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Articles

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Minorities, Multiculturalism and the Constitution

Abstract

If the Canadian Multiculturalism Act is not appropriate for Canada's social structure, why is it still the official policy for population management? This is the question the paper attempts to answer after contrasting the structure and content of the 1982 Constitution and Charter with that of the Multiculturalism Act to see how the aspect of social composition is reflected in them. I examine whether the ideological foundation of Trudeau's vision clashes with the modified views of the confederation proposed by the Meech Lake and Charlottetown Accords (1987, 1992). I propose that it is essential to differentiate between the phenomena of multinationality and polyethnicity in both the theory and the practice of multiculturalism.

Résumé

Si l'Acte Canadien de Multiculturalisme ne s'adapte pas à la structure sociale du Canada, comment se fait-il qu'il soit toujours la politique officielle pour la gestion de population ? C'est la question à laquelle mon étude essaye de répondre après avoir contrasté la structure et la teneur de la Constitution et de la Charte de 1982 avec celles de l'Acte de Multiculturalisme pour voir comment ces documents reflètent l'aspect de la composition sociale. J'examinerai si la fondation idéologique de la vision de Trudeau se heurte contre les vues modifiées de la confédération proposées par les Accords de Meech Lake et de Charlottetown (1987, 1992). Selon ma proposition, il est essentiel de faire la différence entre les phénomènes de multinationalité et polyethnicité dans la théorie ainsi que dans la pratique du multiculturalisme.

In 1971 Canada was the first country in the world to introduce multiculturalism as official government policy, but the Canadian Multiculturalism Act itself went into force only in 1988. Although it was passed by the Mulroney government, it legislated for Prime Minister Trudeau's vision of an egalitarian, meritocratic and unified Canadian identity in its multicultural diversity. By the time the Act was passed, multiculturalism in the descriptive sense was already a social reality in the country, which is clearly expressed in the subtitle: "[a]n Act for the preservation and enhancement of multiculturalism in Canada". The text of the Act suggests that the policy of multiculturalism as a way of management has been successful and needs to be further reinforced in line with its original intention: to forge and keep Canada together. The question I would like to answer in my paper is as follows: if the Canadian Multiculturalism Act is not

appropriate for Canada's social structure, why is it still the official policy for population management?

The actual provisions of the Canadian Multiculturalism Act are preceded by a lengthy preamble, which establishes the Act in the context of domestic constitutional and statute law and international law. In the last clause of the preamble the government of Canada recognizes the diversity of Canadians and announces its commitment to a policy of multiculturalism while working "to achieve the equality of all Canadians in the economic, social, cultural and political life of Canada". The body of the Act contains the description and implementation of the policy of multiculturalism, with definitions in sections 3.(1)(*a*) and (*b*):

> (*a*) [. . .] multiculturalism reflects the cultural and racial diversity of Canadian society and acknowledges the freedom of all members of Canadian society to preserve, enhance and share their cultural heritage;
> (*b*) [. . .] multiculturalism is a fundamental characteristic of the Canadian heritage and identity and [. . .] it provides an invaluable resource in the shaping of Canada's future.

In other words, the first part of the definition declares that multiculturalism protects Canada's present ethnocultural diversity on the basis of its descent from history, whereas the second part of the definition projects multiculturalism as an ideal for the future. The text of the Act goes on to suggest that all ethnocultural groups, including the English and French charter groups, Aboriginal peoples and immigrant groups, are equally covered by the policy. For example, section 3.(1)(*c*) declares it to be the policy of the government of Canada to "promote the full and equitable participation of individuals and communities of all origins in the continuing evolution and shaping of all aspects of Canadian society and assist them in the elimination of any barrier to that participation." This declared attempt at all-inclusiveness is ambiguous, however, because in the Constitution "multicultural heritage" and "rights of the Aboriginal peoples" are treated separately, and because sections 2.(*c*) and (*d*) exempt non-provincial (territorial, Indian band or other Aboriginal) government bodies from obligations to fulfil the provisions of the Act as a major document of Canada's multiculturalism policy. No such exemption is awarded to the Quebecois national minority, whose distinct culture does not receive any recognition, apart from occasional references to the two official languages in the preamble and in sections 3.(1)(*i*) and (*j*).

The Canadian Multiculturalism Act continues the heritage of the Canadian Charter of Rights and Freedoms and it legislates for a pan-Canadian identity, where all individuals are treated as equal members of humankind and full bearers of universal human rights. The right of individuals to access their culture is acknowledged and encouraged because cultural diversity is regarded as beneficial for the whole society. Nevertheless, no culture is treated as exceptional, distinct or privileged in any ways or on any premises, unless the Constitution had already entrenched such a provision. Provided that such a vision of Canadian identity is acceptable for the whole society,

multiculturalism should work. However, it seems from the failure of the Meech Lake constitutional negotiations that considerable sections of Canada's population – namely, groups belonging to national minorities – desire a Canada that is able to accommodate distinct societies within its universalist citizenship. The French charter group and Aboriginal peoples, generally, do not support multiculturalism as a management policy. Summing up this widely shared opinion, Augie Fleras declares:

> Indigenous peoples are not multicultural minorities [. . .] First Nations see themselves as a people, [. . .] and their aspirations and demands for recognition as the "nations within" are more closely aligned with the demands of political sovereignty and cultural nationalism than with theoretical frameworks associated with race, class, or gender. (Fleras, 219)

Moreover, other literature (Kymlicka, 2000; Webber) argues that Quebec itself is a post-ethnic society with its own policy of diversity management called "interculturalism", even if it is placed in a nationalist framework. Thus, national minorities are not against the principles of multiculturalism within a social unit, but rather they believe that it diminishes their distinct role and identity within the Canadian confederation. As it has become increasingly obvious through the course of the crisis of Trudeau's vision, it was a mistake to apply an American model of multiculturalism[1] to the Canadian multinational and polyethnic society without considerable modifications in the federal system.

A few words to explain the introduction of a constitutional accord into my argument about multiculturalism might be useful for readers who are less informed about Canadian legal developments. Meech Lake is an umbrella term for three years of staggering constitutional negotiations (between 1987-90) designed to bring Quebec back into the Constitution, which the province had not assented to in 1982. This also means that Quebec did not voluntarily accept the authority of the Canadian Charter of Rights and Freedoms. Because most importantly Quebec demanded recognition of its distinct society status in exchange for joining the Constitution, the Meech Lake Accord was also expected to become a symbolic act of reconciliation between the province and the Rest of Canada.

The central question at and after Meech Lake was how to accommodate national minorities within a liberal constitutional system. The very basic principle underlying multiculturalism in Canada is liberal egalitarianism, with a belief in the universality of human rights, the equality of all individuals without discrimination, and the equality of communities without privileges. There is a longstanding history in the country of this ideological platform, which always parallelled the biculturalism and bilingualism promoted by the charter groups. Such a commitment to universalism and equality was visible in the subtle resistance of the provinces to attempts to codify a "distinct society" status for Quebec at Meech Lake. They perceived Quebec as one of their equals, which may be distinctive,[2] but is certainly not privileged to make a point of it, especially not at the potential cost of other minorities' equality rights. The egalitarian ethos is also visible in the legal

documents that accompanied the negotiations, where any allusion to anybody's special status is always followed by awarding an implied right to all the others to follow up.

In spite of all the negotiators' struggle over the "distinct-society clause" and their eventual agreement, the Accord failed owing to the resistance of Native Canadians, who had not even participated in the negotiations. Non-participants were in a position to threaten the fate of the Accord because no mechanisms were provided in the Constitution to consult the public during the amending process. On the one hand, meetings proceeded behind closed doors with no news and updates provided for the media; on the other hand, sections of society such as women and indigenous peoples as well as representatives of the Yukon and Northwest Territories could not approach the round table. Their interests found strong support especially in the provinces of Ontario and Manitoba, which pushed for amending the distinct-society clause to protect the charter rights of Aboriginal Canadians and multicultural groups. Such an amendment was denied not because the federal or the Quebec government disagreed with the importance of protecting multicultural and indigenous interests, but because any changes to the clause would have been regarded in Quebec as damage to its "honour and dignity". This highlights the latent difficulties in the distinct-society clause: the discussion of one ethnocultural problem necessarily involved discussing its relation to the other cultural components of society. As the Constitution was supposed to serve the whole of the country, it proved to be difficult (in fact, impossible) to pass an amendment that seemed to satisfy the demands of one province only. At this point the practical and political considerations "to allow Quebec to resume its place as a full participant in Canada's constitutional development" (Canada, 1987) clashed with social and cultural realities.

Most commentators agree that the clause on the "distinct society caused the most controversy" (Mathews, 85; see also Resnick, passim).[3] As a result of post-WWII demographic changes, Canada turned into a multicultural country where a previous British-French duality – which the distinct-society clause seemed to promote again – now shares space with "others" comprising one-third of the population. "At the same time, Aboriginal peoples have become increasingly visible politically, and they, too, challenged the traditional image of Canada as being comprised of two 'founding peoples'" (Monahan, 27). It was only a question of time for these elements of society to break their constraints and demand their space and voice, for which the constitutional negotiations and especially the distinct-society clause provided a forum. How did this happen?

The constitution demands total unanimity for an amendment to pass, which, in the case of the Meech Lake Accord, could not be achieved in three years. Two weeks before the ratification deadline disagreement on a procedural question blocked the motion in the Manitoba legislature, so the required unanimity of all provinces could not be obtained, and the Meech Lake Accord died. In the legal sense, when Elijah Harper voted "no" in the Manitoba legislature, he did not vote as a representative of a national

minority with group-differentiated rights, but as an individual member delegated by the New Democratic Party. However, in the moral and political sense he acted as a representative of the First Peoples (being a Cree Indian) who used the only possible political action available to express their interest. They wanted to deal with the federal government on a government-to-government basis, like a national minority with a just claim to the right to self-government superior to that of other minorities in Canada – even superior to that of Quebec. Indigenous peoples' reasons for the hard stand against the Meech Lake Accord were summarized succinctly by Ovide Mercredi, Head of the Assembly of First Nations, when he said that: "we realized that the concept of a founding nation was being entrenched in the Constitution and that the place of our people and our history in Canada were not being respected and, in fact, we were being ignored" (Mercredi, 222). Harper's stand raised the Accord out of the Canada–Quebec, English–French bipolarity. His symbolic vote carried such weight that the new government model offered during the Charlottetown constitutional negotiations (the next round in 1991-92) treated First Peoples as partners and proposed to introduce a third (indigenous) order of government, which was unlikely to have happened without the failure of Meech Lake.

I now return to the original proposition that Canadian multiculturalism promotes equality. Will Kymlicka argues that "A liberal democracy's most basic commitment is to the freedom and equality of its individual citizens" (Kymlicka, 1995, 34). This indisputable argument forms the basis of Western democracies and is reflected in bills of rights or other measures to ensure the equality of individuals without discrimination. However, some of these societies, usually as a result of colonization, do have internal groups of people who proclaim their difference as a group and ask for special recognition as units of individuals. There are hardly any societies in the world today without internal national or ethnic minorities, and international politics is moving towards accommodating their claims instead of deconstructing cultural groups into a loose set of individuals. Peter Read observes that the demand for equal rights and citizenship is over, as "it was replaced with the demand for the status and privileges of *unequal* citizens with which we are familiar today" (Read, 172). Ethnocultural diversity may originate from the coexistence of national minorities with a national majority within the border of the same country, but also from the presence of various ethnic groups who arrived in the country through migration. The group behaviour of incorporated national minorities and ethnic groups is significantly different. On the one hand, national minorities "typically wish to maintain themselves as distinct societies alongside the majority culture, and demand various forms of autonomy or self-government to ensure survival as distinct societies" (Kymlicka, 1995, 10). This was revealed in the behaviour of Quebec and indigenous peoples during the constitutional crisis. On the other hand, ethnic groups "wish to integrate into the larger society. [. . .] While they often seek greater recognition of their ethnic identity, their aim is [. . .] to modify the institutions and laws of the mainstream society to make them more accommodating of cultural differences" (Kymlicka, 1995, 11). Such polyethnic diversity is handled in the Canadian Multiculturalism Act. It is important to emphasize that Canada is both multinational and

polyethnic, so the term multicultural in the descriptive sense is doubly true for it.

The involuntary recognition after the failure of the Meech Lake Accord that Canada's diversity can no longer be handled either by principles of liberal individual equality or the concept of two founding nations resulted in a "Canada clause" to be incorporated in the Charlottetown Accord. Its triple aims were: to introduce a new value-oriented (not ethno-cultural) notion of citizenship, to reform federalism with the aim of keeping it together at all costs, and to recognise inherent Aboriginal self-government. The clause incorporated all cultures existing in Canada and recognized people's individuality as well as collectivity, and – because it was an interpretive clause – it interpreted the Constitution and the Charter accordingly. Instead of entrenching a separately standing distinct-society clause, certain provisions to recognize Quebec's distinct identity were integrated within the Canada clause so as to express symbolically Canada's unity in diversity. The most creatively imaginative deed of the Charlottetown Accord, nevertheless, was to reform the structure of federalism by introducing a third order of government based on First Peoples' inherent right to self-government. The Accord placed inherence also within the structural framework of Canada (that is, as one of the three orders of government in the country), thereby putting a limit on self-government. From the point of view of the confederation, this served the same purpose as the Canada clause: to keep the country together while simultaneously to allow for as much diversity as possible. Such a radical change could only take place because Quebec's demands broke the federal-provincial balance of power anyway (especially as the principle of provincial equality dictated that anything "granted" to Quebec should also be granted to all the others). Because of the low percentage of the total population represented by indigenous persons, this structural change would probably have had little effect on the practical working of the governing machinery; nevertheless, its significance in the world of ideas was enormous.

Unfortunately, anyone who feels that the previous paragraph would read more correctly with verbs in the conditional mode is right: the Charlottetown Accord actually failed at referenda in 1992, so neither the Canada clause not the third order of inherent Aboriginal self-government were put into practice. The Accord was far from being a final document to close the constitutional discussions; it was rather a beginning – based on a consensus to keep the country together – of other rounds until something final would be achieved in some distant future. Few things remained unchanged in the federal system during the Charlottetown process, two of which however are cornerstones of the Canadian federation: provincial/regional equality and the equality of individuals. The Charter has remained a sacred document, often cited in the hottest constitutional debates. Yet the process also revealed that modern-day nationalism is also alive and thriving, and is able to shake a country's political structure, not to mention the often-discussed splits in the Canadian identity, (assuming that it exists at all). To make a seemingly distant parallel: nationalism in the traditional sense of the word, Stephen Castles and others argue, does not exist in Australia. If it does, as evidently there is a sense of

belonging, then it is of a type that needs to be based on new principles, not those of common culture, language and history (Castles et al., 1-13). This is exactly what the Canada clause tried to do by proposing a new value-oriented notion of citizenship.

In his comparative study of contemporary nationalisms, David Brown differentiates three approaches to nationalism,[4] and he presents "multicultural nationalism" as an ideal, peaceable form of nationalism promoted by a constructivist approach. Within this framework, national belonging would certainly not be based on the primordial rights of ethnic nations (such as historical descent), or situational changes in the global economy (with total difference-blindness), but on the promotion of diversity. I subscribe to this idea, with one restriction: if it is made clear that multiculturalism should incorporate both multinationality and polyethnicity, because only such a broad and inclusive understanding of multiculturalism can bring the three seemingly antagonistic approaches closer together. Thus, multicultural nationalism should be able to recognise both individual and group-differentiated rights as mutually inclusive. (On the contrary, ethnocultural nationalism promoted by the primordialist approach recognizes group-differentiated rights – such as self-government – for the majority ethnoculture only, and civic nationalism promoted by the situationalist approach recognises only polyethnicity with individual rights.) The significance of Kymlicka's liberal theory of minority rights is that it is possible to bring together polyethnic and multinational claims under the one framework of multiculturalism without transgressing liberal principles. In such a constructivist model, multiculturalism and nationalism become inclusive concepts, where nationalism can be defined simply as "thinking about one's nation/country/citizenship", and multiculturalism is no longer regarded as a nation-dissolving factor. On the contrary, it becomes a policy directed towards forming a new kind of national identity, while also describing a social/demographic phenomenon.

Multiculturalism is only one (so far the most successful) attempt to create social harmony and promote a particular vision of the Canadian future, but in its present form as government policy it seems to silence and ignore the inherent cleavages in national identities. This creates opposition especially in Aboriginal peoples and Québécois, who have difficulty fighting off levelling tendencies. Multiculturalist rhetoric has been so successful over the years that by now it has become impossible to push through any nationalist argument because liberal egalitarianism seems to have won. Nevertheless, as continuing clashes prove, particularistic forces that split a country's unity cannot be silenced, because they can solicit international legal and political instruments or resort to separatism if necessary. Unless multiculturalism learns how to accommodate justified nationalist interests, it will always remain a partial solution to the population management problem. If it realizes, however, that its underlying principles can be reconciled with those of the enclosed societal cultures, a new national identity can be forged. For this, the concepts of federalism, nation, nationalism, rights and obligations have to be revisited, and a new notion of citizenship needs to be explored.

To sum up. In the first part of the paper I established that the Canadian Multiculturalism Act is imbued with a vision of undifferentiated Canadian citizenship based on the equality of universal human rights. Then I argued that national minorities with societal cultures do not necessarily subscribe to this vision, and I cited the Meech Lake and Charlottetown constitutional accords to support my argument. I went on to offer a way of resolving the seeming contradiction between multiculturalism and nationalism, arguing that within a constructivist approach these concepts can be mutually inclusive, especially because the distinction between multinationality and polyethnicity is becoming increasingly acceptable in public discourse. Finally, my answers to the question "why is multiculturalism still with us?" are that (1) so far, multiculturalism has proved to be the most successful policy of population management; (2) it is not possible to change it without touching Canada's sacred Charter of Rights and Freedoms, which sanctifies the century-old principles of individual and provincial equality (it would be necessary to understand and make understood developments that have occurred in the philosophy of liberalism to do that); and (3) because such theoretical changes do exist, hopefully the interpretation and implementation of the policy will undergo self-transformation anyway.

Endnotes

1. The most prevalent version of multiculturalism in America can be described as the "cosmopolitan" model, explicated in David Hollinger's *Postethnic America*, which describes shifting group boundaries, multiple affiliations and hybrid identities, based on individual rights. Hollinger, however, acknowledges that minority nationalisms (which he regards as undesirable) cannot be managed within this model, unless their group boundaries are diluted. The prevalent model of American multiculturalism and Hollinger's theory in particular are discussed in Kymlicka, 2000, 216-221.

2. The difference between "distinctive" and "distinct" is significant. "Distinctive" is a term established in legal practice for testing whether Aboriginal claimants can prove Aboriginal title rights on the basis of belonging to a group. "Distinctive" is defensive, because claimant groups have to prove their identity against others and define themselves as different from others. "Distinct" might mean the same, but it is used in theoretical, cultural and social texts. "Distinct" is assertive, because it is used in texts that already acknowledge the difference and uniqueness of a group. "Distinctive", therefore, includes differentiation and dichotomization. The courts' choice of "distinctive" is understandable for two reasons. First, "distinctive" implies a coordinated relationship, meaning that in a society all cultural groups stand on the same level in the hierarchy of power. This view allows for difference, yet provides for equality, and it is coherent with multiculturalism as preferable social theory. Secondly, "distinctive" with its differentiation from others makes clearcut conceptual borderlines, which the precise language of law prefers and prescribes.

3. I do not intend to downgrade or ignore the importance of other issues on the agenda (such as limitations on the federal spending power, the Triple-E Senate, provincial appointments to the Supreme Court, greater provincial role in immigration, etc.); however, they are irrelevant to the line of argument in the present discussion.

4. The primordialist approach sees nationalism as an instinct, the situationalist approach regards it as interest, and the constructivist approach perceives it as an ideology "constructed to resolve the insecurities and anxieties engendered by modernization and globalization" (Brown, 2000, 4-5).

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