ibid., 7.

distinct cultural, legal and language tradition (as did the multicultural policies). It, too, insisted on amendments to the Constitution Act. Native groups, across the country, shared Quebec's claim that the Charter did not recognize their unique culture in the form of self-government, language and tradition. Within Native communities alone, there were differences of opinion along gender lines, as well as between people who lived on and off the reserve. Furthermore, women in Canada felt that the Charter had little or no input from them and was, therefore, unrepresentative of one half of the population.⁹³

Given the lack of widespread support, it is surprising that the Constitution Act, with its Charter of Rights and Freedoms, was adopted by Parliament. It is certainly a testament to Trudeau's ability to sway provincial leaders with the promise of economic and political rewards. This uncanny (or undemocratic) ability is further illustrated by the fact that a Gallup poll in 1981 revealed that "fifty-eight percent of Canadians disapproved of the patriation without broader consent."⁹⁴

Michael Mandel, Professor at York University's Osgoode Hall Law School, shares much of the cynicism of other scholars examining the Charter, and makes the following conclusion regarding its implementation:

⁹³Ibid., 11-12.

⁹⁴Armstrong, Peaceful Kingdom, Ibid., 71.

...Canada does not owe its Charter of Rights to the humanitarian or democratic impulses of its sponsors. However it has been sold to the public, the Charter has always been seen by its leading proponents in the political realm as an **expedient**, whether to fight the Quebec independence movement or the Cold War...⁹⁵

Joe Armstrong, a Canadian scholar and historian, also stood in strong opposition to the Charter. He asserts that repatriation of the constitution was bullied onto the Canadian population with dangerous consequences, some of which are not yet fully realized. "The prime minister had given the word. The federal government was prepared to unilaterally repatriate the Constitution."⁹⁶ Moreover, Trudeau suggested that repatriation, as well as the Charter, had been put to the test through a public forum and had received a national constituency. Unfortunately, as Armstrong points out, the numbers did not support the statement: 914 individuals and 294 groups had participated. Armstrong dismisses the purported legitimacy of this national constituency:

The participants were mostly insider academics and special-interest groups. Most Canadians found themselves uninvited and even barred from participating in the one forum that would have entitled everyone to play a role — a national debate and plebiscite. Their own government had used an elitist, restrictive, and undemocratic process to disenfranchise them.⁹⁷

⁹⁵Michael Mandel, The Charter of Rights and the Legalization of Politics in Canada. Revised, Updated and Expanded Edition. (Toronto: Thompson Educational Publishing, Inc., 1994), p. 36.

⁹⁶Armstrong, Peaceful Kingdom, Ibid., 70.

⁹⁷Ibid., 73.

Allan Hutchinson, professor and associate dean at Osgoode Hall Law School at York University, is yet another opponent of the Canadian Charter of Rights and Freedoms. The title of his book, Waiting for Coraf, ("Coraf," being an acronym for the Charter of Rights and Freedoms), reflects his sceptical outlook on the Charter. He goes much further by declaring that the Charter is "undemocratic, counter-productive and self-delusory" for Canadians. He also draws our attention to a commonly held myth about the Charter: equal access.

In spite of this country's natural and economic wealth, the anguished lives of many poor, Native, gay, illiterate, unemployed, female, and alienated Canadians stand as stark testimony to the fact that rights-talk dazzles rather than illuminates the critical eye of the liberal reformer. The Charter cannot be an empowering force for the egalitarian good when far too many still live in society's penumbral regions.⁹⁸

I will examine the Charter of Rights and Freedoms from the perspective of several Canadian authors in an attempt to illuminate the criticisms levelled at the Charter. This will provide some understanding of the impact the Charter has had on Canadians, and, more specifically, on Canadian identity. Individual rights, in the context of the Charter, appear to have been superceded by group rights. How can we claim that the Charter promotes a Canadian identity when, in fact, it appears to champion competing group claims, encourages creative interpretation of our fundamental rights and

⁹⁸Allan C. Hutchinson Waiting for Coraf: A Critique of Law and Rights, (Toronto: University of Toronto Press, 1995), p. xii.

freedoms on the part of judges, and, finally, challenges the supremacy of Canadian society?

Citizenship and the Charter

Our analysis will begin with the perspective espoused by Alan Cairns. His view is particularly interesting, because he argues that the Charter has strengthened the notion of Canadian citizenship and serves as an "anticipatory response to future diversities."⁹⁹ In addition to the obvious purpose of establishing a fundamental set of rights and freedoms, Cairns suggests that the motivating force behind the Charter is twofold: it provides Canadians with a set of enforceable rights that will strengthen their self-conceptions as citizens; and, a corollary effect will be the development of a "pan-Canadian" attitude. "A modified and strengthened country-wide identity would, relatively, weaken provincial senses of community and identity...the Charter was an attack on the conception of Canada as a community of communities."¹⁰⁰ Ironically, most scholars consider that the Charter has had exactly the opposite effect in Canada; that "individual" has come to mean group rights in relation to the Charter; and, consequently, we have developed a community of competing

⁹⁹Alan Cairns, Charter versus Federalism: The Dilemma of Constitutional Reform (Montreal: McGill-Queen's University Press, 1992), p. 60.

¹⁰⁰Ibid., 118.

communities. I will argue this point further into the chapter.

Let us return, for the moment, to Cairns' contention that the Charter has led to a strengthened sense of citizenship for Canadians. His initial observation is that Canadians do not appear to be aware of this enhancement of citizenship. This may well be a significant observation and one that requires validation since, as previously stated, the Charter has been castigated specifically because of its adverse impact on a "Canadian identity."

Cairns cites three reasons for the lack of attention given to citizenship in Canada generally, and, more specifically, in the Charter. First, "citizenship has always been a thin concept in Canadian constitutional and political analysis."¹⁰¹ He reiterates the arguments shared by many scholars, such as, Taylor and Tully, that, long after Confederation, most Canadians still felt that their loyalty belonged not only to Canada, but also to Britain and its political traditions. Canadians never experienced the "rite of passage" into citizenship as did the Americans, for example, as a result of the American civil war. Consequently, we have never adopted a language of citizenship into our collective psyche. This lack of "citizenship language" is clearly illustrated in the Charter.

¹⁰¹Ibid., 75.

As Cairns points out, the Charter rarely, if at all, advances the set of rights and freedoms to Canadian **citizens** but, instead, guarantees them to "'Everyone,' 'Any person,' 'Anyone,' 'Every individual,' and 'Any member of the public,' as well as 'Every Citizen,' and 'Citizens of Canada'." ¹⁰² "Citizen" is thus equated with "anyone" and "everyone." In other words, the Charter does not explicitly proclaim that we should be proud, or even aware, of the institution of Canadian citizenship in contrast to our American counterparts. We are left to conclude that the effects of the Charter on citizenship are inconsequential, if not, deleterious.

Finally, Cairns points out that "the Charter's rights and freedoms are ubiquitous reminders that the base of the constitutional order is composed not of subjects but of rights-bearing citizens on whose behalf the business of government is undertaken." ¹⁰³ The Charter emphasizes that the government cannot undertake constitutional changes without popular support. Unfortunately, Cairns argues, Meech Lake and the Constitution Act have illustrated that the government will venture to make constitutional changes with as little public input as possible. This point is reinforced by Allan Hutchinson and James Tully, who both concur with Cairns in this respect.

¹⁰² Ibid.

¹⁰³ Ibid., 76.

Cairns concludes that Canadians have much to learn in terms of their empowerment through the Charter. It is, after all, a "constitutional newcomer."

Cairns stands out when reviewing the impact of the Charter because he is isolated in his optimism, particularly when he suggests that the Charter can be used as a weapon to diffuse cultural diversity-related issues in the future.

Across the great divides of provinces and ethnicity, perhaps the most essential vehicle to bring us together is a strengthened sense of citizenship that cannot be left to the free play of forces in the social market but requires nurturing by the state. In that educational task, and admitting all of its weaknesses, the Charter is a central weapon...the Charter is not enough, and (that) it is not an unalloyed good. Only political children, however, could have thought otherwise.¹⁰⁴

Emergence of the "Charterclub."

The Charter has had a dramatic impact on Canadian identity in a number of ways, but there are three areas in particular which have been criticized as having severe consequences for the Canadian society. They are: the legalization of politics, which will be illustrated throughout the chapter; the empowerment of special interest groups; and the enhanced role of judges in what was formerly the political arena.

Rainer Knopff and F.L. Morton discuss the development of a "constitution of special interests" in Charter

¹⁰⁴Ibid., 61.

Politics. Their argument involves the challenge of group rights which, they suggest, has been removed from a democratic political arena and thrown into the judicial system. "...The Charter's main beneficiaries are special interest groups who invoke it to persuade appointed judges to reverse the decisions of democratically elected representatives."¹⁰⁵ In other words, special interest groups, having failed to win support through the process of democratic participation (which was the only avenue in the pre-Charter era), now have the power to thumb their noses at the existing policy process. Knopff and Morton suggest that this development has eroded the notion of a "citizens constitution," as Cairns terms it, and replaced it with a "constitution of special interests."¹⁰⁶ The consequence in Canada is a series of what Knopff and Morton refer to as "court parties."

(The court party) embraces a constellation of interests, which, like the "court party" of old, prefers the policy-making power of the less obviously democratic government institutions...Today the new court party's undemocratic vehicle is the judiciary. The modern court party includes not only the kinds of "citizen" interest groups (described by Cairns) but also important elements within the state bureaucracies, law schools, the broader intellectual community, and the media.¹⁰⁷

They also charge that the Charter has fostered an

¹⁰⁵Rainer Knopff and F.L. Morton, Charter Politics (Scarborough: Nelson Canada, 1992) p. 79.

¹⁰⁶Ibid.

¹⁰⁷Ibid.

environment where "status building" is the primary concern of court parties, or, interest groups. What is more, these court parties are undemocratic because they have not participated, as our recognized political parties have, in the electoral process. The key then, becomes financial; if an interest group has the resources to show that its cause is worthy of review, it can then push its arguments into the judicial arena. These groups become recognized constitutional categories in an attempt to elevate their status. "Constitutional status gives a group official public status of the highest order, and groups who enjoy it have an advantage in pressing their claims against government over groups who do not."¹⁰⁸ A natural corollary to this scenario is that interest groups will then attempt to outshine their competitors. Knopff and Morton liken it to membership in an elite club.

...Some constitutional politics take the form of existing members of the constitutional club attempting to protect the value of their resource by resisting the admission of new members, especially competing members. Those who are already members of the club will also fight among themselves for relative advantage, claiming that there is a hierarchy of constitutionally recognized interests, with their own at or near the top.¹⁰⁹

We can safely conclude that this will not have a unifying effect in Canada, but, rather, a deeply divisive one, particularly since there are financial restraints to

¹⁰⁸Ibid., 82.

¹⁰⁹Ibid.

becoming a member of the "Charterclub."

A "new orthodoxy"

Within the Charter there are three clauses which Jeremy Webber refers to as "interpretive clauses." One of these clauses is section 27, which "requires that the courts apply the Charter in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."¹¹⁰ Section 15 (Equality Rights) also encompasses ethnic or identity groups. Finally, Section 25 protects the "special rights" of Aboriginal peoples. Interpretive clauses open up a Pandora's box because of the newly-acquired prominence of judges. Judges have become the prevailing "arbiters" of these interpretive clauses. Knopff and Morton describe them as having the potential to become "politicians in robes" and we will return to this point shortly. In any case, we are drawn into the quagmire of Charter interpretation. Webber asserts that interpretation can lead to highly litigious areas of social philosophy. This is illustrated by examples such as the anti-abortion and pro-life debate. Webber explains the problematic by using the example of freedom of speech.

Although there may be broad popular agreement within society over the bald statement of rights--agreement,

¹¹⁰Jeremy Webber, "Tales of the unexpected: Intended and unintended consequences of the Canadian Charter of Rights and Freedoms", Ibid., 212.

for example, that freedom of expression is a good thing-- there is often healthy disagreement over the philosophical framework in which those rights should be interpreted. Is freedom of expression, for example, founded on the libertarian impulse that anyone should be permitted to say anything that is not harmful (and if so, what counts as harm)? Or is it founded on an appreciation of specific benefits of expression, benefits that may limit the kinds of expression protected?¹¹¹

This particular example of freedom of speech elaborated upon by Webber is illustrated in Canada by the attention given to Jim Keegstra, former high school teacher in Alberta who denigrated Jews through his teaching of history. He claimed that the Holocaust never took place but was a ruse used by Jews to gain sympathy. It has taken 15 years and, ultimately, the Supreme Court of Canada, decided that Keegstra is guilty under the "hate-propaganda law which prohibits the incitement of hatred against an identifiable group."¹¹² The difficulty in this case was determining whether or not the hate propaganda law threatened Keegstra's right to freedom of expression.

One could argue that the judicial process has become perilously dependent upon a judge's subjective and creative interpretation of the Charter. The problem is compounded by the model to which a particular judge adheres: "judicial

¹¹¹Ibid., 229.

¹¹²Leonard Stern, "Keegstra a hate-monger, top court rules," The Gazette, 29 February, 1996, front page.

activism" or "judicial restraint."¹¹³ These two models have been defined in the following way:

Judicial activism refers to the disposition to interpret rights broadly and to enforce them vigorously against the other branches of government, usually by striking down statutes or excluding evidence in criminal cases. Judicial self-restraint, by contrast, connotes a judicial predisposition to find room within the constitution for the policies of democratically accountable decision makers.¹¹⁴

If a judge follows the precepts of judicial activism and takes advantage of her/his sanctioned position in making broad interpretations of the Charter, the outcome can be devastating to future claims, and to Canadian society in general. Webber claims, as do Knopff and Morton, that this may be an unfortunate result of the legalization of politics, particularly since "social philosophy is perennially a matter of debate, disagreement and learning...courts will also be fashioning an official, enforceable, theory of society..."¹¹⁵

Michael Mandel contemptuously elaborates on the scope of power the Charter has provided for judges, and, the legal profession in general.

¹¹³For an in-depth and critical discussion of activism and restraint on the part of judges, as well as constitutional interpretation, both of which have suffered great criticism, see Knopff and Morton, Charter Politics (Scarborough: Nelson Canada, 1992) Chapter five, "Activism vs. Restraint", p. 98-108 and "The 'Living Tree': Interpretation vs. Noninterpretation", p. 108-114.

¹¹⁴Peter Russell, Rainer Knopff, and Ted Morton, eds., Federalism and the Charter: Leading Constitutional Decisions--A New Edition (Ottawa: Carleton University Press, 1989), p. 19.

¹¹⁵Webber, "Tales of the unexpected," *Ibid.*, 229.

If any group has shown itself unworthy of standing above the government as representatives of the people, this is it. Yet the Charter has puffed up lawyers and courts to the point where their values are becoming the most important ones. In a word, the Charter has **legalized** our politics...Not only does the legal profession not have a more democratic technique for resolving political issues—far from it—the legal technique actually **obscures** these issues by dealing with them in abstractions that are meant to disguise the political nature of the choices being made.¹¹⁶

The following is an examination of a specific Canadian case in which judicial interpretation was called into question. It illustrates the dangers inherent in the current judicial system and the weakness of the Charter.

In January 1994, a case of child molestation received a great deal of media attention in Quebec. The case concerned allegations that a man repeatedly raped his 9-year-old stepdaughter over a period of three years. The accused was found guilty, and rather than receiving the suggested sentence of four years in prison, Judge Raymonde Verreault sentenced him to 23 months. The justification for this sentence is an astonishing example of "creative interpretation" on the part of Judge Verreault.

There were three particular issues that led her to this questionable sentence. First, she claimed that the stepfather had "spared" the child by "preserving her virginity."¹¹⁷ He did this by raping her anally, instead of

¹¹⁶Mandel, Legalization of Politics, Ibid., 4.

¹¹⁷Geoff Baker, "Judging the Judge: How the system was stacked in favor of Raymonde Verreault", The Gazette, 7 July, 1994, p. B3.

vaginally, for three years. Apparently Judge Verreault felt that this was relevant because the rapist was a Muslim. She took it upon herself to interpret the precepts of Islam and concluded that it is paramount for Muslims to preserve only vaginal virginity, and therefore, the circumstances "could have been worse." Evidently, Verreault did not wonder if the 9-year-old child thought it could possibly be worse.

Her second justification for a 23-month sentence was her suggestion that the 9-year-old girl was partially responsible for the three years of rape. This was based on testimony during the trial that the young girl felt some animosity towards her mother. Judge Verreault inferred from the testimony that the animosity was so severe, that the girl thought it worthwhile to endure three years of anal rape, in order to punish her mother.

Finally, Verreault claimed that the girl would suffer no permanent damage as a result of the abuse. These three justifications are compounded by the fact that even when the stepfather was found guilty, he showed no remorse for his crimes. One would expect more than a 23-month sentence for this criminal. In a secular society, the fact that the judge based the conviction on the religion of the defendant and the victim, demonstrates the "special interests" and begs the question, what would the judgment have been if the parties had been, say, Catholic?

The Judge's decision was eventually overturned by the

Quebec Court of Appeal, which deemed that her sentence was "exaggeratedly lenient."¹¹⁸ But what became of Judge Verreault? She received a promotion and now serves as Chief municipal court judge for Montreal. Herein lies the dilemma: how does our justice system determine whether or not a judge is fit to serve on the bench? In Quebec, this duty falls to the Quebec Judicial Council. In the case of Judge Verreault, they failed to make the right decision by claiming that she "acted in good faith and within the law."¹¹⁹ It is important to note that the Judicial Council consists of 10 judges, two lawyers and two civilian representatives. In other words, the "impartial" body that presides over our judicial system is a group composed almost exclusively of judges. One might argue that this could give rise to bias and a certain amount of "protect thine own" philosophy within the Judicial Council. Verreault later revealed that she felt she had received a vote of confidence from the Council. The consequence of this debacle is that many Canadians are left with "a decision that will further entrench the notion that there are double standards - one set of standards for important people and one for everyone else. Clearly, the decision leaves the impression that judges fall into the first category and live by rules

¹¹⁸Geoff Baker, "Sodomy sentence hiked; Verreault criticized", The Gazette, 8 July, 1994, front page.

¹¹⁹Editorial, "Horrible decision is turned around", The Gazette, 8 July, 1994, p. B2.

exclusively their own."¹²⁰ More importantly, where was the Charter for this 9-year-old girl? One could argue that the Charter, in this specific case, was used to protect the guilty and superceded the rights of the victim.¹²¹

The Charter's vaunted attempt to clarify individual rights has muddled the waters, because it is unclear how the Charter speaks to particular issues. Moreover, we have removed these social debates from the public domain, and placed the onus on the courts to develop social definitions.

Webber observes another ill-fated contradiction within the Charter. "Paradoxically, a charter intended to protect differences of opinion can itself become the agent of a new orthodoxy, an orthodoxy whose definition is entrusted to an unrepresentative forum largely isolated from the democratic process."¹²²

Notwithstanding our "fundamental" rights and freedoms

This chapter concludes with a cursory examination of

¹²⁰Editorial, "A bad case of faulty judgment", The Gazette, 2 July, 1994, p. B4.

¹²¹For another example of gross misconduct, see "Judging the Judges; Several of Quebec's benchers have been defrocked--and for a variety of reasons." The Gazette, 3 March, 1996, p. A4 as well as "Judge could be pulled from bench for misconduct," The Gazette, 5 March, 1996, p. A2. Superior Court Justice Jean Bienvenue is going before the Canadian Judicial Council as a result of comments ("Jews felt no pain as they were gassed to death by Nazis" and "women could sink to lower depths than men") he made in December 1994.

¹²²Webber, "Tales of the unexpected," *Ibid.*, 230.

section 33 of the Charter: the Notwithstanding clause. It need only be brief because the inference is uncomplicated.

The section reads as follows:

1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.¹²³

One might assume, naively, that sections 2 or, 7 to 15, listed in the Notwithstanding clause would be obscure, inconsequential parts of the Charter, since they can be easily ignored. This is certainly not the case. Section 2 covers a set of **fundamental** freedoms, such as freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; freedom of peaceful assembly; and, freedom of association. Section 7 includes "the right to life, liberty and security of the person and the right not to be deprived thereof..." The Charter, hailed as the agent of entrenching **fundamental** rights and freedoms, undermines these rights and freedoms completely because it offers the notwithstanding clause to those who feel justified in overriding them. Surely this is the most serious of imperfections in developing a Charter of Rights and Freedoms. Essentially, the Charter, as a result of the Notwithstanding Clause, sacrifices fundamental rights and

¹²³Armstrong, Peaceful Kingdom, Ibid., 72.

freedoms on the altar of political expediency.

Joe Armstrong found the addition of the Notwithstanding clause to be stunning:

Its (section 33) full import was not appreciated at the time (of its introduction). The silence of the legal profession was deafening...The implications were incredible. Here was a clause in the country's very constitution that permitted lower levels of government to override the most fundamental rights and freedoms of individual Canadians.¹²⁴

The Notwithstanding clause is yet another one of those "imperfections" in our Charter of Rights and Freedoms. Trudeau even recognized this point: "I think the Charter is fundamentally flawed because of the override clause. I could have got rid of the compromise, of the notwithstanding clause, by getting rid of the Charter."¹²⁵ Once again, Trudeau's integrity is compromised by his apparent desire to impose the Charter on the Canadian public. Armstrong goes much further in his condemnation of Trudeau by suggesting that the Charter was "a ruse." He argues that "Trudeau wanted to consolidate power in the Supreme Court and weaken Parliament. In so doing, he altered the legal structure of the country from a constitutional monarchy to an oligarchy in one fell swoop."¹²⁶ Unfortunately, section 33 of the Charter will be with us for quite some time. Although it has been invoked rarely, the Charter era has only just begun.

¹²⁴Ibid., 72-73.

¹²⁵Ibid., 74.

¹²⁶Ibid., 75.

Conclusion

It would seem that the Charter contains a variety of paradoxes, none of which leave us with a heightened sense of Canadian identity. If we consider the array of criticisms levelled at the Charter, we can conclude that, although only a decade old, it has paved the way for disunity and potentially harmful competition among the special interest groups which have sufficient financial resources to take advantage of it. Compound this with the legalization of what was formerly the political and social domain, as well as the hazards of judicial interpretation, and the consequences could be disastrous.

Is this the kind of democracy we should be thankful for...? Canadian democracy used to consist of government through representative institutions such as Parliament, the Legislatures, municipal councils, and so on, elected by universal suffrage and answerable to those who elected them by those very electoral means. But these institutions, and others...are now being pushed from centre stage and told what they can and cannot do by judges elected by and accountable to nobody. Not only accountable to nobody, but also lacking in any formal restraints, unless one wants to pretend that vague terms such as "fundamental justice" or "distinct society" restrain courts in any serious way.¹²⁷

This brings us to the crux of the problem: there now exists a danger that Canadian principles of social justice, and the very judicial system itself can be bent to accommodate the apparent needs of particular groups. It has become critical to determine what values we share as

¹²⁷Michael Mandel, Legalization of Politics, Ibid., 2.

Canadians in order to regain confidence in our institutions. Although Cairns claims that the Canadian Charter of Rights and Freedoms is a "constitutional newcomer," I would argue that to date, it has failed to provide Canadians with sufficient direction and it has failed to promote an enhanced sense of Canadian identity. Furthermore, the Charter may well become a more significant source of division in the future because it places emphasis on particular, distinct, group rights which have the potential to supercede individual rights in Canada.

Allan Hutchinson combines his skepticism of the Charter with the hope that Canadians will rise to the current challenge:

Trapped in a precarious purgatory between the unfulfilled hope of formalist salvation and the compulsive fear of nihilistic damnation, the legal-vaudevillians are left to act out an ideological drama on an institutional stage that does neither themselves nor Canada's citizens any justice...Waiting for Coraf is a serene act that is neither courageous nor wise. Indeed, it is the last thing that needs to be done. The realization of a fully functioning democracy will take all the courage, wisdom, and serenity that can be mustered.¹²⁸

¹²⁸Allan Hutchinson, Waiting for Coraf, Ibid., 230.

Chapter 4 - Reserving judgment: The Mohawk challenge to Canadian identity

Introduction

As we have already established, issues of "membership" and "citizenship" often evoke a great deal of emotion and controversy. We are seeing more and more evidence, not so much of a new global community, although this is also occurring, but of rising nationalist movements and tribalism which are having, and have had, devastating consequences. William Pfaff, in his book, titled The Wrath of Nations, claims that nationalism is an expression of social and moral realities at the core of human existence, reflecting the "primordial" attachments of an individual to a group.¹²⁹

Nationalism has also emerged as a strong force among many Native bands across Canada, including the Mohawks and the Cree, both of whom have forcefully challenged the Quebec government in its current drive for sovereignty. The struggle of Native identity in Canada illustrates a serious weakness regarding the federal government. If we cannot effectively resolve issues relating to Native peoples, how can we, as a society, claim credibility in dealing with multiculturalism and identity groups in Canada?

This chapter will focus on Native identity in general, and Mohawk nationalism in Kahnawake, specifically. Political

¹²⁹William Pfaff, The Wrath of Nations: Civilization and the Furies of Nationalism, (New York: Simon & Schuster, 1993), p. 14.

Science Professor, Gerald Alfred, a resident of Kahnawake, articulates the distinctiveness of Native nationalism in the following way:

In the assertion of nationalist goals, the tenaciousness of communities like Kahnawake can only be understood through an appreciation of the reality that for Native peoples, unlike English, African, Asian, or French-Canadians, each community is the exclusive locus of a unique culture...Any further erosion of Mohawk culture and language would bring the Mohawk nation to the brink of extinction. Therein lies the significance of Native nationalism. In their drive to resist Canadian efforts to eliminate their nation, the Mohawks of Kahnawake have re-awakened an independent spirit, a spirit which animates all Native people who hear the voices of our ancestors calling out to save our people.¹³⁰

If Canadians are genuine in their concern for Native self-determination and/or self-government, we must decide if we can support the means necessary to achieve that goal. Native self-government may stand as one of the true tests of Canadian commitment to Native sovereignty. The history of Native relations with the federal government is dubious; there have been no lasting resolutions. In fact, federal legislation in the form of the Indian Act has led to a host of difficulties vis-à-vis Native identity. While the question of Native self-government presents a serious challenge to Canadian identity as we know it, it must be clear that the "Native question" should not be used as a further illustration of the Canadian multicultural debate,

¹³⁰Gerald Alfred, Heeding the Voices of our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism. (Toronto: Oxford University Press, 1995), p. 191.

or the rising trend of interest groups to use the Charter to elevate their status. Multiculturalism and the Charter are recent pieces of legislation which have fanned the flames of the contemporary dilemma of identity in Canada. The struggle of Native people should not be confused with the assertion of Canadian identity. The former has profoundly different roots in terms of its historic depth. It is from this vantage point that we will examine Mohawk nationalism and identity.

Part of the chapter will focus on the membership rules, specifically blood quantum, which were formally adopted by the Kahnawake Band Council in 1981. Unfortunately, but understandably, the Kahnawake blood quantum policy has received a great deal more attention from the media and Canadians in general than the more fundamental issue of self-government and Native identity. If one accepts the validity of a universal and fundamental set of human rights and values, for example, the United Nations Declaration of Human Rights, it is then difficult to support a membership policy based on blood quantum. Most rights documents have as their focus, individual rights, as well as non-discrimination on the basis of race, language, religion and others. Needless to say, some feel that it poses a huge ethical dilemma.

The acceptance of Canadians of the general notion of self-government attests to the best of liberal impulses: namely self-determination and a desire to make amends for past wrongs. The policies flowing from

those impulses, however, clash with other, deeply held principles: non-discrimination, democracy and the idea that rights accrue to individuals as a function of their humanity, not their racial heritage. Then again, self-government becomes meaningless if natives are stripped of their ability to define themselves.¹³¹

The question of Native membership and identity is particularly complicated; not only are there completely different policies among various bands, but there is also some division within bands. We will look specifically at the Mohawk community of Kahnawake since it has developed and implemented a membership policy. The complications of examining membership policies are evidenced by the fact that one cannot consider the Mohawk Nation, consisting of approximately 25,000 people,¹³² as a whole, because at this level there is little homogeneity.

It is against this backdrop that we may consider Native demands for self-government, and inherent in this, the right to determine one's own membership criteria. The First Nations communities are more complex and more compelling a case than the host of ethnic or ethnonational groups in Canada, particularly because they predate the arrival of any white or ethnic groups in this country. Nonetheless, the fundamental questions which surround the Native Canadian

¹³¹Michael Valpy, "A reservation on self-government", The Globe and Mail, March 19, 1994, p. A8.

¹³²Robert Vachon, The Mohawk nation and its Communities. Chapter 1: Some basic sociological facts. (Montreal: Intercultural Institute of Montreal, Fall 1991. Vol. XXIV, No. 4. p. 13.

plight tie directly to this broader forum of a possible redefinition of the Canadian political culture.

The politics of difference and similarity

It has been argued that The Canadian Charter of Rights and Freedoms and the Multiculturalism Act (1988) have led to a new Canadian political culture, albeit vague, and that they have created a trail of conflicting principles, leaving Canada without a communal foundation from which to build or move forward.

Patrick Macklem, a member of the Faculty of Law at the University of Toronto, asserts that this tendency of supporting conflicting principles holds true in terms of the Canadian government and its view of Native peoples. The government espouses, simultaneously, a policy of similarity and a policy of difference which inevitably leads to a legal and philosophical dilemma.

The law has constructed Native people as different when to acknowledge their similarities would threaten basic organizing categories of the Anglo-Canadian legal imagination, but it simultaneously has viewed Native people as similar to non-Native people when to acknowledge difference would threaten basic legal categories of the Anglo-Canadian legal imagination. This interplay of similarity and difference constitutes the rhetoric of justification that has legitimized the imposition of non-Native legal norms onto the Native society by the judiciary. The imposition of Anglo-Canadian legal norms onto Native reality has been

critical to the establishment and maintenance of legal relationships of dependence between Native peoples and the Canadian state.¹³³

Macklem suggests that Native demands for self-determination and self-government are seen as a direct threat to the Canadian government as a result of its "colonial mindset" when, in fact, this need not be so. Central to the threat felt by the federal government is the notion of sovereign authority which, of course, can be exercised only by Canada. Firmly planted in the public's mind is a seed of distrust; Canadians doubt that Native self-government can be realized without a significant sacrifice on the part of non-Natives. Land claim settlements, for example, necessarily imply some level of sacrifice on the part of non-Natives and is therefore a contentious issue. Likewise, Native demands for self-government are viewed as a direct assault on Canadian sovereignty and it is, therefore, much more difficult to embrace a principle of cultural accommodation.

A lack of accommodation regarding Native identity is reinforced in Canadian legal discourse, which includes the Charter of Rights and Freedoms. Macklem ultimately concludes that if Native Canadians are to gain control of their future and their identity, there must be a complete "redrawing of

¹³³Patrick Macklem, "Ethnonationalism, Aboriginal Identities, and the Law." Ethnicity and Aboriginality, ed. M.D. Levin. (Toronto: University of Toronto Press, 1993), p. 11.

the (Canadian) constitutional imagination."¹³⁴

We are repeatedly led to the same conclusion respecting Natives and ethnic groups: Canada's current constitutional, political and social arena does not lend itself to dealing with ethnic groups in an equitable manner. Michael Asch focuses on what he considers to be the deadlock in contemporary political discourse: "The relationship between the collective political rights of minority collectivities with political rights based on the principle of majority rule."¹³⁵

Asch also maintains that the North American principle of universalism, in other words, recognition solely of individual rights as opposed to the rights of ethnonational groups, promotes an assimilationist approach and cannot ultimately deal with the question of Native self-determination or self-government in an unprejudiced manner. His thesis clashes with Canada's multicultural policy and, in fact, devalues the legitimacy of one of its guiding principles. How then, can multiculturalism be realized, Asch claims, if Canadian society is based on a philosophy of universalism? This predicament is reflected in our current rights discourse and in our inability to resolve the struggle of individual over collective rights.

¹³⁴Ibid., 27.

¹³⁵Michael Asch, Ethnicity and Aboriginality, Ibid., 29.

The Canadian Government and membership: An unfortunate precedent

Since Confederation, the federal government, through the imposition of the Indian Act of 1876, has attempted to govern the lives of status Indians on some 633 Indian reserves in Canada. The rules and regulations set out in the Indian Act, were, and in a number of ways, continue to be, based on paternity, although amendments to the Act in 1985 reduced this paternalistic element. Bruce Trigger clarifies the sentiment behind the term "paternalism":

In their view (Samuel de Champlain and the Recollets), they had the right to provide leadership not only to the French in Canada but also to native North Americans. Their assumption of natural superiority was accompanied by a paternalistic concern for the welfare of those native people who acknowledged themselves to be in their charge. Yet this same paternalism led them to believe that they inevitably knew all about these people and what was best for them.¹³⁶

James Tully concurs with Trigger in terms of the paternal elements in the Indian Act, but goes further in his criticism of the Canadian government: "(The government) saw themselves as enlightened guardians who were preparing lower, childlike and pre-consensual peoples for a superior, modern life; in this way they could regard the destruction of other cultures with moral approval."¹³⁷

The United Nations' view of the Indian Act coincided

¹³⁶Bruce Trigger, Natives and Newcomers: Canada's "Heroic Age" Reconsidered. (Kingston & Montreal: McGill-Queen's University Press, 1985), p. 317.

¹³⁷James Tully, Strange Multiplicity, Ibid., 91.

with Tully and Trigger in this regard. Canada was admonished by the United Nations for maintaining the Indian Act, which was found to be discriminatory in that it denied Native people the right to choose where they could live. It is ironic that Canadians appear to have had little concern that Canada, "the true north, strong and free" and apparent bastion of democracy and socially progressive norms and values, was condemned by the United Nations, an institution that we presumably hold in high esteem.

We can look to the Canadian federal government as one of the originators of blood quantum regulations. The system dates back to the Indian Act (1876), which established a federal government interpretation of who is Indian, and who is not. There are obvious discrepancies in the federal system because there are consistent accounts of people who historically, and currently, regained their Indian status, and many who did not. This sets a precedent for ambiguity, error, and more important, selectiveness on the part of the government vis-à-vis membership policy.

The first attempt by the federal government to define an Indian was in 1850. While it was broadly defined, one of the classifications of Indian encompassed any person who was regarded as having "Indian blood." This was eventually formalized through the Indian Act. In other words, the blood quotient system is based upon the long-standing policies of Canadian law.

Surprisingly, James Frideres seems to devalue the role of the Canadian federal government regarding blood quantum.

Changes to the definition of who is an Indian have been made over time, and one of the first changes was to drop the blood quantum factor...while this is not part of a Canadian definition of who is Indian, this has been one of the major attributes used in the United States to distinguish Indians from non-Indians...after contact was sustained for some time, cultural and linguistic attributes became the master traits associated with 'Indianness' and 'Whiteness'. Thus, if a person evidenced a certain way of life, he/she was designated Indian or White...¹³⁸

Frideres appears to be down-playing the role of a blood quotient system on the part of the federal government.

However, what we have witnessed over the last few years is a surge of editorials and articles focused almost exclusively on what has been referred to as the "racist," even "fascist" practices of the Mohawks in Kahnawake. Ironically, one rarely reads that the initial champion of blood quantum was the Canadian government. Gerald Alfred articulates the federal government's role and the Mohawk adoption of blood quantum in the following way:

(The Mohawks of Kahnawake) had (also) assimilated the racist philosophy of membership entrenched in the Indian Act. Kahnawake's new position blended elements of the Indian Act's reliance upon European notions of 'race' (alien to traditional thinking) and the indigenous contemporary goal of maintaining cultural distinctiveness. Essentially, it reflected the Mohawk's appropriation of the specific means used in White society to accomplish indigenous ends.¹³⁹

¹³⁸James S. Frideres, Native Peoples in Canada - Contemporary Conflicts, 4th edition. (Scarborough, Ontario: Prentice Hall Canada Inc., 1993, p. 26.

¹³⁹Gerald Alfred, Heeding the Voices, Ibid., 164.

A further example of the Canadian government dictating the status of Indians falls under the section of "enfranchisement" in the Indian Act.

- Under certain conditions, Indians could lose their status as registered Indians. This process was called enfranchisement. This gave them certain rights enjoyed by other Canadians which registered Indians did not have. But it also took away their rights as Indians.

- A person could be enfranchised upon application if "capable of assuming duties and responsibilities of citizenship" and capable of being self-supporting (e.g. teachers, college or university graduates).

- Wives and unmarried minor children were automatically enfranchised with their husband or father.

- An entire band could be enfranchised upon application if "capable of managing its own affairs as a municipality".

- Once enfranchised, an individual (or band) was no longer considered to be an Indian and was entitled to receive one per cent of a band's capital and revenue funds as a "severance" payment.¹⁴⁰

If one considers the tactics used to assimilate or dislocate Indians from their communities, for example, enfranchisement, we can conclude that the Indian Act is not a model of justice. However, the government of Canada continues to proceed with amendments to the Indian Act, few of which have received consensus in Native communities.

While Ottawa's laws still define Indian status, Bill C-31 restored some of the decision-making power to Indian bands. They were given authority to determine their own band

¹⁴⁰Indian and Northern Affairs Canada, Information Sheet No. 2, Bill C-31, February 1992.

membership. As laid out in the 1985 amendments (Bill C-31), a band could not revoke membership from those who had it prior to 1985, but neither were they obliged to give membership to a person who was considered a Status Indian by the federal government. Bill C-31 was, and continues to be, a source of great concern. The thrust of Bill C-31 involved registration and status, band membership and funding. It was an attempt to "right" past wrongs in the Indian Act, but had the effect of further dividing Native people.¹⁴¹

An editorial in The Globe and Mail, which was written in reaction to the use of a blood quantum criteria in Kahnawake, suggests that up to 1985, the rules for deciding who was, or was not, considered to be an Indian, were based on paternity and not racial percentages.

...the criteria for Indian status are very similar to Germany's citizenship rules: not a flattering comparison. While Canadian citizenship is based on where one was born, regardless of racial background...German citizenship is based on ethnic heritage, or...law of blood. People born in Canada are Canadians; only ethnic Germans can become German citizens...Indian status works much the same way. Ottawa's policy has never aimed to be as boldly offensive as the actions and words last week at Kahnawake, but the spirit underlying the Indian Act's definition is not one that sits comfortably with modern liberalism.¹⁴²

¹⁴¹For more detail on Bill C-31, see Indian and Northern Affairs Canada, Impacts of the 1985 Amendments to the Indian Act (Bill C-31), Summary Report, Minister of Supply and Services Canada, Ottawa, 1990. For a brief but critical discussion of the Bill C-31 impacts, see Menno Boldt, Surviving as Indians: The Challenge of Self-Government, (Toronto: University of Toronto Press, 1993), pp. 212-213.

¹⁴²Valpy, "A reservation on self-government," Ibid., A8.

Former Quebec Native Affairs Minister Christos Sirros captured the irony of the Kahnawake blood quantum policy when he suggested that "the Indian Act, and not the Indians, is the problem. It's the result of the system we have given ourselves...So all that is happening here is that the rules of the game are being applied. It is we who have set the rules."¹⁴³

Quantum leap: Collective versus individual rights

Canada must decide if it is prepared to support the means necessary, as dictated by the Mohawks of Kahnawake to realize the goal of self-government. This ultimately includes blood quantum rules as a criteria for determining membership. One could argue that providing the measure is supported by a majority of the community in question, there is then no sound justification for interrupting the march towards self-government. Many would suggest that blood quantum has an odious connotation and that it is shocking to Canadian liberal sensibilities, but is this sufficient cause to continue to impose membership criteria on Native communities?

We will briefly examine the progression of events in Kahnawake which resulted in the use of a blood quantum criterion.

¹⁴³Rheal Seguin, "'Genetic quality' behind evictions", The Globe and Mail, March 17, 1994. P. A1.

The Mohawks of Kahnawake formally implemented a moratorium on marriages between Mohawk and non-Native people in May 1981.

It is agreed to by the People of the Mohawk Council of Kahnawake that as of May 22, 1981, any Mohawk of Kahnawake, male or female who marries, co-habitates, lives in common-law with a non-Indian, will be deprived of the following benefits and privileges, excluding burial rights.

- Residency
- Land allotment and land rights
- Voting privileges
- and/or
- Any other benefits and privileges under the jurisdiction of the Mohawk People of Kahnawake.¹⁴⁴

While the purpose of this moratorium is self-explanatory, it was also intended to be a "short term mechanism to put a freeze on non-Indians (specifically non-Indian women) from gaining status through marriage to a Mohawk man."¹⁴⁵ There was also a criteria list for what actually constituted a Mohawk versus a non-Indian. Acceptance as a Mohawk generally required that the person's name appear on the Band or Reinstatement list, and that the person sustained a minimum blood quantum of 50 per cent. Use of this "short-term" mechanism appeared to have the desired effect: an end to inter-marriages between Mohawk and non-Mohawk men and women.

Membership in the form of blood quantum has rarely had

¹⁴⁴Mohawk Council of Kahnawake, Kahnawake Mohawk Law, 11 December, 1984, p. 1.

¹⁴⁵Mohawk Council of Kahnawake, *Ibid.*, 2.

full community consensus, as is illustrated by the series of events in Kahnawake preceding the implementation of a strict membership code in May 1981. While quantitative evidence is lacking, Gerald Alfred, a resident of Kahnawake, acknowledged that there was a surge of weddings prior to the May 1981 implementation date. One possible conclusion to this intense marriage activity is that a number of Mohawks in Kahnawake decided to beat the deadline and quickly formalize relationships with partners who would not be accepted under the new membership code. This does not indicate a high level of commitment or support on the part of some Mohawks, nor a consensual acceptance of the new membership code.

It does, however, illustrate that a number of Mohawks were not eager to give up their band membership simply because they had married a non-Native. While some Mohawks continue to marry non-Natives, they are now compelled to leave the reserve, and potentially give up their lifestyles and traditions. This is illustrated through studies by Menno Boldt and Rick Ponting, non-Native scholars, in the following pages. Their studies must be qualified, however, in that they are likely referring to Native communities which are more isolated from urban centres than Kahnawake.

Blood quantum raises a paradox in terms of Native identity and policy: strict membership codes that were developed to safeguard Native culture, may, in fact,

contribute to the erosion of that culture. Natives who violate the code must abandon their Indian membership. Consequently, they may suffer problems adapting to the general Canadian population.

Several studies suggest that Natives who move away from their respective reserves and into the "general Canadian population" in urban areas, often do not fare well. Menno Boldt at the University of Lethbridge, discusses the effect of Indians working off reserve and portrays the damage that may occur:

...Indians who permanently leave their reserve community to take up careers in the mainstream economy in effect have to forfeit kinship relationships and the rights, benefits, and obligations of membership in their bands. Being deprived of social relationships, rights, benefits, and obligations leads to a loss of identification with their community and culture, and, ultimately, leads to assimilation.¹⁴⁶

Paradoxically, a policy meant to strengthen Native identity may lead to the reverse. For example, some people who may only be 40 per cent Mohawk (as a result of their blood), may be more comfortable in their "Indian skin" and be "better Indians" in terms of espousing a Native philosophy. Conversely, some people who exceed the 50 per cent blood requirement may not feel much attachment to Native cultures and traditions. Alfred acknowledges the difficulty in determining who falls into the category of a "real" Mohawk:

¹⁴⁶Menno Boldt, Surviving as Indians - The Challenge of Self-Government, (Toronto: University of Toronto Press, 1993), p. 243.

The cultural component of the Mohawk identity is more complex. It is dependent upon nebulous factors such as values and participation rather than an easily measured factor like blood quantum. Certain factors are identified as indicators of whether or not a person is living life as a Mohawk: pride in the Mohawk heritage; knowledge of the Mohawk culture and language; and participation and contribution within the Mohawk community.¹⁴⁷

It becomes difficult to determine which scenario is more harmful; expelling a Mohawk because of a marriage to a non-Native, or allowing a Mohawk to remain on reserve, along with his/her non-Native spouse who may bring to the reserve different values and customs.

Menno Boldt proceeds with his critical analysis of urban economic participation by Native people with a recommendation that may reduce the threat of assimilation:

...Economic segregation does not safeguard Indian culture, nor does participation in the mainstream economy necessarily lead to assimilation. The survival of Indian cultures does not hinge on whether economic development occurs on or off the reserve. It hinges on whether individual participation in the economy occurs in a framework of traditional philosophies and principles. That is, Indian participation in the economy, wherever it occurs, must proceed hand-in-hand with Indian cultural adaptation and development...the challenge to band/tribal leaders is to establish effective and durable reserve-urban structures and linkages that will enable those who leave the reserve to continue their cultural, political and social ties with their home community.¹⁴⁸

J. Rick Ponting, in his paper titled "The Impact of Self-Government on Indian Communities," suggests an alternative to a specific blood quantum policy. He

¹⁴⁷Gerald Alfred, Heeding the Voices, Ibid., 171-172.

¹⁴⁸Menno Boldt, Surviving as Indians, Ibid., 242.

identifies the protection and retention of Indian culture as a top priority for the survival of Native communities. The institutions that exist within a given Native community serve to socialize younger members of the community to the values, norms and skills of their culture. Indisputably, strong educational facilities and, in fact, a revitalization of the schools on reserve, would be very effective and valuable. Further, the realization of formal Indian self-government would go a long way toward renewing "cultural pride and individual dignity." Added to these elements, Ponting suggests that "the flow of symbolic expression in government ceremonies, honours, etc"¹⁴⁹ would greatly enhance the achievement of cultural protection. Ponting claims that his would be a successful approach: "...Barring unrealistically high expectations, immobilizing community conflict, and colossal failure at economic development, the attainment of this aspiration seems likeliest of all."¹⁵⁰

It is interesting to note that formal statements condemning blood quantum, abound. These include prominent leaders of Native, and non-Native communities, because of the potentially discriminatory implication. If the blood quantum approach is largely rejected by Native writers and opinion leaders, how then can it be justified simply because

¹⁴⁹J. Rick Ponting, ed. The Arduous Journey, (Toronto: McClelland & Stewart Limited, 1986), p. 366.

¹⁵⁰Ponting, Arduous Journey, Ibid., 366.

it is being applied by a Native community, rather than the Canadian or American governments? Surely, the very same arguments and protestations hold true, regardless of whether the implementation of blood quantum is endorsed by a federal government or a band council. Regardless of its origin, whether federal government or Indian, it will always evoke frustration, feelings of exclusion and discrimination by those who sit on the other side, or rather, the lesser side, of the blood requirement.

Alfred vigorously defends the use of a blood quantum policy in Kahnawake. Furthermore, he provides a more profound and significant elaboration of the issue that has heretofore gone unnoticed.

To comprehend the importance of the views expressed by Mohawk people on the issue of identity, one thing must be understood: in Kahnawake there is a consuming fear of assimilation. It is for the most part this pervasive fear of further erosion of the Mohawk culture and the loss of a racial difference which drives Kahnawake's policy. The community's development of stringent, racist membership regulations can be seen as an attempt to create a bulwark against the pressures which could undermine the basis of Mohawk distinctiveness.¹⁵¹

The federal government has a sorry record of imposing membership criteria upon Native peoples. This has been improved somewhat at the government's own initiative, albeit with a great deal of pressure from Native peoples. The Department of Indian and Northern Development (DIAND) issued a policy which enabled Native communities to develop their

¹⁵¹Gerald Alfred, Heeding the Voices, Ibid., 172.

own membership policy over a period of two years. If this is understood correctly, upon receipt of these membership criteria, DIAND would formally acknowledge the right of those communities to assume control of their membership codes, and would update their Indian status lists to include the new submissions from the various band councils.¹⁵²

Unfortunately, many Native communities decided to ignore this policy as a continuation of their protest against the status imposed on Indians by DIAND. As a result, many band councils refused to submit a membership document to the federal government. This has been interpreted as implicit acceptance of federal status rules.

Repeated attempts by the federal government to impose membership rules on Native communities, coupled with the Indian Act, have left Native peoples and Canadians, a legacy of perplexing regulations. It continues to divide Native peoples. To recognize that federal policy has been divisive is a first step in limiting its power in this arena.

The problems associated with discriminatory clauses contained in the old Indian Act still exist. Once people learned to accept the government's term of status and non-status Indians, the problems of discrimination began. This was, and continues to be, a social dilemma not only for Bill C-31 natives, but for the entire native community as well. Because the old legislation divided our people, everyone lost something in the process. What we all lost was equality, the

¹⁵²For an elaboration of DIAND membership rules, see Indian and Northern Affairs Canada, "Indian Band Membership: An Information Booklet Concerning New Indian Band Memberships Laws and the Preparation of Indian Band Membership Codes" (Ottawa: 1990) Minister of Supply and Services Canada.

ability to treat each other as equals and, therefore, the ability to work together cooperatively to ease our transition into modern (multicultural) society.¹⁵³

While the federal government can be condemned for their part in fostering a climate of ambiguity and controversy vis-à-vis Native identity, the perceived dangers of blood quantum are extensive. Is it possible that a blood quantum policy will eventually lead to a more militant group within any given Native community, who will demand more and more rules to determine membership? Surely this would seem to be anathema to most people, including most Native peoples. If the idea is to protect and promote a community, could this policy not work against that very goal by causing further divisiveness within a community?

Furthermore, if there is a deadlock in terms of blood quantum, who should have the deciding vote in matters of membership? Some Kahnawake community members have felt that the judgment of their blood measurements has been unfair.¹⁵⁴ The variety of dilemmas inherent in the use of blood quantum rules can be taken a step further. How does one proceed, for example, if there appears to be a deadlock on the issue, that is, a majority support it, but a vocal

¹⁵³Tom Ley, Indian and Northern Affairs Canada, Impacts of the 1985 Amendments to the Indian Act (Bill C-31): Aboriginal Inquiry, (Ottawa: Ministry of Supply and Services, 1990), p. 25.

¹⁵⁴CBC 940am, Radio Noon, May 1, 1995. Gerald Alfred was the guest and spent two hours discussing blood quantum and responding to calls from Kahnawake community members, some of whom were upset with the new membership code.

minority oppose it?

Surely blood quantum is a philosophically outmoded model, and one that can be replaced with a more progressive policy that does not necessitate assimilation by that larger society. On the other hand, it must be admitted that these conclusions flow from a liberal democratic position, which includes its own set of biases.

Fundamental rights "versus" membership

As previously mentioned, membership in the form of blood quantum has received a great deal of attention in Quebec. An examination of membership and identity from a Canadian liberal democratic perspective, which focuses on rights discourse, may illuminate some of the reasons why blood quantum assaults liberal democratic sensibilities.

Whereas it is impossible to suggest that all Aboriginal peoples recognize the United Nations Charter, it is, nonetheless worthwhile to contemplate the Articles which pertain directly to human rights. They are representative of a universal set of standards which can be used to examine certain cultural practices, for example, blood quantum.

A central theme in all rights documents is the claim to non-discrimination, equality under the law, and equal protection of the law to members of all groups who may encounter negative discrimination in a society. This particular claim is generally seen as the most fundamental

of human rights. "It is the one matter, apart from self-determination, on which references to human rights in the United Nations Charter are specific—Articles 1(3), 13(b), and 55(c) all speak against 'distinction as to race, sex, language or religion' in regard to human rights and fundamental freedoms."¹⁵⁵

If we were to apply this claim of "non-discrimination" to the membership laws inherent in Kahnawake, even given full consensus on the adoption of a blood quantum, they would still contradict the United Nations Articles. Additionally, Mohawks who are in a position to be dislocated from their communities, and pushed into urban areas as a result of marriage to a non-Native, will fall under the U.N. category of people who are being discriminated against.

Another section of the U.N. Charter, titled "Affirmative Action," deals with the possible need for "positive discrimination" in favour of a people, in order to bring them into a position of approximate equality with other peoples in a society. This may well include a group which has suffered repeated attempts of "genocide" or assimilation, and are culturally or socially threatened by the larger society. The Article provides that:

(1) So long as the social, economic, and cultural conditions of the population concerned prevent them from enjoying the benefits of the general laws of the country to which they belong, "special measures" shall

¹⁵⁵James Crawford, ed. The Rights of Peoples (New York: Oxford University Press, 1988), p. 123.

be adopted for the protection of institutions, property and labour of these populations.

(2) Care shall be taken to ensure that such special measures of protection-

a) are not used as a means of creating or prolonging a state of segregation; and will be continued only so long as there is a need for special protection...

(3) Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures of protection.¹⁵⁶

We may ascertain that blood quantum is probably not acceptable as a "special measure" for the protection of a society since it promotes a form of segregation, implies some level of discrimination and generally counters the fundamental nature of the United Nations Charter. Let us suppose, however, that it does fall into this category. How would section 2(a) be determined in this case and for how long would there be a blood quantum criterion? Is it discontinued when the Mohawks of Kahnawake formally achieve self-government? Will self-government ensure that Mohawk women and men will not marry non-Native men and women, or shall we wait for a sufficient explosion in the Mohawk population over the next three, four or five generations until there is no longer a threat to the culture and traditional values? Conceivably, this policy could remain in place for an unlimited time, which has the effect of eliminating it from the possible category of "special measures."

¹⁵⁶Ibid., 124.

James Crawford, editor of The Rights of Peoples, examines the United Nations Articles in terms of their impact on land claim negotiations by indigenous peoples. However, particular attention is paid to Canada and Australia where, the authors submits, in terms of social and economic disadvantages, the situation for the indigenous population is more desperate.

Some of the recommendations for resolving these dilemmas are acknowledgement of land claims, recognition or restoration of land ownership where possible, or compensation where it is not, and, finally, control over the use of lands as well as access to it. These are critical issues that will have a great impact on the social and economic strength of Canada's Aboriginal peoples.

Crawford suggests that these efforts, "combined with other forms of self-government as the people 'self-determine', may provide a basis for physical survival and a revival of cultural pride that will, in time, diminish the need for affirmative action and reduce the bases for negative discrimination."¹⁵⁷

The 1993 Annual Report by the Canadian Human Rights Commission makes some interesting observations on the issue of membership and status of Aboriginal peoples. It clearly recognizes that the Indian Act and DIAND were attempts to rationalize the relationship between the "colonizers" and

¹⁵⁷Ibid., 125.

the "colonized." "As such, it can be criticized on many counts: first, that even in principle it was paternalistic; second, that as often as not it failed on its own terms; and, finally and, perhaps, most important, that it could not hope to last."¹⁵⁸

Implicit in the Commission's statement is that the old Indian Act regime, with its manuals which determine Indian membership, is inappropriate. Nonetheless, we are left to consider the consequences of these measures.

When at the heart of the old relationship one finds an Indian Act regime that in many ways segregates aboriginal peoples and undercuts their traditional ways by creating social dependency, one can almost predict the difficulties that both communities are faced with today. On the one hand, the economic desolation of many reserves has encouraged an outflowing of native people looking for a way out while, on the other, **belated revisions** (my emphasis) to the Indian Act have enabled other aboriginal people to register themselves for such benefits as may be due to them as Status Indians.¹⁵⁹

What the Commission fails to mention is that the "belated revisions," in the form of Bill C-31, continue to fall short of providing any lasting solution. Many Indians with new, or, regained status are still, predominantly, in an undesirable position. Many are not accepted by their former bands and continue to be unwelcome in "their" respective communities. Furthermore, we have the added

¹⁵⁸ Canadian Human Rights Commission, Annual Report 1993, (Ottawa: Minister of Supply and Services Canada, 1994), p. 24.

¹⁵⁹ Annual Report 1993, Ibid, p. 24. Canadian Commission on Human Rights. (Ottawa: Minister of Supply and Services Canada, 1994), p. 24.

problem of individuals who see the pursuit of official status only as an economic advantage and, in fact, have very little interest in serving any Native community.

While the Commission's conclusion demonstrates no insight, and provides no clear direction, it is accurate:

Neither the old classifications of native peoples associated with the Indian Act, nor the crumbling administrative structures that have derived from it, nor even the variety of cultural and political conditions that exist among the people themselves suggests that real solutions can simply be patched together.¹⁶⁰

Conclusion

Philosophically, strict membership policy sits more easily if it has as its goal, the protection and promotion of a threatened culture and less so, if it is "simply" to safeguard scarce financial resources.

The difficulty of developing a sound argument against blood quantum is compounded when one considers that to put forward an argument based on either the Canadian Charter, or the U.S. Bill of Rights, may be inappropriate, since they are generally not recognized by Indian communities. One is left with those fundamental rights enunciated in the United Nations Declaration of Human Rights, although even this document is not recognized by all First Nation communities. The United Nations Declaration at least adds credibility to the argument in that the Cree in the past, among other

¹⁶⁰Ibid., 25.

Native groups, have sought the support of the organization in resolving disputes.

Furthermore, are we in a position to determine and judge whether membership policy, in the form of blood quantum, limits, to an unacceptable amount, individual rights on reserves? Community members of Kahnawake themselves recognize that blood quantum is not "an ideal means of determining eligibility."¹⁶¹

Having stated that, some of the principles that have guided certain Mohawk communities, for example, deep regard for the Great Law, a unique political and spiritual culture which is based on listening to the will of all of the people, and a totemic clan relationship based on the maternal bloodline,¹⁶² do not appear not to have been replaced, but, perhaps, superceded by some Euro-American values adopted through acculturation. The thrust of Mohawk membership formerly focused around themes of culture. Are these cultural guidelines now to be replaced solely by racial standards in the form of a blood quanta? Alfred brings into focus the cultural dilemma inherent in Kahnawake, and ironically, he articulates a difficulty which now permeates Canadian society as well, albeit for different historical and contemporary reasons.

¹⁶¹Gerald Alfred, Heeding the Voices, Ibid., 170.

¹⁶²Proceedings from the Conference "White Justice/Native Justice". Intercultural Institute of Montreal, May 24th and 25th, 1991, p. 90.

To rely strictly on cultural criteria would imply the existence of a unified cultural community, where membership would be determined by the consciousness and manifestation of cultural knowledge within an individual. But in Kahnawake, as in many Native communities, the erosion of that unified cultural complex has destroyed the consensus which once existed on what may be considered authentic or valid elements of cultural knowledge.¹⁶³

Native communities must consider how far they are willing to push collective rights over individual rights, just as Canadians must consider how far they are willing to embrace collective over individual rights.

The point should also be made that, if we are committed, as Canadians, to Native self-government, then surely we have little right to question Mohawk collective rights, particularly since our own Constitution has sections which specifically protect collective rights. Do these sections extend as far as blood quantum, or are there limits to our constitutional recognition of collective rights? Blood quantum has only recently received a great deal of attention from the Canadian public and, therefore, a cohesive argument in favour, or, against it, has not been properly developed. Nonetheless, it has proven to be a politically volatile issue.

The boundaries of constitutional recognition of collective rights are currently being challenged by a variety of groups. A re-drawing of what was formerly perceived to be constitutional "limits" is underway and,

¹⁶³Gerald Alfred, Heeding the Voices, Ibid., 174.

therefore, constrains effective evaluation.

The Globe and Mail published an editorial which illustrates the Canadian "mindset" in terms of blood quantum.

But how should a community be defined? A definition based on racial or ethnic identity will eventually lead to conflict, discrimination and "ethnic cleansing" of a kind. A definition based on commonly held customs, behaviour and beliefs is more familiar and comfortable to most Canadians...¹⁶⁴

There are two points to be made in reference to this editorial. First, it could be argued that a natural corollary to this statement is that Canada is headed for conflict, discrimination and ethnic cleansing of a kind, since we are unable to develop a set of Canadian values based on commonly held customs, beliefs or behaviour. This has been amply demonstrated by the debates surrounding multiculturalism and the Charter of Rights and Freedoms. Moreover, what is "more familiar and comfortable to most Canadians" cannot continue to be a justification for our history of foisting membership rules and regulations on Native peoples in Canada.

On the other hand, Natives peoples must decide if they are genuinely willing to abandon the Indian Act, which includes federal funding on a regular basis. Many Native groups are essentially asking to be erased from the Canadian "identity landscape," while at the same time fear complete

¹⁶⁴editorial, "Aboriginal blood", The Globe and Mail, 10 July, 1995, p. D6.

isolation from the Canadian state.

Finally, can we acknowledge that much of the resistance encountered by Native peoples in their struggle for self-government comes from a deep-seated fear of losing some measure of what we may consider to be Canadian supremacy? Canadians must recognize that our practice of "sitting on the fence," a quintessentially Canadian feature, will no longer suffice. Clarifying our position on Native identity and self-determination may pave the way to a deeper discussion of what is uniquely Canadian. Native self-government continues to stand as one of the true tests of Canada's commitment to social justice.

Chapter 5 - Conclusion

Canada is no longer the peaceful kingdom. In less than half a century, without a military conquest, a civil war, or a natural catastrophe, the northern half of the North American continent has devoured itself in a conflict over values...After thirty years of interminable wrangling, Canada is a nation in name only...Many people will rationalize the tragedy as inevitable; will say that there was nothing they could have done, anyway. This group is to be simultaneously envied their unearned peace of mind and held in contempt for their arrogance.¹⁶⁵

The dilemmas presented in this work do not lend themselves to easy solution. How does one respond to the difficulty, not of emerging new coherences, but, of "...The world breaking into its bits and pieces, bursting like big and little stars from exploding galaxies each one straining to hold its own small separate pieces from spinning off in their turn?"¹⁶⁶ We are leaning, more and more, towards exclusionary tendencies in our approach to social and political issues. This has resulted in a focus on unique group identities at the expense of a collective Canadian community. There is no longer any consensus about what it means to be Canadian. Canadian public policy, including Multiculturalism and the Charter of Rights and Freedoms has reinforced this lack of consensus; has promoted divisiveness; and has contributed to the erosion of our

¹⁶⁵Joe Armstrong, Farewell the Peaceful Kingdom, Ibid., 1.

¹⁶⁶Moynihan, Pandaemonium: Ethnicity in International Politics, (New York: Oxford University Press, 1993), p. 65.

national identity. Canada is undergoing its own version of what Charles Maier calls a moral crisis of democracy.

Perhaps the most that we can hope for, at this juncture, is to continue to identify the sources of the problems and take steps to develop forums where these issues can be specifically addressed. Canadians have witnessed the results of numerous "forums" and "commissions," designed to examine the predicament of Canadian unity. Unfortunately, these attempts have met with limited success. Continued attempts at inclusive dialogue must eventually lead us to some resolution.

Ironically, Québec sovereigntist Premier Lucien Bouchard, in a speech to Anglophone Quebecers, makes some insightful observations, a number of which can be applied to the broader Canadian impasse:

...We must all take steps to forge the bonds between us. In a sense, looking beyond our differences and without denying them, we must be mindful of our social fabric, and work to make it strong enough to sustain whatever tension the future might hold...(The Quebec government) no longer seeks homogeneity but it embraces diversity and pluralism...(citizens) can avoid unduly interfering with our fellow citizens' sense of identity; we can approach all disagreements with a clear willingness to resolve them through negotiation and deliberation; we can use strong arguments in debates, yes, but always showing respect for individuals and their beliefs...¹⁶⁷

His suggestions may lead us to the crux of the problem when discussing identity group claims in Canada: nationalism

¹⁶⁷Lucien Bouchard, excerpts from his speech, "Bouchard extends hand to anglos; nothing enduring can be built on misunderstanding," The Gazette, 12 March, 1996, p. A8.

always defines itself **against** the "other." "Other" often refers to marginalized, or, minority groups, in the context of a larger society. Paradoxically, in this case, it applies to the variety of competing ethnic or interest groups in Canada. Perhaps we should be concerned that Canadian traditions and values will soon be marginalized and forgotten.

As Charles Taylor observes, "To compare oneself with anyone else raises the problem of identity."¹⁶⁸ In Canada, it seems evident that this comparison has led to disillusionment among some identity groups. The result of this disillusionment is manifested in the growth and intensity of group demands, each of whom are vying for a stronger position than their "competitors."

For this reason, successful dialogue becomes very difficult because few people, or, groups, are willing to make concessions in order to achieve some level of consensus. While we are witnessing a resurgence of nationalism and identity group claims in Canada, it is interesting to consider a different perspective on nationalism:

Nationalism is, in the end, not about flags and trade wars; it's about a way of belonging in the world. But the world is now changing so quickly that belonging seems more and more difficult. Even where it succeeds,

¹⁶⁸Charles Taylor, Reconciling the Solitudes, Ibid., 13.

nationalism might prove little more than a straw in the wind.¹⁶⁹

The suggestion that nationalism will be short-lived runs contrary to what most authors and scholars suggest. There is strong consensus regarding the permanence of identity group claims and their continued challenge to Canadian identity. One point is clear: it has become vitally important to feel a sense of belonging in our respective communities. The question remains, however, how does one achieve this without fragmenting the larger community? The United States, France and Britain have succeeded, over centuries, in developing and maintaining cohesive societies. Britain and France, in particular, which both have very strong and vocal minorities, have succeeded in attaining a well defined national community with a distinctive set of values which most people support. Perhaps there is something to be learned from these nations, although, in fairness, Canada is a much younger nation in terms of its history.

How has Canadian public policy dealt with issues of Canadian and group identity, and the larger issue of "belonging?" Multiculturalism policy in Canada, for example, is too vague to be useful in any practical sense. Apparently, it was intended to provide ethnic groups with a basis of equality from which to pursue their goals.

¹⁶⁹Mark Abley, "Nationalism 101," The Gazette, 17 February, 1996, p. B2.

Ironically, multiculturalism has been condemned, by many, as endangering the cohesion of Canada and focusing too specifically on differences, as opposed to similarities, shared by ethnic, linguistic and religious groups.

The review of authors on this topic has proven to be unsatisfying. Their conclusions are scholarly, profound, sometimes idealistic, and philosophically impeccable, but do they truly respond to the secular concerns of many Canadians? Have they contributed in a significant way to developing more effective government policies? What becomes evident is that these scholars reflect the chasm between academe and the day-to-day reality of Canadians. Canadians must forge ahead to develop some meaningful resolutions to the numerous dilemmas surrounding the notion of Canadian identity.

Based on a review of reactions to the Charter of Rights and Freedoms, we can conclude that it currently receives more criticism than praise. It has also introduced Canadians to a new political culture, a new way of thinking about government, citizenship, and how we relate to the diverse identity groups within our community.

The Charter raises a number of paradoxes which illustrate severe and, often, perplexing contradictions. For example, the Charter, now woven into the very fabric of Canada and seen by many outside of Quebec, as a fundamental and distinctive characteristic of our nation, in fact,

champions competing group claims. It has been proven that the Charter, with some help from our judges, can be readily subverted to accommodate the apparent needs of ethnonationalist groups in Canada. A natural corollary is that our justice system and the Canadian principles of social justice can be manipulated to serve specific groups. This exploitation of the Charter does not lend itself to securing an acceptable vision of Canadian identity or, justice, for that matter.

What stands out time and again when reviewing Canadian public policy is that we lack an ability to be decisive, consistent and precise:

All western industrial nations must deal, to some degree, with ambivalence about the role of the state and the nature of political community. But few experience that ambivalence to the degree encountered in Canada, where tensions between English and French "founding races," and between a British institutional legacy and an American environment, are exacerbated by a continental range of regional (and ethnic) diversity. Canadians have learned to live with ambivalence by institutionalizing it in ambiguously and equivocally defined state structures. The inability to agree upon a federal-provincial division of powers, in particular, has meant that this balance must be continually renegotiated in different policy arenas. And these negotiations have also entailed a continual rebalancing... of the appropriate level of unity within the political community, and of the priority of individual and collective values...¹⁷⁰

The insightful observation that Canadian policy is shrouded in ambiguity presents another paradox: our tendency towards

¹⁷⁰Tuohy, Carolyn Policy and Politics in Canada: Institutionalized Ambivalence. (Philadelphia: Temple University Press, 1992), pp. 365-366.

a philosophy of accommodation and diplomacy, quintessentially Canadian features, may well contribute to the erosion of a Canadian identity. These Canadian features raise the question of whether or not we can continue to live with ambivalence, or, have we reached a watershed where "disunity" can bring the edifice crashing down at our feet? We are confronted with two possible options. First, we can continue to live with ambivalence and attempt to solve the problems of unity and identity in Canada, while continually reshuffling and "rebalancing," as Tuohy suggests, or, we can recognize that, at this point in our history, ambivalence will lead to our destruction since identity group conflicts are more profound than ever before. An obvious example is the current relationship between Quebec and Canada. Canada's inability to accommodate Quebec may lead to the end of Canada as we know it, unless we can bring to the table a proposal that will sufficiently embrace Quebec's distinctiveness.

Human nature is such that individuals and groups will constantly test the limits of social, political and legal boundaries. Consequently, the silence of Canadian policy when undergoing these "tests," is interpreted as permissiveness. In some cases, this assumption of permissiveness has been taken to such an extent that Canadian tolerance is overshadowed by the willingness of people to abuse the system, or, Canada's tolerant nature.

This is illustrated by the example of "Ahmed," who speaks as though he is still in Somalia, or, at least has the right to retain all Somali traditions, regardless of whether or not they counter Canadian law. The practice of genital mutilation, which was mentioned in a previous chapter, also reflects a disregard for Canadian law. I assume that implicit in immigration is a social contract which implies two particular components. First, it is reasonable to expect that there is an implicit understanding on the part of immigrants to set aside their tribal differences; and, more fundamentally, they accept the laws, institutions and mores of the society they choose to join. It appears that Canada may be the exception to the rule in that some immigrants ignore this tacit social contract.

These moral quandaries are compounded by another contemporary development. Today, even the most sincere and thoughtful questioning of the culture, behaviour and values of identity groups, immediately prompts the slur of racism. In other words, many people are quick to make thoughtless responses to what can be genuine concern or curiosity about distinct cultures, or even multiculturalism. The result is that people are labelled "politically incorrect." Consequently, serious and genuine dialogue becomes severely inhibited.

The government's reticence to be precise, in terms of policy content and direction, enables individuals or groups

to interpret them in a variety of ways. Furthermore, it has become evident that Canadian policy can be used to illustrate many different and, often, opposing, perspectives. Mandel discusses the wording in the Charter and makes the same observation. There are "...phrases (in the Charter that are) so ambiguous they could plausibly be sold in English Canada and in Quebec as accomplishing precisely opposite ends."¹⁷¹

Surely this was not the original intent of legislation such as the Multiculturalism Act and the Charter of Rights and Freedoms. Ambivalence may have worked in Canada's past, but it will not be sufficient for our future.

Native identity in Canada continues to be a matter of great concern not only for the various Native groups, but for Canadians as well. Demands for self-government have met with limited success to date and no significant resolutions are in sight. The Mohawks of Kahnawake have adopted a blood quantum criteria for membership, which illustrates the perceived fragility of their identity.

Native peoples are a significant and crucial part of Canadian society, and yet, we have not developed a meaningful relationship with them. We must strive to live alongside them, rather than continuing the federal government's tradition of isolating Native communities from the larger society. It is my belief that isolation from

¹⁷¹Mandel, Legalization of Politics, Ibid., 2.

Native communities in Canada will continue to diminish our national character.

While the issue of Native identity poses a serious challenge to Canadian identity, or, sovereignty, it might also serve as a profound way to "connect" Canadians. I would argue that if Canada cannot effectively resolve the essential issue of Native identity, our credibility, and hope of resolving problems surrounding multiculturalism and emergent identity groups in Canada, are severely limited.

There is a fundamental and vital thread that runs through the fabric of the Canadian community, historically, socially and politically: Native peoples and their struggle for self-determination. An effective resolution in this area may well prove to be something that will bind all Canadians.

The following quote is from an article discussing the differences between Canadian and American culture. The author makes some enchanting observations about Canadians. My hope is that these observations are still, and will continue to be, relevant. It seems an appropriate way to end my conclusion, particularly since we are constantly attempting to determine what "Canadian identity" is all about. It may be a somewhat romantic look at Canadians, but it is a positive outlook nonetheless.

If people here are more willing to bow to society, it may be because society has made their lives more secure...Respect for the institutions of government (which Canadians have) does not fully explain the gentleness and deference with which Canadians treat each other...Canadians are civil not just because

government has more worth here, but because each individual has less...

If the American Dream is the relentless pursuit of material success, the Canadian Dream is collective: preservation of unity in a bilingual nation always threatening to break apart...We look in the mirror of America with great envy, but we define ourselves by what we don't see.¹⁷²

¹⁷²Anne Swardson, "Maple-Leaf Manners," The Guardian Weekly, (Reprinted from The Washington Post), 27 August, 1995, p. 16.

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