

*Federalism as Friendship:  
Renegotiating 'Sovereignty' and the Canadian Case*

By

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A Thesis  
Submitted to the Faculty of Graduate Studies  
in Partial Fulfilment of the Requirements  
for the Degree of

MASTER OF ARTS

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**Kristin Good**

**A Practicum submitted to the Faculty of Graduate Studies of The University  
of Manitoba in partial fulfillment of the requirements of the degree**

**of**

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## ***Table Of Contents***

	<b>page</b>
<b>Abstract.....</b>	<b>iii-iv</b>
<b>Acknowledgements.....</b>	<b>v</b>
<b>Introduction.....</b>	<b>1</b>
 <i>Chapter:</i>	
<b>1. Sovereignty As Institution.....</b>	<b>7</b>
<b>2. Canada As Institution: Exploring “Normality” in Canada’s Time and Space.....</b>	<b>49</b>
<b>3. The Trudeau - Lévesque Debate: From Federal Dialogue to “Sovereign” Monologues.....</b>	<b>80</b>
<b>4. “Canada” Through Friendship: Recovering and Reinvigorating the Canadian Dialogical Model.....</b>	<b>121</b>
<b>Concluding Remarks.....</b>	<b>167</b>
<b>Bibliography .....</b>	<b>176</b>

## Abstract

Questions as to whether Canadians can constitute themselves as a sovereign people and, more generally, whether a “solution” to the question of Canadian unity will be found are not new. There is a general feeling that Canadian constitutionalism is at a point of stalemate. This thesis is more positive in tone and is premised on the idea that we are asking the wrong questions. Transcending the current *impasse* requires that we question our most basic assumptions.

The thesis therefore examines the most basic principle of political organization, the notion of sovereignty. Sovereignty, it is argued, is best conceived as a historically-specific, inherently social and dynamic institution that emerged with the constitutive idea that a single legitimate authority should exist on a continuous and contiguous territory. Social norms concerning the scope and nature of legitimate sovereign authority, although structured by its constitutive idea, nevertheless change across time through state practice. Changing state practice results in new norms that account for and “rebundle” the practical imperfections of the idea of “sovereignty” across time. Understanding Canada requires situating it historically in the “sovereign” conversation.

The thesis deconstructs “Canada” similarly and uncovers its constitutive idea as well as how organic or “conservative” change occurs. Diverse federalisms, it is argued, are constitutive of “Canada”, a fundamental characteristic that was, as the debate surrounding Confederation illustrates, difficult to reconcile with the idea of “sovereignty”. “Canada”, it is submitted, is an idea with a constitutive basis that is very much at odds with the idea of sovereignty; it is essentially structured by two competing and, to a certain extent, contradictory conversations.

The Trudeau-Lévesque debate and its legacy illustrate the extent to which the idea of sovereignty continues to constrain Canadian constitutionalism. Frozen sovereign,

nationalist assumptions force exclusivity of allegiance and harden constitutional options; they are in disagreement with Canada's constitutive basis.

Transcending Canada's constitutional impasse requires that we embrace our constitutive diversity and challenge our sovereign assumptions. Doing so reveals both new institutional alternatives and a regulative process more appropriate to diverse federations. New constitutional paths appear with the realization that federalism is friendship.

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## **Introduction:**

History repeats itself and many Canadians have grown particularly tired of listening to Canada's constitutional saga. It is the view of many that Canadian constitutional debate has reached an *impasse* that must either be ignored or finally solved. This thesis, however, is more positive in tone and is premised on the belief that there exist 'hidden' roads that may allow passage through Canada's constitutional *cul-de-sac*. The directions, furthermore, lie in Canadian history. The purpose of this thesis is to provide a new theoretical compass to guide Canadian constitutionalism.

The discussion will take place within a framework of a theoretical study of the concept of sovereignty. It is the view of this thesis that addressing the theoretical ambiguities surrounding this concept will clarify the assumptions on which current constitutionalism is based and, in doing so, provide innovative answers to the question of Canadian unity. More specifically, the thesis will demonstrate how the idea of "sovereignty" obstructs Canadian constitutionalism. Transcending the current *impasse* requires that Canadians challenge their most basic assumptions.

While this thesis will speak primarily to a Canadian audience its content may also be useful to students of comparative politics and international relations. Employing literature from various fields, the thesis will pose three general and interrelated questions: First, how is the concept of sovereignty best conceptualized? Second, and most central to the discussion, what does this tell us about Canada's current constitutional *impasse*? Finally, what relevance does the Canadian example have in terms of the international system as a whole? The thesis is relevant, in a general sense, to those students of comparative and international politics interested in examining new ways of accommodating diversity as well as in terms of clarifying the nature of international order. However, the thesis' usefulness in this regard will be tempered by its epistemological position that recognizes difference, and questions the effectiveness of generalization. In other words, the thesis will speak implicitly to questions of appropriate

methodology. Simply put, it will expose the weakness of scientific method in terms of understanding Canada. The thesis will adopt a more interpretive approach that recognizes the importance of the dialectic between theory and practice, the power of ideas to affect change and, perhaps most importantly, diversity with regard to both theory and practice.

The first chapter of the thesis will be primarily theoretical. It will compare the manner in which sovereignty is conceived in the international relations, political economy and “Canadian” literature. It will discuss both what sovereignty is and what it is not. It will demonstrate why a body of international relations theory literature labelled “institutionalism” provides the most promising conception of sovereignty. Essentially, the inadequacies of realism (the traditionally dominant theory of international relations), globalization theory (dominant in the field of political economy), and the Canadian literature, all of which, to varying extents, have left the concept of sovereignty under-theorized, will be revealed.

Basically, two competing conceptions of sovereignty have dominated the literature. One, popular in theories of globalization, holds that sovereignty is being eroded by increasing constraints, or decreasing autonomy while, the other, the “traditional” realist view, argues that “sovereignty” is not eroded by constraint, but, rather, that states may take on any number of constraints as long as their law-making and law-giving authority is maintained. Both theoretical strains, however, have left their central concept of “sovereignty” under-theorized. These two competing views of “sovereignty” are, furthermore, irreconcilable and, as such, difficult to evaluate. Globalization theory, which proposes that the world is witnessing significant change in terms of the nature of political organization, is unable to account for the fact that states have always been, in varying degrees, interdependent; states, as Canadians should know particularly well, have never been fully autonomous. Traditional “realist” theory, which focuses on continuity, is inadequate in properly addressing apocalyptic change in the

states-system; realist theory, in short, lacks a theory of change and cannot, therefore, address the challenges put forward by the globalization theorists.

The chapter will argue that “sovereignty” is best conceptualized as a social institution where ideas, language, meaning and history are central to its understanding. An interpretive epistemological approach will be employed to uncover both the constitutive basis of the institution, as well as how the institution is regulated. It will be argued that the existence of a single legitimate authority on a defined territory, recognized by international society, is constitutive of “sovereignty”. The institution, it will be submitted, is then regulated through state practice. State practice results in new norms or rules that account for and “bundle” the imperfections of exclusive territoriality; it regulates both the nature and scope of what is considered legitimate territorial authority. Viewing “sovereignty” as such, it will be demonstrated, is theoretically superior, as it accounts for both continuity and change. Conceptualizing “sovereignty” in this way resolves the theoretical dispute between realists and globalization theorists by demonstrating the accuracy of the realist proposition that constraints do not necessarily undermine state sovereignty, as well as the accuracy of the globalization theorist’s proposition that the nature of political organization is changing. It will be demonstrated that at the core of the debate lies the failure of these theorists to distinguish between the concepts of “autonomy” and “sovereignty”.

The chapter will also briefly introduce the reader to the practical implications of the theoretical debate in relation to Canadian unity. It will acquaint the reader with the conceptual confusion that misconceiving sovereignty engenders at the domestic level as well as introduce a connection between regulative constitutionalism at the international and domestic levels.

The thesis will then turn to an in-depth examination of the Canadian case. Chapter two will, in a sense, de-construct Canada in a manner similar to the way in which “sovereignty” is examined in the first chapter. “Canada” will also be explored as a

socially-constructed, historical “institution” with both constitutive and regulative rules. Looking at “Canada” in such a manner is particularly appropriate. “Canada” is often described as conservative. Nevertheless, such a label elucidates neither what it is that “Canada” conserves nor does it edify change. A great deal of the literature on “Canada”, in short, suffers, from the same problem of ahistoricity as realist theory does in relation to “sovereignty”. Looking at “Canada” as an institution within its own time and space corrects the problem of ahistoricity as it accounts for both continuity and change. The chapter will uncover Canada’s constitutive basis as well as demonstrate how “organic” change occurs through regulative practice. Basically, the chapter will put forward a, seemingly paradoxical, theory of “conservative change”.

The chapter will also situate the discussion in the larger theoretical debate about the nature of “sovereignty”. The idea of “sovereignty”, it will be demonstrated, imposed significant constraints on the choice of state form at the time of Confederation. Canada’s diverse nature, in short, was difficult to reconcile with the idea of a single legitimate authority on a defined territory. More specifically, although it was apparent that a federal system would be needed, actors had difficulty reconciling the notion of competing sources of authority with “sovereignty”. Nevertheless, as will be seen, the debate that ensued at the time of Confederation resulted in a “renegotiation” of the boundaries of sovereignty. Canada’s particular time and space, it will be argued, by allowing the same conceptual distinction as will be made in chapter one, resulted in a unique theory of federalism. Reconciliation of the concepts of federalism and “sovereignty” was made possible, to a certain extent, by the ideas surrounding Canada’s relationship with Britain. A conceptual distinction between the concepts of “autonomy” and “sovereignty” grew out of Canada’s particular time, space and, constitutive diversity.

The third chapter will turn to a comparative examination of the Trudeau-Lévesque constitutional visions in order to illustrate the extent to which the idea of “sovereignty” conditions more contemporary constitutional debates. It will be argued

that the “clear” solutions offered by Trudeau and Lévesque are symptomatic of the tendency of states to wish to become more “perfectly” sovereign. Both of these actors, it will be demonstrated, operate under “frozen” sovereign assumptions that force exclusivity of allegiance and the creation of a single “nation” or “people”. Trudeau and Lévesque, it will be shown, although they acknowledge the *cul-de-sac* that their two monolithic visions impose, see no way out of it. Quebecers cannot, in their view, “have it both ways.” They both agree that two or more nations cannot be “equal” within a single sovereign state. Their sovereign assumptions dictate that a choice must be made between “Canada” and “Quebec” and, in so doing, it will be argued, their visions are in disagreement with the constitutive basis of Canada. Their legacy, furthermore, is still with us.

The fourth chapter will discuss the way in which questioning “sovereign” assumptions may lead Canada out of the current constitutional deadlock. Doing so, it will be argued, requires returning to and reinvigorating the federal distinction between the concepts of “autonomy” and “sovereignty” recognized at the time of Confederation, as well as adopting a process appropriate to Canada’s constitutive diversity. Questioning ideas about exclusive territoriality, it will be demonstrated, uncovers new institutional options. It reveals novel institutional solutions to both ethnic diversity and the accommodation of “post-modern” identities.

Moving beyond the *impasse* entails conducting constitutional negotiation in a spirit of compromise. It involves rejecting the Trudeau-Lévesque monologues and adopting a dialogical “partnership” approach that is multilaterally negotiated, consensual and recognizes multiple identities in the way in which they wish to be recognized. This process, it will be maintained, is neither unfamiliar historically, nor unique. Negotiation, consent, and recognition, in short, are the principles underlying international relations. These principles must animate constitutional negotiation in Canada. Indeed, in a

domestic setting where the “other” is better known, application of these three principles would be enriched.

The chapter will conclude by discussing the implications of the dialogical-partnership approach and the institution of “sovereignty” more generally. The Canadian *cul-de-sac* is not unique to Canada. In fact, the nature of Canada’s *impasse*, underlies civil war and ethnic conflict internationally. “Sovereign” assumptions, it will be asserted, must be relaxed at both the international and domestic levels. Basically, if order is to be maintained, co-operation must occur at both the particular, domestic level, as well as at the international level. New rules concerning the nature of legitimate authority, as well as new institutions, may need to be developed at both levels. Multiplicity, briefly put, must become the rule of both the international and domestic “games”.

## Chapter One:

### Sovereignty As Institution

The phrase **sovereignty-association** has two elements meanings “independent” and “connected,” and thus is a thumbnail description of the human condition itself. As we all know, it is not easy for us as individuals to juggle those elements, juggle our individual nature and our social nature without doing unacceptable damage to either. Customs, traditions and philosophies of innumerable sorts help us in this juggling act. Even so, we have to practice and work at it as long as we live, forever making subtle readjustments and corrections to try to keep some balance between our independence and our connectedness. [emphasis added]

Jane Jacobs, *The Question of Separatism*.

The concept of sovereignty has received a great deal of attention in recent years in international relations theory. Until recently, the concept of sovereignty was a fairly “safe” one. Realist and neorealist theorists assumed the sovereignty of states and proceeded from there in their quest of attaining disciplinary status, of establishing a scientific body of theory separate from the study of domestic politics. However, the “honeymoon” is over. Talk of the decline of the nation-state and the “erosion” of its sovereignty has become the latest theoretical fashion. Basically, international relations theory is in a state of “conceptual chaos” with “sovereignty” being central to the conceptual debate.

The current attention given to “sovereignty” in the international relations literature is, however, not new to the Canadian literature. As a largely “American discipline” it is understandable that the concept could be left under-theorized and in a sense taken as a “given” in international relations (IR) theory. Canadians and Canadian theorists, in contrast, have never felt able to assume Canada’s sovereignty. To many, it has been challenged both internally and externally since Canada’s birth. Canada has been described by some as “stillborn” and, by others, as a nation on life support. Many

simply plan for funeral arrangements, others wonder from what source the “plug” will eventually be pulled.

The word “sovereignty” is a central one in Canadian political discourse. Terms such as “sovereignty-association” and “sovereignty-partnership” circulate regularly. One of Canada’s foremost political philosophers has gone as far as to announce Canada’s death as a sovereign state.<sup>1</sup> Canadians are, in short, obsessed with “sovereignty”. While some feel threatened, others rejoice at the mention of the word. What unites all Canadians, however, is the conceptual confusion surrounding both the location and nature of the threat or freedom associated with it.

The ambiguous nature of the Canadian-made concept of “sovereignty-association” seems to capture both the essence of the Canadian condition and the more general theoretical tensions in the international relations theory literature. “Sovereignty-association” is, in short, the “thumbnail description” of the international system itself. However, many today would argue that the “association” part of the equation is increasingly squeezing the “sovereignty” part out. It is the view of many that the world is witnessing a fundamental change in the nature of political organization.

Current challenges to the “sovereignty” of states generally collect under the rubric of “globalization”, a term which itself is contestable. Globalization theorists propose that new “flows” permitted by technology are eroding the sovereignty of “nation-states” (yet another contestable concept). Nevertheless, another trend is also apparent; nation-states as well as those desiring nation-state status have increased dramatically. Similarly, while many Canadian political scientists would argue that Canadian sovereignty is being eroded by the forces of globalization and, most importantly, increasing American-Canadian interdependence, one of Canada’s provinces is

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<sup>1</sup>Grant, George. Lament For A Nation: The Defeat Of Canadian Nationalism. Ottawa, Ontario: Carleton University Press, 1965, reprinted 1997.

contemplating sovereign status. Taken together, these two trends, so often noted in the recent international relations and political economy literature, present a paradox, a paradox that is, furthermore, very Canadian.

The purpose of this chapter is to provide a theoretical framework in which to situate the Canadian national unity debate. It is the view of this thesis that a theoretical look at the question of “sovereignty” will clarify some of the issues surrounding Peter Russell’s question as to whether Canadians can constitute themselves as a sovereign people and whether the Canadian “constitutional odyssey” will ever be over.<sup>2</sup> The “mega-constitutional”<sup>3</sup> debate must first be engaged at the international level in order to better understand Canada’s “mega-constitutional” difficulties.

The chapter will begin by identifying the nature of the “mega-constitutional” challenge to the international system as it is presented in the political economy, Canadian, and interdependence literature. It will be found that “sovereignty” is viewed as synonymous with “autonomy” in much of the literature. The chapter will then proceed with a brief discussion of the implications of such a definition for federal state structures. The above conceptualization of “sovereignty as autonomy” will be found wanting both in terms of its domestic and international implications; the chapter will, therefore, turn to a discussion of the “traditional” IR theorists who offer an alternative conception. Finally, it will become apparent that the two rival conceptions provided by theories of globalization and realist theory are irreconcilable and a “new” approach will be conjectured. The chapter will conclude that “sovereignty” is best conceptualized as a social institution and introduce the implications of such a conceptualization for Canada.

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<sup>2</sup>See Russell, Peter. “Can Canadians Be a Sovereign People?,” *Canadian Journal of Political Science*, Vol. 24, No. 4, December, 1991 as well as his *Constitutional Odyssey: Can Canadians Become a Sovereign People?* Toronto, Ontario: University of Toronto Press Inc., 1993. As will become apparent throughout the thesis, this way of stating the issue is ill-conceived as the journey or “odyssey” is infinite.

<sup>3</sup>Peter Russell uses the terms “mega-constitutional” or “macro-constitutional” to describe constitutional politics that are about the very nature of the political community on which the constitution is based.

### Sovereignty, Globalization and “Deep” Association:

As early as 1965, George Grant, one of Canada’s foremost political philosophers wrote a polemical book “lamenting” the death of Canada as a sovereign state. His argument, while compelling, was dismissed by many at the time as not consistent with the “facts”.<sup>4</sup> However, in the hindsight view of many Canadians today, Grant’s work is regarded as the harbinger of Canada’s fate as a “sovereign” state. For this reason, his “lament” is useful as a sample of how “sovereignty” is conceptualized both in a great deal of the Canadian literature and in Canadian political discourse. Grant’s definition of “sovereignty”, nevertheless, is implicit and will therefore be made explicit below by a short survey of his famous work.

As with most of Grant’s “political” works, his 1965 *Lament For A Nation* was inspired by a current political event. It opens with the statement: “never has such a torrent of abuse been poured on any Canadian figure as that during the years from 1960 to 1965. Never have the wealthy and the clever been so united as they were in their joint attack on Mr. John Diefenbaker.”<sup>5</sup> At one level, *Lament For A Nation* tells the story of the defeat of the Diefenbaker/Green government and their failure to protect Canada’s independence. It discusses how their opposition to stationing American nuclear warheads on Canadian soil brought all the powers that be against them. At this level, it also tell the story of a man with a different and more noble vision for Canada than the Liberals, however imbued with contradictions.<sup>6</sup> Before settling on a title for his book, Grant had, in fact, considered naming it “In defense of Diefenbaker”.

Nevertheless, according to Grant, Diefenbaker’s defeat was only a symbol of a larger issue: the defeat of Canadian nationalism. Grant states: “lamenting for Canada is

<sup>4</sup>For example, a 1966 review of *Lament For A Nation* proposed that “Mr. Grant is short on concrete data” and that other works that appeared at the time did “little to bolster George Grant’s alarmist views about the branch plant society...” Brady, Alexander. “National and International (book reviews),” *University of Toronto Quarterly*, Vol. 35, 1966, p. 161.

<sup>5</sup>Grant, George. *Lament For A Nation*. p.23.

<sup>6</sup>The Liberals, in Grant’s view were continentalists that, as such, had contributed to Canada’s demise.

inevitably associated with the tragedy of Diefenbaker” and “his inability to govern is linked with the inability of this country to be sovereign.”<sup>7</sup> In Grant’s view, the events surrounding Diefenbaker’s defeat made it clear that the powerful in Canadian society no longer followed the wisdom of Sir John A. Macdonald, that the most important threat to Canadian sovereignty came from the south.<sup>8</sup> Grant emphasized the American threat as early as 1945 in his article “Have we a Canadian Nation?,” stating that “unless we know what we are trying to build here in Canada, unless we make a conscious effort to build it - we will inevitably be shaped by the REPUBLIC.”<sup>9</sup> Essentially, Grant viewed the possibility of national articulation as “a process through which human beings form and re-form themselves into a society to act historically” which “coheres around the intention realized in the action [emphasis added],”<sup>10</sup> as a necessary condition to sovereignty. Furthermore, in practical Canadian terms, the exercise of sovereignty, in his view, is “a governmental means of preserving and allowing to expand certain traditions that [are] different from those of the United States.”<sup>11</sup> These definitions, more clearly articulated in his “lament”, are consistent with the views expressed in Grant’s 1945 article. However, the tone of the 1945 article was much more positive. Thus, the question as to why the defeat of the Diefenbaker government signalled the death of Canada according to Grant must be posed.

Diefenbaker’s defeat, in essence, indicated to Grant the impossibility of Canada for two reasons. First, Diefenbaker’s efforts to resist “easy grace”<sup>12</sup> and stand-up to the

<sup>7</sup>Grant, George. Lament For A Nation. p. 25.

<sup>8</sup>Interestingly, it was John A. Macdonald’s “National Policy” that fostered the growth of American multinationals in Canada (multinationals that Grant claims undermine Canadian sovereignty).

<sup>9</sup>Grant, George. “Have we a Canadian Nation?,” Public Affairs. Vol. 8, 1945, p.162.

<sup>10</sup>Grant, George. Lament For A Nation. p. 31.

<sup>11</sup>Grant, George. “Conversation: Canadian Politics,” in Schmidt, Larry (Ed.). George Grant in Process: Essays and Conversations. Toronto, Ontario: House of Anansi Press Ltd., 1978, p. 21.

<sup>12</sup>Grant referred to “easy grace” in Canada as the act of making moral judgements on the sins of other nations, short of offending one’s own powerful neighbour (the U.S.) - as a sort of flimsy emblem of independence. See Peter Self’s “George Grant: Unique Canadian Philosopher,” Queen’s Quarterly. Vol. 98, No. 1, Spring 1991, p. 35.

U.S. in the nuclear warheads issue was met by a coalition of opposition from all powerful segments of Canadian society (including academics). This was the first time, furthermore, that the Canadian public did not support a politician in his attempt to “stand-up” to the U.S. Most importantly, however, Canada’s economic elite were no longer nationalists. Their interests now lay in the continental economy. As Grant observed: “[t]he wealthy rarely maintain their nationalism [which in “Lament” is in many ways viewed as synonymous with anti-Americanism] when it is in conflict with the economic drive of the day.”<sup>13</sup> In 1965, it had become clear that the state, which for Grant carried religious connotations, embodying both order and morality, had been taken over by capitalists. According to Grant, therefore, the “conscious effort” necessary to allow independent national articulation and thus, to protect Canada’s sovereignty, was now unattainable. In short, Grant was of the opinion that Diefenbaker’s opposition, “in their derision they showed, whether aware or not [emphasis added], that they really paid allegiance to the homogenized culture of the American Empire.”<sup>14</sup> The powerful had been wooed by “easy grace”.

Second, and related to the first, the ability “to know what should be built” in Canada was also becoming increasingly difficult. Grant recognized that although Diefenbaker’s intentions were good, his vision was unclear. Diefenbaker failed because he was “never specific about what Canada should be.”<sup>15</sup> Diefenbaker was an advocate of small-town private enterprise and, according to Grant, such a vision was inadequate in a country that had industrialized and urbanized since the war. More importantly, however, Diefenbaker’s talk of free enterprise was inconsistent with the traditional Canadian belief in public enterprise; “the Conservative party had, after all, created Ontario Hydro, the CNR, the Bank of Canada, and the CBC.”<sup>16</sup> Essentially, in Grant’s

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<sup>13</sup>Grant, George. Lament For A Nation. p. 32.

<sup>14</sup>Ibid., p. 26.

<sup>15</sup>Ibid., p. 32.

<sup>16</sup>Ibid., p. 33.

view, Diefenbaker's attempt to combine populism, free-enterprise ideology and nationalism "made a strange mixture."<sup>17</sup> To Grant, Diefenbaker represented the plight of the true conservative in modern Canada whose rejection of officially accepted, liberal, wisdom turned him into "a stranger in the public realm" and yet whose "belief in community and tradition [made] him long for a public realm to feel at home in."<sup>18</sup> Grant sympathized with Diefenbaker's efforts suggesting that "his confusions and inconsistencies ... [were] essential to the Canadian fate."<sup>19</sup>

Grant believed that Canada was, in essence, a conservative nation; a nation, furthermore, that "believed that the past could tell us something of the future" and that "true progress can only be made step by step -layer by layer- if it is going to stick."<sup>20</sup> Canada had been made possible by the British connection and a strong state, according to Grant, which, with careful planning, directed the economy west-east instead of north-south. In Grant's view, since the state could no longer control technology, Canadian sovereignty had or was being eroded; "true" conservatism had become impossible in practice. This impossibility, in turn, indicated the impossibility of Canada.

Grant did not, however, limit his argument to Canada. He claimed that Canada was merely one casualty among the many to come in an era dominated by the "spirit of progress". Although *Lament For A Nation* tells the story of the death of Canada, one cultural "particularism" at the hands of American liberalism, it is also a meditation on a larger trend; the move toward what Grant calls the "universal and homogeneous state". Grant basically put forward an argument similar to Fukuyama's "end of ideology" thesis, arguing that modernization is equivalent to liberalism which, in turn, renders local cultures anachronistic.<sup>21</sup> In Grant's view, the "spirit of progress" or "will to technology"

<sup>17</sup>Ibid., p. 33.

<sup>18</sup>Grant, George. paraphrased in John Muggeridge's "George Grant's Anguished Conservatism," in Schmidt, Larry (Ed.). *George Grant in Process: Essays and Conversations*. p. 40.

<sup>19</sup>Grant, George. *Lament for a Nation*. p. 26.

<sup>20</sup>Grant, George. "Have We a Canadian Nation?," *Public Affairs*. Vol. 8, 1945, p. 163.

<sup>21</sup>See Fukuyama, F. *The End of History and the Last Man*. London: Penguin Books, 1992.

was eroding borders. Canada was no longer able to control its destiny within the context of globalization. The defeat of the Diefenbaker government was empirical evidence of this fact. Thus, in 1965, Canada had ceased to be sovereign.

Grant's thesis is essentially consistent with the suggestion, popular in current theories of "globalization", that technology and new "flows" are undermining not only Canada's, but other "nation's" sovereignty as well. The term "globalization", however, like "sovereignty", is highly contested and broadly employed. While, the "logic" behind it is often conceptualized similarly, its result is highly contested.

Some definitions of globalization emphasize increased awareness of difference and others, like Grant's, similarity or increased homogeneity. For example, while Grant and Fukuyama's analyses suggest that globalization inevitably leads to homogenization, Elkins and Huntington would suggest (for different reasons) that diversity is taking on a more important role.<sup>22</sup> Still, others acknowledge both forces and their relationship. This paradoxical trend is reflected in the title of one of Benjamin Barber's recent publications: "Jihad vs. McWorld."<sup>23</sup> Rather interestingly, both forces have been cited as evidence of the decline of the nation-state and its sovereignty. Both forces, furthermore, are highly relevant, as will be discussed later, to the Canadian case. For the purpose of the discussion it is best to employ a broad definition of "globalization" as a worldview and process that includes trends such as changes in the international economic environment, the increasing interdependence among states, the rise of non-state actors and international social movements, as well as other types of "flows" that "unbundle"<sup>24</sup> territory and appear to make borders less relevant.

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<sup>22</sup>See Elkins, David J. Beyond Sovereignty: Territory and Political Economy in the Twenty-First Century. Toronto, Ontario: University of Toronto Press, 1995 and Huntington, Samuel. "The Clash of Civilizations?", Foreign Affairs, Vol. 72, No. 3, Summer 1993, pp. 22-49.

<sup>23</sup>For an abridged version of his argument see Barber, Benjamin. "Jihad versus McWorld," in Bateman, Thomas et al. (Eds.). Braving the New World: Readings in Contemporary Politics. Scarborough, Ontario: Nelson Canada, 1995, pp. 17-24.

<sup>24</sup>This term is used similarly by both Elkins and Ruggie. Elkins describes/defines "unbundling" as such in his Beyond Sovereignty: "Unbundling probably always involves or follows from another form of bundling,

Grant's *Lament For A Nation* puts forward, within the Canadian context, two challenges to the sovereignty of the "nation-state", popular in the international political economy and international relations literature: economic transnationalism and interdependence. Lauterpacht, for example, describes globalization as follows:

Gradually, as a result of improvements in communications and the development of the range and scale of international trade, states became **more interdependent**. No longer was it possible (if it ever truly was) for them to live in separate compartments without relations with one another. So, in the period after the First World War, and with accelerated speed after the Second World War, there began to evolve a pattern of legal relationships in which even that freedom which customary international law accorded states to act within their own territories without reference to the interests of other states was diminished in many respects... All this is well known in general terms. What may be less well known are some of the details which illustrate the **range and extent of the acceptance by states of such limitations on their freedom of action**. No longer is it possible to suggest that such limitations are marginal or incidental. And because these limitations affect states in their most vital interests, the notion of **sovereignty - in the comprehensive sense of a plenitude of power remaining within the uncontrolled discretion of states - has been significantly eroded.**<sup>25</sup> [emphasis added]

Arguments such as the above rest most often on the presence of technological means. In fact, some such as David Elkins view "globalization" and "technology" as virtually synonymous. "Globalization", according to him "might be another word for technology conceived broadly."<sup>26</sup> Technology, both in permitting the globalization of production via multi- or transnational corporations and, by increasing communication, has diminished the autonomy of "nation-states". According to this argument, as a state's autonomy diminishes, so too does its "sovereignty".

Grant's writing, like most of the writing on globalization, focuses on the impacts of technology on the autonomy of the state.<sup>27</sup> Grant implies that the "logic" of technology is no longer compatible with the "logic" of the modern states-system.

another way to repackage identities; but from the point of view of the long-standing bundles called nations, unbundling is an undoing of what had been taken for granted." (p. 31). See also, John Gerald Ruggie's "Territoriality and Beyond: Problematizing Modernity in International Relations," International Organization, Vol. 47, Winter 1993, pp. 139-174.

<sup>25</sup> Lauterpacht, Eli. "Sovereignty - myth or reality?", International Affairs, Vol. 73, No. 1, January 1997, p. 141.

<sup>26</sup> Elkins, David J. Beyond Sovereignty: Territory and Political Economy in the Twenty-First Century. p. 41.

<sup>27</sup> Grant uses the words "liberalism", "technology" and "capitalism" interchangeably.

Technology had once been controlled by the state; a situation, that by 1965, had, in his view, been reversed. This is what Grant meant by the above suggestion that the state had been taken over by capitalists and that their interests now lay in the continental economy. Technology had once permitted the uniting of the Canadian colonies with the railroad. It had also permitted the establishment of a national broadcasting network (CBC). Today, technology defies the “logic” of territorial boundaries, undermines the autonomy of governments and, thus, undermines Canadian sovereignty in Grant’s view.

The multinational corporation (MNC) is generally viewed as the first significant economic challenge to the sovereignty of states in the political economy and international relations literature.<sup>28</sup> Grant expressed similar concerns about MNCs in his “lament”. In 1965, the year of *Lament*’s publication, Quebec was in the midst of its “Quiet Revolution”. With regard to the preponderance of newspaper coverage about new francophone appointments to management positions in American MNCs, Grant evoked the old adage: “I fear the Greeks, especially when they come with gifts” suggesting that “corporations make concessions about management personnel for the sake of better relations with the alien community” adding that “these do not involve control [emphasis added] of the economy.”<sup>29</sup> If Quebec were to seek sovereignty, it would face the same fate. The impossibility of controlling a sovereign Quebec’s economy would also be the impossibility of a “sovereign” Quebec in Grant’s view.

In her 1997 article, “Global capitalism and the state,” Jan Scholte presents a similar argument. The state, in her view “has lost its former core attribute of sovereignty”<sup>30</sup>. “Sovereignty”, in her view, “has disappeared under globalizing capitalism in so far as contemporary states have lost the capacity for the unilateral

<sup>28</sup>Mabee, Bryan. “A Post-Sovereign Epoch?: Globalisation And The Social Construction Of Sovereign Space,” A thesis submitted to the Faculty of Graduate Studies in partial fulfilment of the requirements for the degree of Masters Of Arts, Department of Political Studies, Winnipeg, Manitoba: University of Manitoba, 1997, p. 9.

<sup>29</sup>Grant, George. *Lament For A Nation*. p. 89.

<sup>30</sup>Scholte, Jan Aart. “Global capitalism and the state,” *International Affairs*, Vol. 73, No.3, 1997, p. 442.

exercise [emphasis added] of comprehensive macroeconomic policy.”<sup>31</sup> In a similar fashion, Grant suggested in his *Lament* that “[a]fter 1940, nationalism had to go hand in hand with some measure of socialism.”<sup>32</sup> “Only nationalism could provide the political incentive for planning” wrote Grant, and “only planning could restrain the victory of continentalism.”<sup>33</sup> Nevertheless, “no such combination was possible, and therefore”, in Grant’s view “our nation was bound to disappear.”<sup>34</sup> Echoing Grant more than 30 years later, Scholte suggests a causal connection between reductions in the economic autonomy of states and their “sovereignty”.

Suffice it to say that most contemporary challenges to state sovereignty present arguments like the one put forward by the above authors. Although at the time of *Lament*’s publication Grant’s argument was viewed as somewhat of a theoretical aberration, more recently, observers and academics have described Grant’s 1965 work as prophetic. It is the view of many Canadians that Grant’s thesis is increasingly relevant with time. In fact, Grant has been frequently cited by nationalists fearing the “erosion” of Canada’s sovereignty that they claimed would result from the implementation of both the NAFTA agreement and the proposed M.A.I. (multilateral-lateral agreement on investment).<sup>35</sup> Apparently, Canada is becoming increasingly “less sovereign” and “Lament” has, in a sense, become the “bible” of the Canadian nationalist.

Interdependence theory, often associated with Keohane and Nye’s seminal work entitled *Power and Interdependence*, is viewed by some international relations theorists as yet another important challenge to state “sovereignty”. Although they do not deal explicitly with “sovereignty”, some authors have extracted a definition of “sovereignty” from their work. Mabee, for example, states that “sovereignty, as conceptualized by

<sup>31</sup>Ibid., p. 443.

<sup>32</sup>Grant, George. *Lament for a Nation*. p. 34.

<sup>33</sup>Ibid.

<sup>34</sup>Ibid. p. 34.

<sup>35</sup>See for example, Emberley, Peter C. (Ed.). *By Loving Our Own: George Grant and the Legacy of Lament for a Nation*. Ottawa, Ontario: Carleton University Press Inc., 1990.

theorists of interdependence, is equated with total autonomy or freedom of action.<sup>36</sup> Nevertheless, whether intended as an assault on “sovereignty” or not, what is certain is that Keohane and Nye’s “new” model of world politics describes a reduction in state autonomy and control. They clearly indicate that their “perspective implies that interdependent relationships will always involve costs, since interdependence restricts autonomy.”<sup>37</sup> Interdependence theory is founded on the belief that states have become increasingly “sensitive” and “vulnerable” to each other with sensitivity involving the question of “how quickly do changes in one country bring costly changes in another, and how great are the costly effects?”<sup>38</sup> and vulnerability referring to “the relative availability and costliness of the alternatives that various actors face.”<sup>39</sup> Their model is essentially an attempt to examine the impacts of globalization more systematically.

Grant’s description of globalization fits what Keohane and Nye describe as the “dependence” model with dependence broadly defined by the authors as “a state of being determined or significantly affected by external forces.”<sup>40</sup> Interdependence, the fundamental concept of their theory is somewhat different and, “most simply defined means mutual dependence.”<sup>41</sup> As such, and in light of Grant’s thesis, interdependence theory warrants consideration. In fact, in Keohane and Nye’s view, the Canada-U.S. relationship is a sort of “ideal” case of interdependence. An entire chapter of their *Power and Interdependence* is devoted to a discussion of this very case.<sup>42</sup>

It is interesting to note that the same event that precipitated Grant’s writing of *Lament*, the nuclear warheads issue, was mentioned in *Power and Interdependence* as anomalous of the Canada-U.S. relationship where military alliance and co-operation

<sup>36</sup>Mabee, Bryan. p. 20.

<sup>37</sup>Keohane, Robert O. and Joseph S. Nye. *Power and Interdependence: World Politics in Transition*. U.S.: Little, Brown and Company Inc., 1977, p.9.

<sup>38</sup>Ibid., p. 12.

<sup>39</sup>Ibid., p. 13.

<sup>40</sup>Ibid., p. 8.

<sup>41</sup>Ibid.

<sup>42</sup>See chapter 7 in Keohane and Nye.

between these highly interdependent states is taken as a “given”. Keohane and Nye state that “one of the most serious crises in post-war relations, and one that led to the fall of a divided Canadian government, was over the nuclear arming of missiles involved in joint Canadian-American defense against the Soviet military threat” adding that “military threats, or even threats of withdrawing military protection, have not characterized the bargaining process.”<sup>43</sup> Furthermore, they describe the chance of military aggression in the relationship as reminiscent of “the Red Queen telling Alice in Wonderland that she could think of six impossible things before breakfast every day.”<sup>44</sup> In Keohane and Nye’s work, the events surrounding Diefenbaker’s defeat are considered anomalous while in Grant’s view they provided some important empirical evidence of the death of Canadian sovereignty.

Without providing a detailed description of Keohane and Nye’s findings, suffice it to note that the timing of Grant’s concerns coincides with the development of increased interdependence presented in Keohane and Nye’s model. What is perhaps most interesting, in light of Grant’s thesis and its treatment of sovereignty as synonymous with autonomy or freedom of action, is that Keohane and Nye’s study indicates that Canada’s power in relation to the U.S. has increased since W.W.II. In fact, Keohane and Nye’s study found that conflict over various issues indicated that “outcomes were closer to American objectives in two-thirds of the pre-war cases and nearly half the cases in the 1950s, but in only a quarter of the cases in the 1960s” and that “Canada did better in the post-war than pre-war period, and better in the 1960s and in the 1950s.”<sup>45</sup> According to the study, Canada was an “interdependent” instead of a dependent after the War, an interdependent, moreover, with increased “autonomy” *vis à vis* the United States.

Contrary to Grant’s 1965 contention that Canadian nationalism had been

<sup>43</sup>Ibid., p. 167.

<sup>44</sup>Ibid.

<sup>45</sup>Ibid., p. 193.

defeated, Keohane and Nye's 1977 study found that Canadian nationalism was alive and well:

Societal interdependence and policy interdependence did not by themselves create a transnational sense of political community. Nationalism and the nation-state were not banished from the politics of bargaining in situations of complex interdependence. Quite the contrary: while the elephant roamed abroad, the beaver built dams.<sup>46</sup>

Keohane and Nye's study, in short, suggests that Grant's belief that Canadians "really paid allegiance to the homogenized culture of the American Empire"<sup>47</sup> was erroneous.

What was perhaps most interesting about Keohane and Nye's study is that interdependence creates a situation where all states (including the US) are constrained. Even Grant's "technological monolith" to the south is constrained by interdependence. Thus, if complete autonomy is the appropriate way of conceptualizing sovereignty then American sovereignty is, rather ironically in relation to the content of Canadian political works, equally threatened by Canada. Actually, as a weaker partner in the interdependent relationship, Canada appeared to have gained autonomy or power according to Keohane and Nye's findings. In fact, more generally, it is equally intelligible, considering the greater viability of the weaker state in an era of interdependence that "a strong case can be made for treating a map of states as more accurate than ever before."<sup>48</sup> However, as will be discussed later in the thesis, Canada's "sovereignty" may indeed be threatened by interdependence notwithstanding its increase in power or autonomy in relation to the US. Basically, the option of a "sovereign" Quebec also becomes more viable in an era of complex interdependence.

The above discussion illustrates that theories of globalization such as the dependence, interdependence, and transnationalism varieties present challenges to state

<sup>46</sup>Ibid, p. 211.

<sup>47</sup>Grant, George. Lament For A Nation. p. 26.

<sup>48</sup>Falk, Richard. "Evasions of Sovereignty," quoted in Walker, R.B.J. and Saul H. Mendlovitz (Eds.). Contending Sovereignties: Redefining Political Community. Boulder, Colorado: Lynne Rienner Publishers, 1990, p. 61.

sovereignty conceived as erosion of autonomy or loss of control. However, many “globalization” theorists who challenge the viability of the nation-state and make the empirical claim that sovereignty is being eroded, have failed to theorize adequately the objects of their attacks. They have “never presented a comprehensive theoretical reevaluation of the concept of sovereignty.”<sup>49</sup> Rather remarkably, if one accepts a definition of sovereignty as autonomy then one would have to conclude that some states (such as Canada) are, in fact, more sovereign than before.

#### State Structure and “Sovereignty as Autonomy”:

The implications of the failure to achieve a comprehensive theoretical re-evaluation of “sovereignty”, however, are not limited to the external dimensions. The implications of this conceptual confusion run much deeper. The debate is, as will be discovered increasingly throughout this thesis, indeed, very relevant to Canada’s national unity debate. As will become increasingly apparent throughout this thesis, a conceptual discussion of “sovereignty” cannot be divorced from state structure.

The conceptualization of sovereignty as autonomy is problematic in federal states. Essentially, if sovereignty is viewed as divisible then there would appear to exist many “sovereign” states in Canada, each possessing degrees of sovereignty. In her article, “Sovereignty in Transition”, Ruth Lapidot argues just that. Citing both the reasons discussed in the above section and the rise of new state forms, Lapidot concludes that sovereignty has lost much of its relevance. Sovereignty, once viewed as indivisible, is now challenged with division both internationally and domestically. In essence, states, once sovereign, now exist in an era of complex interdependence both internally and externally.<sup>50</sup>

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<sup>49</sup>Biersteker, Thomas J. and Cynthia Weber. “The social construction of state sovereignty,” in their State Sovereignty as Social Construct. Cambridge, Great Britain: Cambridge University Press, 1996, p. 7.

<sup>50</sup>See Lapidot, Ruth. “Sovereignty in Transition,” Journal of International Affairs, Winter 1992, Vol. 45, No. 2, pp. 325-345.

Reflections of the view that “sovereignty” may be equated with autonomy surface regularly in Canadian political discourse. The Québécois have made particularly clever use of such a definition. In the 1980s, for example, Bourassa proposed a formula for a united Canada based on “soveraineté partagée” or “shared sovereignty”. The model he had in mind was one similar to the European Union that, in his view, was already an example of a “shared sovereignty” arrangement. It would appear that Bourassa viewed the existence of a Canadian constitution as an insignificant detail in terms of the EU comparison, or at least in terms of his conceptualization of sovereignty.

However, the most remarkable example of a notion of divided sovereignty to appear in Canadian political discourse in contemporary times is the idea of “sovereignty-association”. Although the concept, taken literally, seems far from novel in that it perhaps most accurately describes the relations between states in an interdependent world, debate surrounding its implications has resulted in a great deal of ambiguity.

French, for example, describes the option of “sovereignty-association” for Quebec as an arrangement where Quebec would be a sovereign “borderline case”. Basically, in his view, if Quebec opted for such an arrangement it would become “a nation with absolute sovereignty over A, B, and C, within a state having absolute sovereignty over X, Y, and Z.”<sup>51</sup> French suggests that the most telling argument against such an arrangement is that “no precedent exists”. Nevertheless, one is left to wonder how such an arrangement differs from a federal one. Perhaps he would emphasize the **absoluteness** of the sovereignty over A, B, and C. Nevertheless, given the argument put forward by the globalization theorists, it is questionable as to whether Quebec’s “sovereignty” would be absolute even in those spheres. Implicit in French’s conception of

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<sup>51</sup>French, Stanley G. “Canada-Quebec: A Dialogue,” in French, Stanley G. (Ed.). Confederation: Philosophers Look At Canadian Confederation. Montreal, Quebec: The Canadian Philosophical Association, 1979, p. 44.

“sovereignty-association” is the same conceptualization discussed above, namely, that sovereignty may be equated with power and control.

The popularity of this ambiguous concept, however, has not been restricted to application to the Quebec question. Some have suggested that it may also be applied to the issue of decentralization within the Canadian federal system. Adalbert Lallier, for example, suggests that the term “shared sovereignty,” implicit in the concept of “sovereignty-association,” also expresses “the desire of our provinces to remain integrated in the larger Canadian market while also sharing with the Federal government in the sovereign powers of Canada.”<sup>52</sup> It is well-known that the Parti Quebecois did not have such a conception in mind when they presented it to the Quebec electorate in 1980. Nevertheless, as Pinard’s research indicates, the ambiguity surrounding the concept appears to make it more palatable to the Quebecois.<sup>53</sup>

In Canada, there would appear to exist many “sovereigntists”. To the list of those desiring “sovereignty” must be added many First Nations. In a submission to the Bélanger-Campeau commission a member of the Mashteuatsh band articulated that his band was seeking “sovereignty”. His submission stated:

nous recherchons cette protection dans la première loi du pays: notre notion de soveraineté. Nous sommes conscients que le terme “souverainté” peut effrayer beaucoup de monde. J’aimerais ici contribuer à démystifier un terme qui a peut-être été trop galvaude à toutes les périodes. Nous voulons une soveraineté avec des compétences spécifiques permettant notre épanouissement selon nos aspirations. Certaines compétences doivent être partagées et d’autres purement déléguées. Il n’est pas question non plus d’avoir un État dans l’État avec des affaires étrangères, une armée propre, des postes, etc., Ce n’est pas la notre conception. Il est plutôt question d’avoir des compétences propres sur un territoire nous appartenant spécifiquement et qui traduiront notre soveraineté. C’est là que nous voulons exercer notre droit à l’autonomie complète.<sup>54</sup> [emphasis added]

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<sup>52</sup>Lallier, Adalbert. *Sovereignty Association: Economic Realism or Utopia?* Oakville, Ontario: Mosaic Press, 1991, p. 46.

<sup>53</sup>See Maurice Pinard. “The Dramatic Reemergence of the Quebec Independence Movement,” *Journal of International Affairs*, Vol. 45, No. 2, Winter 1992.

<sup>54</sup>Kurtness, Remy. *Journal des débats*, No. 12, p. 902-903 in Gagnon, Alain-G. et Daniel Latouche. *Allaire, Bélanger, Campeau et les autres: Les Québécois s’interrogent sur leur avenir*. Québec: Éditions Québec Amérique, Bibliothèque nationale du Québec, 1991, p. 370.

To this member of the Mashteuiatsh band, the term “sovereignty” may be applied to a situation where government functions are divided and complete autonomy in certain spheres is guaranteed. In the above quotation, the member clarified that his band does not wish to conduct its own foreign affairs or have an army or a postal service, but rather, simply desires to become “sovereign” *within* the federal framework. Actually, in light of French’s conceptualization of “sovereignty-association”, it would appear that this band also wishes to be “sovereignty-associated”.

The above discussion exposes the degree to which the concepts of “autonomy” and “sovereignty” are used interchangeably in Canada. However, what also becomes apparent is that if “sovereignty” may be conceived in terms of control or “degrees of autonomy” then Canada’s “sovereignty” has been undermined both internally and externally through decentralization, interdependence and globalization. Furthermore, it is debatable as to whether Canada has ever been sovereign. In a federal state such as the Canadian one, autonomy has always been divided internally.

Tensions between the idea of “federalism” and “sovereignty” are not new. As will be seen in chapter two, these tensions are reflected in Canadian political discourse since the Confederation debates. Furthermore, Canada has always been externally “dependent” or “interdependent” internationally as historical examination of its connections with both the Britain and the U.S. reveal. In fact, Canada has had a branch-plant economy at least since the implementation of Macdonald’s “National Policy”.

In light of the Canadian experience, one is only left to wonder why internal state structure and outside economic influence are now being cited as a challenge to the concept of sovereignty. Most likely, the current theoretical popularity of the “globalization” thesis has contributed to the re-opening of the debate. However, in light of the definition of “sovereignty” offered by the “globalization” theorists, the erosion of Canada’s “sovereignty” is a matter of degree and not kind.

Such a conception of “sovereignty”, however, only serves to confuse the Canadian national unity debate. Most notably, if one may be “sovereign” within federation and increasingly so through decentralization then one is left to wonder why Quebec seeks to become “sovereign”. Essentially, in relation to many of the above conceptualizations it would seem that Quebec is already, in many ways, a “sovereign” entity. The question then becomes whether “sovereignty” may be viewed as divisible and whether it is, in fact, synonymous with “autonomy”. The discussion will now consider an alternate view; one that views sovereignty as indivisible. It will consider a view of sovereignty as “kind” rather than degree. In order to do so, the discussion will turn to a brief history of the modern conception of sovereignty followed by a short discussion of both its “internal” and “external” dimensions.

#### A short history of the emergence of the “sovereign” states-system:

The origin of the concept of sovereignty is closely related to the nature, origin and evolution of the state. The “sovereign” state emerged in response to changing economic and social conditions that resulted in the political consolidation of power within territorially defined units. The emergence of the modern-day states-system ended the nature of rule characteristic of Medieval Europe which consisted of “a patchwork of overlapping loyalties and allegiances, geographically interwoven jurisdictions and political enclaves.”<sup>55</sup> Territorial rulers used the term “sovereignty” to consolidate their exclusive territorial jurisdiction in contrast to the previous overlapping medieval, personal jurisdiction.<sup>56</sup> In short, the “sovereign” states-system emerged as a new way of ordering the world politically.

The history of the modern state is thought by many to have begun with the end of the Thirty Years War and the *Peace of Westphalia* in 1648. However, the birth of this

<sup>55</sup>Camilleri, Joseph A. “Rethinking Sovereignty in a Shrinking, Fragmented World,” in Walker, R. B. J. and Saul H. Mendlovitz (Eds.). Contending Sovereignties: Redefining Political Community. p. 13.

<sup>56</sup>Lapidoth, Ruth. “Sovereignty in Transition,” p. 326.

new world order is far from unambiguous. In his “Rise and Demise of the Territorial State,” Hertz highlights the changes and confusions that this treaty created regarding the concept of sovereignty. Confusions about sovereignty are not new. At the time of the treaty, there were still many high dignitaries such as “princes” or “dukes” who, out of tradition, were referred to as “sovereign”. However, the chief problem according to Hertz was how to classify those rulers who, because of their membership in the Empire, were subjects of the Emperor. He asks the question: “could one be “sovereign” and “subject” at the same time?”<sup>57</sup> In short, questions concerning both the location and nature of sovereignty are not new.

Debate as to the “internal” location of the sovereign has been the topic of debate for centuries. It is, therefore, not surprising, that Canadians have a difficult time understanding what is meant by “sovereignty”; great philosophers, like Canadians, have also been perpetually preoccupied with the concept.

The first modern articulation of the concept of “sovereignty” appeared in Jean Bodin’s Six livres de la République (1576). Bodin maintained that the sovereign was “absolute”, but subject to the laws of nature, and God, as well as to certain human laws. Hobbes attempted to rectify this confusion and postulated that the sovereignty of the people and the state were fused in a “Leviathan”. The “Leviathan”, according to Hobbes, becomes the absolute legitimate authority by the virtue of its supreme coercive power.

Locke, Rousseau and Kant, on the other hand, “loosened” the above notion of sovereignty by introducing the notion of “popular sovereignty”. The notion of “popular sovereignty” underlay the movement of the “Levellers” during the English Civil War and existed in Locke’s thought preceding the Glorious Revolution of 1688. According to Locke, the state exists to preserve inalienable individual rights, including the right to

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<sup>57</sup>Hertz, John H. “Rise And Demise Of The Territorial State,” World Politics, Vol. 9, No. 4, 1957, p. 479.

private property. These rights limit the authority of both state and society.<sup>58</sup> Essentially, according to Locke, the people were to be a “check” on the monarchy and parliament. A century later, in his *Social Contract*, Rousseau extended this principle further arguing that “sovereignty” resided in the people alone. Nevertheless, like Hobbes, Rousseau also believed that sovereignty was indivisible and that the state was a result of a social contract to which individuals must submit their will. Where Rousseau and Hobbes differed was in their view of how sovereign authority was to be legitimated. While Hobbes emphasized coercion, Rousseau focused on moral legitimacy. Finally, while Kant agreed with Rousseau’s notion of popular sovereignty, he focused on the state’s legal basis and suggested that the only relevant legal form was a constitutional one.

The above discussion indicates that the debate over sovereignty is related to the nature of authority. For example, while in Hobbes’ conception, the state possesses a monopoly of coercive authority, in Rousseau’s, the state’s authority is legitimated morally. These contrasting views of the state which correspond, in many ways, to the distinction between realists and idealists in IR theory have “deeply influenced the theory and practice of state sovereignty and, to a considerable extent, account for the tensions and ambiguities that have surrounded the concept since its earliest formulation.”<sup>59</sup>

As will become increasingly apparent throughout the thesis the tensions concerning how sovereignty is legitimated are not limited to the distinction between the “coercive” and the “moral”. As the question put forward by Canadian historian Ramsay Cook who asked “Locke, Rousseau or Acton?”<sup>60</sup> suggests, the manner in which sovereignty is legitimated in Canada is more complex. Basically, the Canadian

<sup>58</sup>Camilleri, Joseph A. p. 17.

<sup>59</sup>Ibid. p. 15.

<sup>60</sup>See Cook, Ramsay. “The Canadian Dilemma: Locke, Rousseau, or Acton?,” in his Canada and the French-Canadian Question. Toronto: Macmillan of Canada, 1966, pp. 143-167.

“experiment” raises the question as to whether “sovereign” authority must be legitimated in the same way by all members of the community.

Nevertheless, one commonality unites all the above theorists: the idea of a single legitimated legal authority. There is debate as to the location and scope of sovereign authority. However, the central issue of contention between theorists is one of how authority is legitimated. Sovereignty is not divisible, according to these theorists, but rather, its authority is legitimated (be it morally or coercively) in different ways.

#### Morgenthau and the “Realists”:

While the above-discussed philosophers viewed sovereignty as the final authority or supreme good internally, other theorists, namely International Relations theorists, have been concerned with the concept as an organizing principle of the “international”. The external dimension concerns the way in which states relate to each other and is, in Mabee’s words, the “logical corollary to internal exclusivity, that of no overriding authority externally.”<sup>61</sup> To summarize, the internal and external dimensions of sovereignty, taken together, represent the idea that “there is a final and absolute political authority in the political community, and no final and absolute authority exists elsewhere.”<sup>62</sup>

As mentioned, external sovereignty has been the primary concern of International Relations theorists; they take the concept very seriously for it is the “sovereignty” of states that makes the “international” possible. “Sovereignty,” to IR theorists, is simply a legal concept; it is the rule or norm which permits the recognition of the actors with whom relations take place. In “traditional” international relations theory “sovereignty” simply refers to the **independence, equality and unanimity** of states and their **reciprocal obligation** to respect these qualities in other “sovereign” actors.

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<sup>61</sup> Mabee, Bryan. p. 38.

<sup>62</sup> Hinsley, Francis Harry. *Sovereignty*. London: C.A. Watts & Co. Ltd., p. 26.

The question as to whether sovereignty should be conceived as something that could be eroded by constraints which limit control, “freedom of action” or autonomy was raised above. The following discussion will turn to an alternative conception of “sovereignty”, that of the dominant view of IR theorists.

According to Morgenthau, often deemed the “founding father” of international relations theory, “sovereignty” may not be viewed in terms of degree as the “globalization” theorists appear to suggest. Sovereignty, according to Morgenthau, is not a matter of degree but, rather, is a question of “kind”: “It is not the quantity of legal restraints that affects sovereignty”, writes Morgenthau, “but their quality.”<sup>63</sup> Interdependence, according to Morgenthau, since it does not affect a state’s law-giving and law-enforcing authority within their own territory does not affect the legal attribute called “sovereignty”; “the actual inequality of nations and their dependence upon each other have no relevance for the legal status called sovereignty.”<sup>64</sup> In light of Morgenthau’s view of sovereignty, Grant’s “lament” for the death of Canada as a sovereign state was premature. Canada may become increasingly constrained, granted. Nevertheless, Canada was in 1965, and is today, recognized internationally as a sovereign actor, and its constitution is recognized domestically as the supreme law-giving and law-enforcing authority.

Not all realists, however, have given the same amount of attention to the concept of sovereignty as Morgenthau did. In his *The Twenty Years Crisis, 1919-1939*, for example, Carr indicated that sovereignty was nothing more than a “convenient label” to describe the claim for independent authority made by states after the breakdown of the Medieval system.<sup>65</sup> More contemporary realists and neorealists such as Waltz,

<sup>63</sup>Morgenthau, Hans J. *Politics Among Nations: The Struggle for Power and Peace* (fourth edition). New York, U.S.A.: Alfred A Knopf Inc., 1967, p. 303.

<sup>64</sup>Ibid, pp. 304-305.

<sup>65</sup>Carr, E.H. *The Twenty Years Crisis 1919-1939*. New York: Harper & Row, 1964, p. 229 quoted in Biersteker, Thomas J. and Cynthia Weber. “The social construction of state sovereignty,” p. 5.

furthermore, seem to have almost “done away” with the problematic concept of sovereignty altogether. Basically, in systemic accounts, “neorealists tend to combine population, territory, authority, and recognition - the principal constitutive elements of sovereignty - into a single, unproblematic actor: the sovereign state.”<sup>66</sup> Neorealists, due to their fixation on anarchy, have devoted little attention to sovereignty. They see sovereignty as merely one institution for managing anarchy and define it in terms of this condition.<sup>67</sup>

Thus far, two conceptions of “sovereignty” have been put forward: one which holds that sovereignty remains unaffected by the quantity of constraints (Morgenthau) and, the other, that sovereignty is being eroded by these same constraints (Grant and other theories of globalization). The latter theory implies that there has been a fundamental change in the nature of international relations. The question then arises as to whether Morgenthau, other realists, and neorealists can account for such fundamental change. Theories of “balance of power” and shifting capabilities can explain minor change. They nevertheless seem inadequate in addressing what is described by many as apocalyptic change. As Ruggie stated, “realists and neorealists have reproductive, but not transformative logic.”<sup>68</sup> This is a central flaw in realist theory which makes it theoretically impotent in the face of current challenges.

Another related flaw in realist writing is that it cannot account for how the concept of “sovereignty” emerged. “Sovereignty” is, essentially, prior to their theorizing. As Biersteker and Weber observe: “[a]lthough neorealists have provided a parsimonious explanation of how and why the state system has persisted as long as it has, they have not

<sup>66</sup> Halliday, Fred. “State and Society in International Relations Second Agenda,” *Millennium*, Vol. 16, pp. 215-29 paraphrased in Biersteker, Thomas J. and Cynthia Weber. “The social construction of state sovereignty,” p. 5.

<sup>67</sup> Biersteker, Thomas J. and Cynthia Weber, *Ibid.*

<sup>68</sup> Ruggie, John. “Continuity and Transformation in the World Polity: Toward a Neorealist Synthesis,” *World Politics*, Vol. 35, pp. 261-95 paraphrased in Biersteker, Thomas J. and Cynthia Weber. “The social construction of sovereignty,” p. 6.

done a good job of explaining how it emerged in the first place” or “how it might still be in the process of emerging.”<sup>69</sup> They cannot, to cite, once again, the title of Peter Russell’s recent book about Canada, account for sovereignty’s “Constitutional Odyssey”.

It is clear after even a cursory glance at history that the way sovereignty is practiced has changed. However, without a look at these changes historically, it is impossible to evaluate whether, in recent times, there has been a qualitative change in the concept. Both realist and globalization theories are in a sense ahistorical. For realists, “sovereignty” simply “is” despite constraint. Realists are, therefore, unable to address the issue of what would constitute a veritable challenge to the qualitative nature of “sovereignty”. Theories of globalization are also problematic as they are unable to account for why sovereignty is now being eroded when states have, for many years, been, in varying degrees, interdependent. Essentially, both theories have left the concept of “sovereignty” under-theorized and, as such, are irreconcilable.

Many current theoretical works on sovereignty propose that examining sovereignty as a social construction will permit a more fruitful evaluation of both traditional conceptions as well as challenges to the concept.<sup>70</sup> Biersteker and Weber are two such theorists who propose that since sovereignty is a pre-condition of the international, it must therefore follow that it is both a social and historical concept. If states are able to recognize each other as sovereign, as realist theory assumes, then it is implied that states understand what is meant by “sovereign”. Basically, a common understanding of “sovereign rule” implies the existence of an international society. “Sovereignty”, write Biersteker and Weber, is “an inherently social concept.”<sup>71</sup>

The social nature of “sovereignty” is implicit in Morgenthau’s theory and more explicit in Bull’s and the “English School’s” conception of “international society”.

<sup>69</sup> Biersteker, Thomas J. and Cynthia Weber. p. 6.

<sup>70</sup> See Biersteker and Weber and, Mabee, Bryan.

<sup>71</sup> Biersteker and Weber, p. 1.

Realist theory is, in essence, ontologically social. The problem, however, is that the epistemology employed by realists such as Morgenthau and his followers does not fit the ontological character of their unit. In their article, “International organization: a state of the art on an art of the state,” Kratochwil and Ruggie discuss the difficulties of employing a “scientific” approach or epistemology within the context of an ontology that is necessarily intersubjective and social.<sup>72</sup> When a positivist approach is combined with an ontological unit requiring intersubjectivity, in the words of Kratochwil and Ruggie, “we have the most debilitating problem of all: epistemology fundamentally contradicts ontology!”<sup>73</sup> They propose that the use of an interpretive methodological approach would reconcile this fundamental contradiction.

Towards a resolution of the ontology-epistemology contradiction: “Sovereignty” as “Institution”

The interpretive approach is discussed at length in Hollis and Smith’s *Explaining And Understanding International Relations*. This approach, rooted in the idealist tradition, is generally the “pre-theory choice” of recent IR theorists who emphasize the socially constructed nature of sovereignty. The interpretive or “understanding” approach makes meaning, rules, history and actors’ expectations central to their theorizing.<sup>74</sup> Such an approach places importance on both agency and structure, viewing them as “co-constituted”.

The “understanding” approach, as it relates to this chapter, begins by separating the concepts of “state” and “sovereignty” where the state becomes the agent and, sovereignty, the structure. The state is, however, not reified or viewed as a fixed agent but rather, is seen as “an identity or agent, and sovereignty, as an institution or discourse”

<sup>72</sup>Kratochwil, Friedrich and John Gerard Ruggie. “International organization: a state of the art on an art of the state,” International Organization. Vol. 40, No.4, Autumn 1986, pp. 764-66.

<sup>73</sup>Ibid., p. 764.

<sup>74</sup>Hollis, Martin and Steve Smith. Explaining And Understanding International Relations. New York: Oxford University Press, 1991, pp. 68-70.

with the two interacting “as mutually constitutive and constantly undergoing change and transformation.”<sup>75</sup> Viewing “sovereignty” as an institution, implies conceiving it as a set of rules; a set of rules, moreover, that are dynamic and have a “deep” basis.<sup>76</sup>

Wittgensteinians suggest that all social activities and thus, institutions may be seen as a historical combination of “constitutive” and “regulative” rules.<sup>77</sup> The constitutive rules are the “defining” or structural ones and the “regulative” rules, the “facilitating” ones. Distinguishing between these two types of rules allows for an account of change without fundamentally changing the nature of what Hollis and Smith call the “game” (in this case the nature of “sovereignty”). Therefore, the method required to understand sovereignty as a social institution “is to identify the constitutive and regulative rules of the relevant ‘game’ (institution, practice, ‘form of life’), exhibit the associated normative explanations and thus understand action as the doing of what is normatively expected in a situation structure of rules.”<sup>78</sup> The first task then becomes identifying the defining or “constitutive” rule/s of the game.

One problem with this approach is that although it is useful for describing change, the establishment or fixing of a “constitutive” rule is perhaps open to interpretation.<sup>79</sup> In short, distinguishing between “constitutive” and “regulative” rules is somewhat blurry. The question arises as to whether sovereignty has any constitutive rules at all. Perhaps all rules are “regulative”, facilitating or changing. Wittgensteinians, however, would reply that “all social activities have some constitutive rules” because “social activity is

<sup>75</sup>Biersteker, Thomas J. and Cynthia Weber. p. 11.

<sup>76</sup>Mabee, Bryan. p. 81. Charles Taylor , as will be discussed later in the thesis, uses the word “deep” to describe the “institutional” nature of Canada’s diversity.

<sup>77</sup>Hollis, Martin and Steve Smith, p. 179.

<sup>78</sup>Hollis, Martin. The Philosophy of Social Science: An Introduction. Cambridge, Great Britain: Cambridge University Press, 1994, p. 143 quoted in Mabee, Bryan. p. 80-81.

<sup>79</sup>The issue of “interpretation” will be discussed in more depth in later chapters. There is, according to Wittgenstein, also a way of grasping a rule that involves examining instances where actors are viewed as following or going against the rule in actual cases. Examining history is important as it provides the theorist with instances through which rules become apparent as well as reveals the temporal specificity of certain rules.

possible only in so far as there are ‘rules of the game’ to go by.”<sup>80</sup> The ahistorical potential of settling on “constitutive” rules can best be rectified by taking a historical perspective where the “constitutive” rules emerge from the dominance of a particular idea.

In relation to “sovereignty” the constitutive rule is generally viewed as the existence of an exclusively defined territory or “the claim to ultimate or final authority in a particular space.”<sup>81</sup> The “regulative” rules, furthermore, involve the scope of authority and “delineate the specific functions over which the state as legitimate authority and can legitimately claim authority.”<sup>82</sup> Both the “constitutive” and the “regulative” dimensions of sovereignty will be discussed below.

Exclusive territoriality, generally viewed as the constitutive rule of sovereignty, is the dominant assumption of the era. Nevertheless, it was not always so. What Murphy calls the “political-territorial” ideal is a historically unique way of organizing space; the result of a new worldview that manifested itself after the *Peace of Westphalia*.<sup>83</sup> This new worldview was one in which “discrete, quasi-independent territorial units were seen as the principal building blocks for social and political life.”<sup>84</sup> It was a worldview, furthermore, that involved a unique way of viewing space. Territory is not synonymous with geography or space, “every object takes up space, and so do organizations” but

<sup>80</sup>Hollis and Smith, p. 179.

<sup>81</sup>Thomson, Janice E. Mercenaries, Pirates and Sovereigns: State-Building and Extraterritorial Violence in Early Modern Europe. Princeton, New Jersey: Princeton University Press: 1994, p. 14 taken from Mabee, Bryan. p. 85. See also: Elkins, David. Beyond Sovereignty; Ruggie, John Gerald. “Territoriality and Beyond: Problematizing Modernity in International Relations,” International Organization, Vol. 47 (Winter 1993), pp. 139-174; Barkin, Samuel J. and Bruce Cronin. “The state and the nation: changing norms and the rules of sovereignty in international relations,” International Organization, Vol. 48, No. 1, 1994, pp. 108-130.

<sup>82</sup>Thomson, Janice E. p. 16 in Mabee, Bryan, pp. 85-86.

<sup>83</sup>As will become more evident as the chapter progresses, one cannot historically fix this change in political organization. Rather, the emergence of this new system of political organization must be viewed as a process. The *Peace of Westphalia* is, therefore, simply an historical yardstick.

<sup>84</sup>Murphy, Alexander B. “The sovereign state system as political-territorial ideal: history and contemporary considerations,” in Biersteker, Thomas J. and Cynthia Weber (Eds.). State Sovereignty as Social Construct, p. 82.

"there are different ways of occupying space."<sup>85</sup> Exclusive territoriality is one way of occupying space; it is historically contingent and socially constructed. It is, in short, unique to the modern period, "constitutive of our environment but ultimately derived from shared social experience."<sup>86</sup>

Spatial ontology, nevertheless, despite its importance to "sovereignty" is rarely explored.<sup>87</sup> Ruggie is one of the few theorists who discusses the way in which this particular way of organizing and perceiving space emerged historically. The standard accounts of the emergence of the modern territorial state generally focus on economic, military and political efficiency.<sup>88</sup> However, Ruggie's research adds another important dimension to this functional account: the power of ideas or the emergence of what Ruggie calls a new "social episteme".<sup>89</sup>

Upon examining the nature of political organization through time, Ruggie concludes that the principles of territorial contiguity, exclusivity and, continuity, constitutive of sovereignty, are, indeed, a historically unique way of perceiving and organizing space. His study considered various past spatial principles such as consanguinity or kin-based systems, nomadic territoriality, as well as medieval perceptions of space. In the first instance, the organizational principle is not territorial at all. "To be sure", writes Ruggie, "territory was *occupied* in kin-based systems, but it did not define them."<sup>90</sup> The second instance, indicates that territoriality need not be fixed; in nomadic systems, "the right to move prevailed over the right to camp" and ownership meant the title to migration.<sup>91</sup> Finally, in medieval times, territory, although fixed, was

<sup>85</sup>Elkins, David. p. 16.

<sup>86</sup>Ibid.

<sup>87</sup>John Gerard Ruggie, Friedrich Kratochwil and, David J. Elkins are some of the few theorists that have explored this issue in any depth.

<sup>88</sup>See Hertz, "The Rise and Demise of the Territorial State," World Politics, Vol. 9, No. 4, 1957, pp. 473-493.

<sup>89</sup>Ruggie, John Gerald. "Territoriality and Beyond: Problematizing Modernity in International Relations," International Organization, Vol. 47, (Winter 1993), p. 157.

<sup>90</sup>Ibid., p. 149.

<sup>91</sup>Ibid.

not owned exclusively as “different juridical instances were geographically interwoven and stratified” and “plural allegiances, asymmetrical suzerainties and anomalous enclaves abounded.”<sup>92</sup> “Briefly put”, writes Ruggie, “the spatial extension of the medieval system of rule was structured by a nonexclusive form of territoriality, in which authority was both personalized and parcelized within and across territorial formations and for which inclusive bases of legitimacy prevailed.”<sup>93</sup> In short, the exclusive, continuous and contiguous way of occupying space “sovereignly” is unique to the modern period.

Ruggie, as mentioned, attributes the rise of the sovereign “territorial ideal” to a change in “social episteme” that replaced what Friedrich Meinecke has called the “heteronomous shackles”<sup>94</sup> constitutive of the medieval way of perceiving space with the “homonomous”<sup>95</sup> fetters of modern spatial conceptions. Social, perceptual changes, in Ruggie’s view, were instrumental in the creation of the “bundle” now known as the “sovereign” territorial state. In his view, developments in art and language both reflected and encouraged this changing “spatial episteme.”<sup>96</sup> He mentions as significant examples, the “invention of [the] single-point perspective” in the visual arts as well as “the growing use of vernaculars, and the coming to the dominance of the ‘I-form’ of speech” which permitted the distinction between I and you and between me and the world.<sup>97</sup> Elkins concurs with idea that vernacular language is both territorial and historically specific arguing that with the decline of Latin, “the greater concern with

<sup>92</sup>Ibid., p. 150.

<sup>93</sup>Ibid.

<sup>94</sup>Meinecke, Friedrich. *Machiavellism* (trans. Douglas Scott). New Haven, Conn.: Yale University Press, 1957, in Ruggie, John Gerald. “Territoriality and Beyond: Problematising Modernity in International Relations,” p. 150.

<sup>95</sup>Ruggie, John Gerald. p. 151.

<sup>96</sup>This is my adaption to Ruggie’s “social episteme”.

<sup>97</sup>Ruggie, John Gerald. pp. 158-159.

political territoriality went hand in hand (or mouth-to-mouth) with linguistic territoriality.”<sup>98</sup>

Without exhaustively listing the various ideas that coincided with a focus on territory, changing notions of property rights were also an important social force. Elkins elaborates the various ways in which property has been conceived historically including notions of shared ownership of land (the popular view of many Aboriginal nations), as well as a form of transient “ownership” based shared usage. Today, however, the dominant assumption is that usage entails ownership and, according to Elkins, “this concept of ownership may be related, in its emphasis on exclusivity, to the notion of territory as the exclusive base of nations”; it is also the analogue of the concept of sovereignty in the state system.”<sup>99</sup> Ideas and, more generally, a changing social and spatial “episteme” played an important role in the emergence of the modern states system.

However, ideas or changing “social epistemes” were not solely responsible for the emergence of the modern territorial states-system. At the very least, ideational change permitted and legitimated rather than caused the emergence of the system. Political, economic, technological and ideational changes interacted dialectically through time and resulted in the new “sovereign” territorial form. There has been too much interdependence and interaction (historically) between social, religious, political, and technological changes to single-out any one variable as the individual variable that resulted in the “bundling” of territory. The institution of sovereignty is a hybrid case of the ideal-types referred to by Taylor as “family-type” and “service-type” institutions. In other words, it both provides a pole of identity and serves a utilitarian function.<sup>100</sup> In

<sup>98</sup>Elkins, David J. p. 51.

<sup>99</sup>Ibid., p. 88.

<sup>100</sup>See Taylor, Charles. “Institutions in National Life,” in his *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism*. Montreal & Kingston: McGill-Queen’s University Press, 1993, pp. 120-134.

fact, as Elkins notes, “a sharp division among social, religious, economic, political, and technological variables - however plausible to us now - would have seemed quite arbitrary to people living in the late medieval and early modern period.”<sup>101</sup>

Moreover, it is significant that at the time of the emergence of the modern states-system, as Hendrik Spruyt’s research has established, many viable organizational forms were in existence if one were to assess them according to utilitarian considerations.<sup>102</sup> Spruyt’s research is also important as it highlights the historical coexistence of different state forms. At the time of the rise of the “sovereign” territorial state, larger-scale territorial states, city-states and, city-leagues all existed. Nevertheless, the “sovereign” territorial form, prevalent today, was eventually, however imperfectly, selected out. As Ruggie has correctly observed, “[d]esignating dominant historical forms, therefore, is a matter of balance: of judging ascendancy and decline, relevance and spurious signification.”<sup>103</sup> “Nonetheless” adds Ruggie “it is the case that the modern state has succeeded in driving out substitutable alternatives more effectively than any other prior form.”<sup>104</sup> Although changes in social epistemology did not single-handedly cause the rise of the territorial state, they were an important and contagious force resulting in a new social norm: the exclusive use of territory as the constitutive basis of sovereignty.

The regulative dimension of an institution is what permits change. More specific to this discussion, regulative rules are the ones produced by state interaction (the practices of states) within the confines of the institutional structure of sovereignty. Basically, while the constitutive basis of sovereignty (a single legitimate authority on a defined territory) provides the structure or the limits of action, the states or agents are

<sup>101</sup>Ibid, pp. 80-81.

<sup>102</sup>See Hendrik Spruyt’s. The Sovereign State and Its Competitors. Princeton, New Jersey: Princeton University Press, 1994.

<sup>103</sup>Ruggie, John Gerald. p. 167.

<sup>104</sup>Ibid.

actively involved, through practice, in changing or recreating the rules of the “game” as they go along. The regulative rules delineate the specific functions over which the state has legitimate authority as well as who can legitimately claim authority over their constitutive territory. The regulative rules determine the **scope of authority**, as well as what is considered **legitimate**.

Without exhaustively listing the multitude of regulative changes that have been made, a short list will suffice to illustrate the ways in which regulative change has occurred. The concept of “extraterritoriality” is one early and important example. As Ruggie has explained, having established sovereign states based on exclusive use of territory, states were faced with the tough question of what was to be done with problems that could not be dealt with territorially. One such problem was the need for diplomatic space or embassies. Tension occurred when members of the foreign country wished to practice their respective religions in their respective embassies’ chapel. According to Ruggie, in order to remedy the imperfections of sovereign territorial constraints, states invented the fictitious concept of “extraterritoriality.”<sup>105</sup> Essentially, the issue of an exclusive territorial religion was “unbundled” to permit ambassadors to practice their religious views within a territory deemed “extra” or “in reserve” for the “other” and thus not subject to the sovereign. The “sovereign” would “pretend”, in Ruggie’s words, that the religious service was taking place at the home country.<sup>106</sup> “Extraterritoriality” was a way in which sovereign nations sought, in Ruggie’s words, “to compensate for the ‘social defects’ that inhere in the modern construct of territoriality.”<sup>107</sup> This regulative rule protected the integrity of sovereignty by permitting a small degree of territorial “unbundling” and “rebundling” by introducing the concept of “extraterritoriality”.

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<sup>105</sup>Ibid., p. 165.

<sup>106</sup>Ibid.

<sup>107</sup>Ibid., p. 171.

The issuing of passports by the 1920s is another, more contemporary, example of regulative change. Until World War One people generally did not travel very much and thus passports were unnecessary. However, “when by 1920 it was evident that this presumption no longer held, nations took steps to control who entered their territory and for what purpose.”<sup>108</sup> When travel began to “unbundle” territory, states took steps to address this “social defect”. States took steps to regulatively “rebundle” their state using passports to specify “who belongs where” and “what belongs to whom”. Passports were used to “sort” people territorially.

Another significant example of regulative change is the way in which states or nations are recognized by international society. Criteria for legitimate entry into international society have evolved greatly since the modern states system’s inception. The principles of self-determination and anti-colonialism are two examples of such regulative change. These new principles, as will be seen later in the thesis, are of significant importance to current discussions of sovereignty in Canada.

Sovereignty is a socially “relative notion, variable in the course of time, adaptable to new situations and exigencies,”<sup>109</sup> and as Hinsley so aptly put it “despite the loose talk about the way it is acquired, lost, eroded, sovereignty is not a fact” but “rather it is an expression of a claim about the way political power is or should be exercised.”<sup>110</sup> It is a claim to legitimate authority on a territory that is regulated by the practice of states. “Sovereignty”, as a social norm or institution, is not erodable, does not exist in degrees, but, rather, is regulated within the framework of its constitution (exclusive, continuous and contiguous territory).

<sup>108</sup>Elkins, David J. p. 22.

<sup>109</sup>Luzius, Wildhaber. “Sovereignty and International Law,” in R. St. J. Macdonal and Douglas M. Johnston (Eds.). The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory. Nijhoff, Dordrecht, Netherlands, 1986: pp. 140–41 quoted in Lapidoth, Ruth. p. 345.

<sup>110</sup>Hinsley, F. H. Sovereignty. London: C.A. Watts, 1966, p. 1 paraphrased in Camilleri, Joseph A. p. 13.

The above discussion indicates that Grant's 1965 "lament" may have been premature. Although Canada may have lost some of its autonomy, "freedom of action" or control over the years, increasing external constraints do not imply loss of sovereignty. Autonomy is distinct from sovereignty. "Autonomy", as Naidu observes, "implies the existence of a superior authority that grants degrees of self-government in prescribed realms" and, as such, "is limitable and divisible."<sup>111</sup> While sovereignty denotes supreme and legitimate authority over a particular territory and is a question of identity, autonomy means self-government and may be divided, both externally and internally, through negotiation and state practice.

Although distinguishing between "autonomy" and "sovereignty" is important in terms of evaluating perceived challenges to state "sovereignty" at the international level, it is also relevant to the understanding of state structure. For example, the argument that there exists two "sovereign" orders of government in federal systems or that Aboriginal peoples seek "sovereignty" may be understood for what they are: the existence of more than one autonomous government and a desire for increased autonomy respectively.

An examination of "sovereignty" is inextricably linked to the nature of modern constitutionalism. Essentially, modern constitutionalism is a regulative device at the "particular" or individual state level. It is a way of adapting local conditions to the institution of "sovereignty" as a whole. Canada is, in essence, characterized by a relationship of interdependence both internally and externally. It is embedded in both "international" and "domestic" society.

Indeed, the institution of "sovereignty" affects the nature of, and, places constraints on, constitutionalism. After conducting a comprehensive study of national constitutions from 1870-1970, John Boli-Bennett concluded that a global ideology had

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<sup>111</sup>Naidu, M. V. Quebec Separatism, Canadian Unity: Issues, Opinions. Oakville, Ontario: M.I.T.A. Press, 1995, p. 3.

developed that “calls for continual expansion or growth state authority...for an augmentation of state jurisdiction over society and citizens that..appears to follow an upwardly accelerating curve.”<sup>112</sup> Individual states, furthermore, respond to evolving definitions of what it means to be a “state” and these definitions then “limit the extent of national variations in state-society relations.”<sup>113</sup> Boli-Bennett’s study, in short, suggests that there is a relationship between deepening association at the international level and the nature of constitutionalism at the “particular” level. Boli-Bennett’s findings concerning the limits on national variation confirm Spruyt’s hypothesis that the dominant unit of the time is selected out and mimicked. These limits, moreover, are perhaps the most noteworthy in regard to the Canadian case as in an age of “global interdependence” there is an increased need, as this thesis will demonstrate, for “national variation” and flexible constitutionalism.

In his article, “The Embedded State”, Alan Cairns discusses Canada’s domestic “web of interdependencies” arguing that somewhat paradoxically, it is both stabilizing and fragmenting. On the one hand, the interdependent nature of Canadian federalism “locks the state and society in countless discrete overlapping linkages” and, on the other, has resulted in a state that is “increasingly plural, fragmented and multiple in its allegiances and identities.”<sup>114</sup> In his view, the state-society dichotomy no longer holds (if it ever did). State and society are clearly co-constituted. States create, legitimate as well as embody societal identities; “the state is unquestionably actor as well as umpire.”<sup>115</sup> The state is both a structure and an agent. It is the mediator between the international and domestic, as well as a societal structure.

<sup>112</sup>Boli-Bennett, John. “The Ideology of Expanding State Authority in National Constitutions, 1870-1970,” in Meyer, John W. and Micheal T. Hannan (Eds.). National Development and the World System. University of Chicago Press, Chicago: 1979: pp. 223-224 in Cairns, Alan. “The Embedded State: State-Society Relations in Canada,” in Banting, Keith (Research Coordinator). State and Society: Canada in Comparative Perspective. Toronto: University of Toronto Press, 1986 p. 78.

<sup>113</sup>Cairns, Alan. “The Embedded State,” p. 78.

<sup>114</sup>Ibid., p. 55.

<sup>115</sup>Ibid., p. 78.

Nevertheless, despite the apparent increased scope of the state's authority and legitimacy, domestic loyalties compete. Canada possesses not one but many states and identities that are embedded and overlapping in its society. In recent years, constitutional revision in Canada has resulted in both the extension of state authority and increased competition among identities. With regard to the constitutional process in Canada, Cairns observes: "what began primarily as a contest between governments in Quebec City and Ottawa steadily expanded to encompass all eleven governments along with women, Aboriginals, numerous ethnic groups, the handicapped and others."<sup>116</sup> New "non-territorial" identities, furthermore, have been added to the older "territorial" ones and "the thesis of the women's movement - 'the personal is political' is of general application."<sup>117</sup> In particular, Canada's 1982 Charter of Rights and Freedoms both legitimated and helped create and reinforce new non-territorial identities; what Cairns refers to as the "Charter Groups" may be added to Canada's entanglement of competing identities.

However, as discussed, the fragmentation of autonomy and increased interdependence, whether internal or external, does not necessarily endanger sovereignty. Sovereignty, if properly regulated, remains viable within "webs of interdependencies" both domestic and international. What matters is that authority on a territory is seen as legitimate. The above discussion indicates that the state is as legitimate as ever. The "sovereign" state remains both the legitimate actor and the legitimator of authority in both the international and domestic realms.

What then would provide a true threat to the institution of "sovereignty" as a whole as well as Canada's "sovereignty" in particular? Essentially, in order to threaten "sovereignty" in a general sense, there would have to be a fundamental change in "social

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<sup>116</sup>Ibid., p. 67.

<sup>117</sup>Ibid., p. 82.

episteme" that would undermine the constitutive idea of "sovereignty" (exclusive territoriality). In essence, a new way of viewing space and its relation to legitimacy and authority would have to become dominant. If we are indeed in the midst of such a profound change in social epistemology then it is possible that Grant's "lament" was both premature and prophetic.

If more "personal" identities, such as the identities of what Cairns calls the "Charter Groups" (for example, feminists) in Canada, were to reach the top of the "identity hierarchy" and were no longer directed at the state for legitimization, then the territorial mindset, characteristic of sovereign governing, could be undermined. There has been some talk of "societal sovereignty" (a fictitious concept) as interest groups, more universal in focus, have emerged. Speaking of the international penetration of societal interest groups, Andrew Cooper has observed, for example, that "while not entirely 'sovereignty free', many more 'cosmopolitan' societal groups may be said to have a diminished territorial state of mind."<sup>118</sup> If this mindset were to become widespread, the concept of sovereignty could become obsolete.

Nevertheless, in a context where ideas of "sovereignty" and "exclusive territory" dominate, Quebec secession remains the most serious threat to the Canadian state and its "sovereignty". The Quebec nation, as an already delineated territorial entity within Canada, has the potential to fulfil the "territorial ideal" necessary for admittance into international society. The Canadian federal state, created in order to accommodate difference, has arguably been too successful. The creation of delineated territorial entities within Canada, symptomatic of the dominance of modern conceptions of space, may undermine its larger sovereign territory. Although Quebec secession is the most

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<sup>118</sup>Cooper, Andrew F. "Questions of Sovereignty: Canada and the Widening International Agenda," *Behind The Headlines*, Vol. 50 (Spring 1993), p. 11.

immediate threat, it would also potentially result in further fragmentation of the remaining provinces and even perhaps result in the partition of Quebec.

It is unclear, however, whether U.N. regulative rules permitting "self-determination" would include sovereign recognition of non-colonial "nations" or "peoples" such as Quebec. A 1970 United Nations General Assembly Declaration attempted to resolve this problem. A detailed description of the principle of self-determination was followed by these statements:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour...Every state shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country.<sup>119</sup>

According to this passage, it is questionable as to whether Quebec secession is permitted under international law. Canada is "possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour." The rule is basically ambiguous and leaves many questions unanswered. As Ruth Lapidot has asked: 'Is it enough that a heterogeneous state, in order to be in compliance with the principle of self-determination, has a government representing the whole population? Is self-determination or secession prohibited in the case of a multi-ethnic democratic state but permitted in a nondemocratic one?<sup>120</sup>

Upon consideration of the Canadian case, the most significant problem with this rule is its apparent disapproval of, or, at best, indifference to, institutional recognition of "deep" diversity. More specifically, the above rule assumes that governmental differentiation based on culture "race, or creed" is inherently discriminatory and it is just such a differentiation that both the Quebecois and Aboriginal peoples are seeking in

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<sup>119</sup>Resolution 2625 (XXV), 24 October, 1970 cited in Lapidot, Ruth. "Sovereignty in Transition," p. 344.

<sup>120</sup>Ibid.

Canada. The rule reflects an American assumption about race or cultural relations, namely, that separate or different is inherently unequal.<sup>121</sup> The rule has embedded a paradox in the institution of sovereignty as the notion of self-determination suggests that the idea of “nation” or “people” forms the basis of legitimate political authority and then negates it with the idea of a universal, all encompassing government that doesn’t recognize difference institutionally. In light of the Canadian case, as will be demonstrated as the thesis progresses, it is clear that new regulative rules are needed. The tension inherent in this rule as it relates to the Canadian case will be discussed further in chapter three.

What is certain, however, is that Quebec secession would undermine the “national unity and territorial integrity” of the Canada state. Furthermore, given that the definition of what constitutes a “people” is also ambiguous, if Quebec secession were permitted under international law then it could set a precedent for unlimited claims to self-determination and “sovereignty”. Not only would other heterogeneous states be endangered, but Quebec may also be seen as divisible. The breakdown of the ability to “regulate” sovereignty could also undermine its viability. Unmanageable international disorder could potentially contribute to a shift in social or spatial “epistemes”.

The final and more general threat to the concept of sovereignty would be the emergence of a world state. International society could develop to the point where sovereignty is undermined by the transfer of authority and legitimization of identity to a universal world state. Nevertheless, the current mindset appears, at this point, to remain primarily territorial. Such grand predictions, rooted in idealism are, today, both empirically and ideationally deficient. Such theories are also symptomatic of a “centralized state” mindset. In fact, it is this same mindset, so prevalent in IR theory that

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<sup>121</sup>For example, in the landmark Supreme Court decision on segregated public schools in the U.S., *Brown v. Board of Education*, Chief Justice Earl Warren stated that “in the field of public education, the doctrine of ‘separate but equal’ had no place. Separate educational facilities are inherently [emphasis added] unequal.” *Brown v. Board of Education of Topeka, Kansas* (1st decision), 347 U.S. 438 (1954).

prompted Martin Wight's question as to "Why is there no International Theory?"<sup>122</sup> Kenneth Waltz's assertion that the European Community would not amount to much in the "international structure" unless it became a "unified state", although for different reasons, also reflects this conceptual constraint.<sup>123</sup>

To recapitulate, two competing conceptions of sovereignty have dominated the literature. One, popular in theories of globalization, holds that sovereignty is being eroded by increasing constraints on states while the other, the "traditional" IR view, argues that "sovereignty" is not eroded by constraint but, rather, that states may take on any number of constraints as long as their law-making and law-giving authority is maintained. Both theoretical strains, however, have left their central concept of "sovereignty" undertheorized.

These two competing views of "sovereignty" are, furthermore, irreconcilable and, as such, impossible to evaluate. Globalization theory, which proposes that the world is witnessing fundamental change in the nature of political organization, is unable to account for the fact that states have always been, in varying degrees, interdependent. Similarly, traditional "realist" theory, which focuses on continuity, is inadequate in properly addressing foundational change in the states-system. In short, while the former focuses on change, the later focuses on continuity and as such, the two theories are deficient.

Viewing "sovereignty" as a social construction is useful in dispelling some of its myths. Most significantly, however, viewing "sovereignty" as a socially constructed institution permits an account of both continuity and change. "Sovereignty", theorized in such a way, has both transformative and reproductive logic.

<sup>122</sup>Wight, Martin. "Why is there no International Theory?," in Butterfield, Herbert and Martin Wight (Eds.). Diplomatic Investigations: Essays in The Theory of International Politics. Cambridge, Massachusetts: Harvard University Press, 1966, pp. 17-34.

<sup>123</sup> See Waltz, Kenneth. Theory of International Politics. Reading, Mass.: Addison-Wesley, 1979 in Ruggie, John Gerard. p. 140.

However, of more immediate and fundamental concern is how such a conception is relevant to the domestic Canadian national unity debate. The continued viability of the concept of “sovereignty” as a organizing principle of the “international” depends on the capacity of individual states to “bundle” their territory in accordance with exclusive territoriality. In short, modern constitutionalism, is inextricably tied to the process of “rebundling” sovereignty.

Canada is an important “particular” case in this regard. The Canadian case illustrates the difficulty that states characterized by “deep diversity” have in meeting the “sovereign territorial ideal”. Essentially, while Canada’s constitutive basis imposes “heteronomous shackles” domestically, it is faced with the “homonomous” shackles of “sovereignty-thinking” or idea of the “normal” way of being a state as a member within the institution of sovereignty. Canada’s “constitutional odyssey” reveals the extent to which the idea of “sovereignty” constrains modern constitutionalism, as well as highlights the role that particular states can play in renegotiating or regulating sovereignty. Certain states are, basically, less amenable to “sovereignty” and, for this reason, an examination of “particular” cases may be useful both in terms of assessing “regulative gaps” internationally and, more generally, the continued viability of the institution of “sovereignty” as a whole.

The idea of “Canada”, as will be seen in the following chapters, necessitated, from the outset, a renegotiation of the boundaries of sovereignty. Canada’s history is replete with “anti-sovereign” ideas that were, nevertheless, made to “fit” within the concept of sovereignty. The discussion will now turn to an in-depth examination of the Canadian case.

## Chapter Two:

### Canada as Institution: Exploring “Normality” in Canada’s Time and Space

When different peoples meet they must find ways of answering the question: who belongs here and what belongs to whom? There are many ways of answering the question: conquest, domination, and assimilation of the weak by the strong are perhaps the most common. But there is also the possibility of sharing, co-existence, and even co-operation. The history of Canada provides illustrations of all of these possibilities...

Ramsay Cook, *Quebec, Canada, and the uses of Nationalism*

Remnants of the past that don't make sense in present terms - the useless, the odd, the peculiar, the incongruous - are signs of history. They supply proof that the world was not made in its present form. When history perfects, it covers its own tracks.

Stephen Jay Gould, *The Panda's Thumb*

Guy Laforest has recently articulated that “[c]ontemporary debates on sovereignty would be clearer if references to normality were avoided” adding that, he views “[h]istory as an open process which does not have much to do with normality and necessity”.<sup>124</sup> Laforest’s comment is both telling with regard to how the concept of “sovereignty” implicitly structures the Canadian national unity debate and highlights the importance of the particular. “Normality”, in short, is not static but, rather, what is considered “normal” is relative to time and space. The central purpose of this chapter is to identify what is “normal” for “Canada” in its time and space.

Employing an institutional perspective, the first and main task of this chapter will be to uncover the “constitutive” rule/s of the Canadian “game”. Nevertheless, Canada must also be situated within the larger, over-arching institutional structure of “sovereignty” in which it is “co-constituted actor”. Essentially, the chapter’s purpose is to uncover both the particular and more general ideational constraints that existed at the time of “Confederation” as well as how they have interacted.

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<sup>124</sup>Laforest, Guy. “The Need for Dialogue and How to Achieve It,” in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, p. 424.

The same methodology as applied in the first chapter will be employed to look at Canada's particular institutional evolution. As with the discussion in chapter one concerning sovereignty, meaning, rules, history and actors expectations will all be central. Although agency and structure will be viewed as co-constituted, they will be separated conceptually at times in order to examine their interaction. Whereas in the discussion of "sovereignty", "sovereignty" was the institution and, the "state" the agency, the examination will move down a level of analysis where the "state" (in this instance "Canada") becomes the "institution or discourse" and "society" or "politics" and more generally, political *practice* becomes the identity or agent.

In the above discussion of "sovereignty" it was stated that the first task is to identify the "constitutive" rule/s of the game. It was the view of this thesis that this may be somewhat problematic since all rules could simply be regulative and that settling on "constitutive" rules may, for this reason, be open to interpretation. While, as was seen in the first chapter, Wittgensteinians would suggest that all social activities have constitutive or defining, structural rules as well as regulative or facilitating ones, the problem of interpretation may be more acute in the case of "Canada". Canada is often referred to as a country of many "solitudes" which suggests that the "game" may be viewed very differently by various communities. In fact, Canada has been described as possessing a tradition of "philosophical federalism", a tradition, furthermore, where there is an ambiguous and interdependent relationship between "theory" and "practice".<sup>125</sup> This lack of awareness of the relationship between Canada's constitutive, or unique "form of life" and its regulative dimension is what lies at the crux of Canada's "mega-constitutional" saga. Constitutional reform in Canada may be seen as a struggle

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<sup>125</sup> See for example, Douglas Verney's Three Civilizations, Two Cultures, One State: Canada's Political Traditions, Durham, U.S.A.: Duke University Press, 1986 and John Ralston Saul's Reflections Of A Siamese Twin: Canada At The End Of The Twentieth Century, Toronto, Ontario: Penguin Books, 1997.

to find a formal institutional structure that permits both the continuity of Canada's constitutive principle/s and their effective regulation.

The problem of interpretation or "settling" on inaccurate constitutive principles was rectified in chapter one by taking an historical perspective. In the case of "sovereignty" it was found that the institution emerged in conjunction with changes in ideas about space and authority as well as some utilitarian concerns. Namely, it was found that sovereignty emerged with the idea that there should be a single legitimate authority on a defined territory.

The emergence of the idea of "Canada" must therefore be placed in a temporal, a spatial and, an ideational context. The task, however, is a difficult one as there is, as Léon Dion has noted, an asymmetry between anglophone and francophone views of time and space. Basically, Dion is of the opinion that "[o]f the two main transcendental categories of understanding, space and time, Anglophones lay the greatest emphasis upon space, and Francophones upon time."<sup>126</sup> How "Canada" is viewed by these two groups is very much a product of the asymmetrical emphasis placed on these two categories.

Whereas "English Canada's" temporal understanding of Canada usually begins with "Confederation", "French Canada's" stretches further back. More specifically, the *Royal Proclamation* (1763), the *Quebec Act* (1774), the *Constitution Act* (1791), and the *Act of Union* (1840) are equally significant, from a francophone perspective, to Canada's constitutional history. As Verney has noted "[t]he difference in attitudes toward constitutional documents symbolizes the two different approaches to Canadian history."<sup>127</sup> A fruitful understanding of Canada's constitutive basis can only be achieved, therefore, by extending historical memory to encompass both the anglophone and francophone views of time.

<sup>126</sup>Dion, Léon. Quebec, The Unfinished Revolution. Montreal and London: McGill-Queen's University Press, 1976 introductory quote (chapter 6) in Verney, Douglas. Three Civilizations, Two Cultures, One State: Canada's Political Traditions. p. 172.

<sup>127</sup>Verney, Douglas. p. 174.

Essentially, the above mentioned constitutional documents are meaningful as they provide the foundations of a dualist view of Canada. Although not all of the documents formally recognize the dual nature of Canada, the resultant practice is viewed as evidence of political dualism. Political practice created norms that regulated relations between French and English Canada. These informal rules, furthermore, were to have lasting significance in terms of how Confederation was viewed. They were to become a significant part of Canada's informal institutional foundation, or discourse, and would condition perceptions of how the Canadian "game" should be played.

Many Canadians today would find it puzzling that the *Royal Proclamation* (1763) remains meaningful to those that espouse a dualist view of Canada. In fact, the Act, assimilationist in strategy, had as its purpose the elimination of many of the distinctive features of the French colony. For example, it would have rescinded the legal status of the Catholic Church, eliminated the seigneurial system, as well as replaced civil law with common law. Nevertheless, it is not the formal content of document that now catches the attention of contemporary historians and politicians, but rather the politics or practice that developed within the formal "regime". Despite the assimilationist strategy of this formal policy, the Governor General of the time concluded that assimilation would not work. The Act was never enforced and the colonies continued to function pragmatically according to the principle of duality. The fate of the *Royal Proclamation* is evidence of the power agency or the "political" to override inappropriate formal structures.

As McRoberts has demonstrated, this opposite political strategy eventually resulted, 11 years later in the *Quebec Act* (1774), a formal recognition of dualism. Basically, the formal powers of French institutions lost with the *Royal Proclamation* were reinstated in the *Quebec Act* and "[i]n this way," writes McRoberts, "the Quebec Act laid the basis for Canadian dualism."<sup>128</sup> More specifically, the *Quebec Act* laid the

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<sup>128</sup>McRoberts, Kenneth. *Misconceiving Canada: The Struggle for National Unity*. Toronto, Ontario:

**formal** basis for Canadian dualism. The *Quebec Act* formally recognized what was taken as a “given” in practice; it simply “caught-up” with politics and formalized the practical norm of dualism.

Political dualism was again practiced when, in 1791, with the *Constitution Act*, the colonies were granted representative government and divided into Lower and Upper Canada. This division had as its purpose to grant majority status to the British and the French in their respective representative institutions and, although dualism was not recognized explicitly, and “strictly speaking, the division was territorial,” according to McRoberts, “the rationale was to accommodate cultural dualism.”<sup>129</sup> The Assembly of Lower Canada became a vehicle of francophone “nationalism”. In fact, the first debate in the legislature of Lower Canada was about the preservation of the French language. As Monet notes, “that theme of the importance of the French language to French Canadians goes right back to that period.”<sup>130</sup>

Perhaps most importantly, in light of contemporary separatism, “[t]he measure served to link francophones with a specific territory.”<sup>131</sup> The 1791 *Constitution Act*, by establishing an institutional link between “French Canada” and a delineated territory, created “sovereign potential”. The Act is, not surprisingly, an important part of the Quebec nationalist’s and separatist’s historical memory.

Nevertheless, the *Constitution Act*, while formally an Act granting representative government and dual political institutions, resulted in a *de facto* regime of control by the economic elite of the time, most of whom were English-speaking. Basically, the main advisors to the governors of the time were members of the Family Compact. In the opinion of the one of the foremost contemporary experts on Canadian constitutionalism,

Oxford University Press, 1997, p. 4.

<sup>129</sup>Ibid., p. 5.

<sup>130</sup>Monet, Jacques. “Two Nations Warring?,” in a dialogue that appeared in Bothwell, Robert (Ed.) Canada and Quebec: One Country, Two Histories (Revised Edition). Vancouver, B.C. : UBC Press, 1998, p. 27.

<sup>131</sup>Ibid.

“[i]t was the tensions generated by this combination of quasi-aristocratic and democratic elements that gave rise to the 1837 rebellions”.<sup>132</sup> These rebellions, motivated by economic concerns, were separatist in nature, as one is so often reminded today, and when put down, led to Canada’s fourth Constitution in 1840.

Lord Durham was, subsequently, sent to Canada to analyze and report on the causes of Rebellion and, in perhaps the most popularly cited Canadian historical reference, he noted the dual nature of Canada, describing the political situation as one where ‘two nations [were] warring at the bosom of a single state.’ His report’s recommendations formed the basis of “pre-Canada’s” fourth constitution. Essentially, the report’s most significant recommendations were to establish responsible government and to assure assimilation of the “French fact”.

The Durham report was antithetical to the conservative practices that had developed organically prior to the rebellions. As Tully has noted, Durham was hostile toward the common-law principle of continuity, manifested in pre-rebellion practices, and interpreted the rebellions through this lens. For example, his report began with an interpretation of the rebellions as ‘a struggle, not of principles, but of races.’ The problem, in Durham’s view, was neither economic nor principled but, rather, was incited by two conflicting claims to cultural continuity. Moreover, the English, since they were, in his view, superior in every way could not possibly culturally co-exist with a francophone majority. Durham suggested that it was impossible that ‘a race which felt itself...superior in political activity and intelligence, should submit with patience to the rule of a majority which it could not easily respect.’ Basically, it was Durham’s opinion that the conflict in the Canadas was not a result of class differences, imperialism or domination, but rather was due to the archaic convention of continuity and the imposition

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<sup>132</sup>Russell, Peter H. Constitutional Odyssey: Can Canadians Become a Sovereign People? Toronto, Ontario: University of Toronto Press Inc., 1993, p. 14.

of an “inferior” culture on the minority. French-Canadian resistance to assimilation was presented therefore as reactionary ethnic “backwardness”. Assimilation and discontinuity were justified in the name of a ‘comprehensive view of the future and the permanent improvement of the Province.’ Both anglophones and francophones, in Durham’s view, would benefit from assimilation.<sup>133</sup> Presaging the Trudeau vision, the English-speaking and French-speaking nationalisms were to be treated asymmetrically in the name of a universal, comprehensive view of the future or “progress”.

In order to fulfil Durham’s recommendation for responsible government, a formal constitutional text was not required but, rather, in what Russell describes as “a manner more typical of British constitutionalism,” a change was simply made in the instructions given to the governors of British North America.<sup>134</sup> The governors were from then on to be advised by a group of politicians seen as legitimate by the assembly (in effect, a cabinet). This principle was put into practice in the Union when Lord Elgin chose Louis Lafontaine and Robert Baldwin to form government following their election victory.<sup>135</sup> The first “Durham model” Union government was, ironically, a dual one. It once again became apparent that simply replacing one formal institutional structure with another could not eliminate the dual nature of the colonies in practice.

Furthermore, structurally, in light of the perceived desirability of assimilation, a legislative union was recommended. Consequently, with the *Act of Union* (1840), Upper and Lower Canada merged and political dualism lost its formal constitutional recognition. Nevertheless, in what McRoberts describes as “one of the greatest ironies of Canadian history” political dualism not only survived the 1840 regime, but “the political institutions of the new United Canadas soon evolved a most elaborate scheme of political

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<sup>133</sup> Much of the information in this paragraph is taken from James Tully’s *Strange Multiplicity: Constitutionalism in an age of diversity*. Cambridge: Cambridge University Press, 1995, Chapter 5.

<sup>134</sup> Russell, Peter. *Constitutional Odyssey: Can Canadians Become a Sovereign People?* p. 15.

<sup>135</sup> *Ibid.*

dualism.”<sup>136</sup> The “bilingual institutional dialogue” that had animated the pre-Union period could not be replaced by a “monological”, unitary one despite formal structure.

In fact, the two units, the Upper and Lower Canadas, did not completely disappear but were instead renamed Canada West and Canada East respectively. Although the maintenance of these constituencies was not motivated by a desire to preserve past institutions but rather to assure that Upper Canada was not underrepresented in terms of seats, formal territorial dualism remained in an attenuated form.

English Canadians, despite their numerical superiority (in terms of seats), soon proved to be more divided than the French Canadian “bloc”. Divisions among the British such as over responsible government as well as economic rivalry between English-speaking businessmen in Montreal and Toronto necessitated consideration of partnership with francophones. Lafontaine understood quite well the benefits of bloc voting arguing that “if French Canadians worked together...and didn’t divide the way English-Canadians did, they could exercise greater power in the new political constitutional arrangements than their numbers alone would have allowed them to.”<sup>137</sup> Lafontaine’s politics were a form of dualist elite accommodation that worked well for francophones. When it was time to form the first government, as McRoberts explains, “[a]lthough the colonial secretary in London was furious, he finally had no choice but to accept a government formed by ... [a] Baldwin-Lafontaine coalition.”<sup>138</sup> Regardless of the formal structure, the political necessity of dualist cooperation had once again emerged.

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<sup>136</sup> McRoberts, Kenneth. Misconceiving Canada. p. 6.

<sup>137</sup> Cook, Ramsay. “Two Nations Warring?,” in a dialogue in Bothwell, Robert (Ed.). Canada and Quebec: One Country, Two Histories. p. 36.

<sup>138</sup> McRoberts, Kenneth. Misconceiving Canada. p. 7.

McRoberts and Verney have both established the extent to which dualist political practices developed.<sup>139</sup> Past institutional norms or conventions were not easily replaced. The “Quebec” government, for example, was permitted to continue providing services in French and, civil law was maintained. Basically, the French Canadian formal “gains” associated with the *Quebec Act* were maintained in practice.

The principle of dualism was, in fact, extended during the Union period. An elaborate system of dual administration developed: “the United Canadas maintained separate senior administrative positions, such as provincial secretaries, commissioners of Crown lands, and deputy superintendents of education”; ministries themselves were dual; and, “there were even dual prime ministers.”<sup>140</sup> Furthermore, the capital shifted between Canada West and Canada East cities, first between Kingston and Montreal, and, then Quebec City and Toronto. In fact, in 1849 it was decided that the capital should alternate, ever four years, between Quebec City and Toronto. The practice, furthermore, of recording sessions of the legislature in English only was eliminated in 1848. In 1849 Lord Elgin, read the Throne Speech in English and French and announced that French and English were of equal status in parliament.<sup>141</sup>

Perhaps most significantly, a principle of “double-majority”, viewed by many as the forerunner of federalism, developed. Verney and Russell, for example, both acknowledge the “double majority” principle as “federal practice”. More specifically, the practice of “double-majority” was, in Russell’s view, “quasi-federal”<sup>142</sup>. Verney, furthermore, argues that the “sectional dualism” that emerged “served both as an

<sup>139</sup> McRoberts, Kenneth. Misconceiving Canada, and Verney, Douglas V. Three Civilizations, Two Cultures, One State: Canada's Political Traditions.

<sup>140</sup> McRoberts, Kenneth. Misconceiving Canada p. 7.

<sup>141</sup> McRoberts, Kenneth Misconceiving Canada pp. 7-8, Russell, Peter. Constitutional Odyssey: Can Canadians Become a Sovereign People? p. 16 and, Verney, Douglas V. Three Civilizations, Two Cultures, One State: Canada's Political Traditions. p. 199.

<sup>142</sup> Russell, Peter. Constitutional Odyssey: Can Canadians Become a Sovereign People? p. 16.

alternative to the imperial policy of assimilation and as the forerunner of Canadian federalism.”<sup>143</sup> Dualist politics were apparently the harbinger of Canadian federalism.

This relationship between the “dualist principle” and the “federalist” principle is, however, not only recognized in hindsight. In an 1865 speech on the Quebec resolutions Macdonald described this “double-majority” Union practice as such: “in matters affecting Upper Canada solely, members from that section claimed and generally exercised that right of exclusive legislation, while members from Lower Canada legislated in matters affecting only their own section.”<sup>144</sup> Moreover, in the same speech Macdonald explicitly acknowledged the federal nature of this Union political practice stating that:

although we have nominally a Legislative Union in Canada - although we sit in one Parliament, supposed constitutionally to represent the people without regard to sections or localities, yet we know, as a matter of fact, that since the Union in 1841, we have had a Federal Union...We have had a Federal Union in fact, though a Legislative Union in name.<sup>145</sup> [emphasis added]

Clearly, in light of history, politics, or practice are equally as significant as formal structure. Intercultural dialogue and accommodation were constitutive of the Union period regardless of formal structure, and dualism was an important regulative norm.

The regulative norms that developed in pre-Confederation times were to have lasting significance, and dualism was perhaps the most important of these. As stated by Verney, “dualism was not simply one of several important features”, but rather, dualism “was the country’s most distinctive attribute.”<sup>146</sup> Political dualism was practiced politically from the Conquest onward. It was recognized formally in the *Quebec Act* (1774), the *Constitution Act* (1791) and developed in practice within the legislative union established in 1840.

<sup>143</sup>Verney, Douglas V. p. 200.

<sup>144</sup>Macdonald, Sir John A. “Speech on the Quebec Resolutions,” in Forbes, H. D. (Ed.). Canadian Political Thought. Toronto: Oxford University Press, 1987, p. 73.

<sup>145</sup>Ibid.

<sup>146</sup>Verney, Douglas V. p. 218.

Recognizing Canada's formal and informal institutional history is significant in terms of understanding the transition from Union government to Confederation, as well as contemporary arguments concerning the "real" meaning of Confederation. One may speak of an "institution", according to Charles Taylor, "every time the practice of a given population stabilizes around certain forms."<sup>147</sup> Basically, practices or "[c]ertain ways of acting become "normal" and often normative as well."<sup>148</sup> They "define different roles" and actors "recognize themselves in these roles."<sup>149</sup> An institution may exist, according to Taylor, "even where it is not regulated by a legal code."<sup>150</sup> At the time of Confederation, Canada already possessed an institutional structure; a structure, furthermore, that would shape the constitutional debates that lead to Confederation.

Looking at Canada as a developing "institution" allows one to consider both structure and agency. Clearly, in light of the brief history of pre-Confederation politics, the formal structures were often disregarded and indigenous practices developed. A Canadian "institutional discourse" developed over the approximately one hundred years after the Conquest. Confederation did not occur in an "institutional vacuum" but, rather, important conventions had already developed. In fact, many "Canadas" had already existed at the time of Confederation.<sup>151</sup> These conventions were to condition how Confederation would be interpreted.

When looking at Confederation, it is important to consider both continuity and change, as well as how that change is perceived. Many English-Canadian academics, although with a focus on Confederation, acknowledge the importance of continuity to Canada's political tradition. W. L. Morton and George Grant, for example, have

<sup>147</sup>Taylor, Charles. "Institutions in National Life," in his Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism. Montreal & Kingston: McGill-Queen's University Press, 1993 p.121

<sup>148</sup>Ibid.

<sup>149</sup>Ibid.

<sup>150</sup>Ibid.

<sup>151</sup>See Verney, Douglas and Diana M. Verney. "A Canadian Political Community? The Case for Tripartite Confederatism," Journal of Commonwealth and Comparative Politics. Vol. 12, No. 1, (March 1974), pp. 1-19.

described Canada as a “conservative nation”. In fact, Grant, as was discussed in chapter one, attributed the “impossibility of Canada” in his 1965 *Lament* to the “impossibility of conservatism”.<sup>152</sup> This kind of statement, however, is not very useful in terms of assessing how one can both conserve and develop. A blanket statement such as this one takes “Canada” for granted in a similar way, as we saw in chapter one, as the realists have done with regard to “sovereignty”. It begs the question of how one may both conserve and change.

In his “The Conservative Principle in Confederation,” W. L. Morton also suggests that Confederation was a conservative under-taking. The “conservative principle”, in Morton’s conception, is “the assertion that the chief political good is stability”; an order, however, that “is not imposed by authority from without, but order arising from equilibrium reached among the elements of society by usage, tradition and law.”<sup>153</sup> The conservative principle is related to “what the philosophers call an organic order, not an order mechanically contrived, but one resulting from growth from within.”<sup>154</sup> Essentially, the conservative principle implies that change takes place within a structural or constitutional order. If Confederation was indeed “conservative” then it follows that it must be viewed as a result of “organic growth” from within. More specifically, if Confederation was “conservative” it must be viewed as an “organic” or structured “growth” with its roots in the pre-Confederation constitutional order.

#### Moving Toward Confederation:

Due to both a population shift beginning in the 1850s that tilted the balance in favour of Canada West, and increasing deadlock in the 1860s, the Union government became intolerable to many English Canadians and reform became the order of the day. The Upper Canadians, who when outnumbered by Lower Canadians in 1840 had decided

<sup>152</sup>Grant, George. *Lament For A Nation*. p. 81.

<sup>153</sup>Morton, W. L. “The Conservative Principle in Confederation,” *Queen’s Quarterly*. Vol. 71, (1964-1965), p. 529.

<sup>154</sup>Ibid.

to divide seats equally between the two “sections”, were quickly converted to the logic of “rep. by pop.” when the demographics shifted. As Macdonald would later remark, “the desire and cry for [representation by population]...was daily augmenting” among Upper Canadians, a system to which resistance in Lower Canada was “proportionably increasing in strength.”<sup>155</sup>

The system, in short, had become difficult to manage. The alliances between Macdonald’s Conservatives and Cartier’s *Bleus*, and Brown’s Reformers and Dorion’s *Rouges*, with majorities in Canada East and Canada West respectively, had created deadlock. The colonies had reached a point of constitutional crisis. “Anyone who contemplates a binational, double majority system as the solution to Canada’s present discontents should,” observes Russell, “consider the frustrations and animosities generated by such a scheme during the union period.”<sup>156</sup> A system that would temper the “sectional jealousies” was clearly needed in Macdonald’s view.<sup>157</sup>

To these domestic factors may be added some of the “external” factors, both economic and security related, that made the need for union of British North America urgent. The British were dismantling their mercantile system and there was fear that the U.S. would abrogate the 1854 *Reciprocity Treaty*. Furthermore, the development of the West as a supplier of natural resources and as a market for Eastern goods, was appealing. Common security was also an issue in the face of the “democratic”, “mob rule” in the U.S.<sup>158</sup>

The possibility of Confederation was permitted by an “odd coalition” of three leaders of major factions, John A. Macdonald, Georges-Étienne Cartier and George

<sup>155</sup> Macdonald, John A. “Speech on the Quebec Resolutions,” in Forbes, H. D. (Ed.). Canadian Political Thought. p. 70.

<sup>156</sup> Russell, Peter. Constitutional Odyssey: Can Canadians Become a Sovereign People? p. 17.

<sup>157</sup> See Macdonald, Sir John A. “Speech on the Quebec Resolutions,” in Forbes, H.D. (Ed.). Canadian Political Thought. pp. 70-71.

<sup>158</sup> Vipond, Robert C. Liberty & Community: Canadian Federalism and the Failure of the Constitution. Albany, New York: State University of New York Press, 1991, p. 17.

Brown. As Peter Russell has delineated, George Brown had chaired, since March 1864, a parliamentary committee examining options for constitutional reform which upon completion in mid-June of that same year reported that a federal system (for either the two Canadas or for all of British North America) would best solve Canada's constitutional difficulties.<sup>159</sup> When the Macdonald-Taché coalition government was defeated in a vote of non-confidence, a few hours after the committee made its report, Brown "to the total amazement of the political pundits of the day - agreed to join Macdonald and Cartier in a Great Coalition solely for the purpose of achieving a constitutional solution along the lines recommended by Brown's committee."<sup>160</sup> As Macdonald would later admit: "it was not without a great deal of difficulty and reluctance that ...[the coalition] Government was formed."<sup>161</sup> In what would be instructive to political actors today, the leaders at the time of Confederation, faced with a constitutional crisis, put their party differences aside in the spirit of compromise.<sup>162</sup>

The Confederation package was indeed a compromise. While it was generally agreed that "federalism" was the only answer to the constitutional difficulties plaguing the colonies, the "Fathers" supported the "federal" state form to varying degrees. As LaSelva has noted, "[i]n 1867 Confederation had supporters as well as opponents, but few Canadians were unequivocal federalists."<sup>163</sup> Foreshadowing constitutional positions today, the "Fathers" had different expectations, and indeed conceptions, of what it meant to be "federal". In many ways Confederation was made possible by the ambiguity of the compromise.

<sup>159</sup>Russell, Peter. Constitutional Odyssey: Can Canadians Become a Sovereign People? p. 18.

<sup>160</sup>Ibid.

<sup>161</sup>Macdonald, Sir John A. "Speech on the Quebec Resolutions," Forbes, H. D. (Ed.). Canadian Political Thought, p. 67.

<sup>162</sup>In fairness to leaders today, this compromise was an elite compromise. One of the difficulties facing leaders today is the breakdown of "elite accommodation".

<sup>163</sup>LaSelva, Samuel. The Moral Foundations Of Canadians Federalism: Paradoxes, Achievements And Tragedies Of Nationhood. Montreal & Kingston: McGill-Queen's University Press, 1996, p. 31.

Macdonald's reasons for supporting a federal union were pragmatic, and his support lukewarm. Actually, Macdonald had originally supported the idea of a unitary legislative union. Macdonald recognized, however, that the possibility of a strictly unitary state was constrained by Canada's inherent dualism, or the "French fact". In a speech to the Legislative Assembly of Canada in February of 1865 he stated his reasons for supporting the establishment of a federal state as such:

I have again and again stated in the House that, if practicable, I thought a Legislative Union would be preferable. I have always contended that if we could agree to have one government and one parliament, legislating for the whole of these peoples, it would be the best, the cheapest, the most vigorous, and the strongest system of government we could adopt. But, on looking at the subject in the [Quebec] Conference, and discussing the matter as we did, most unreservedly, we found that such a system was impracticable. In the first place, it would not meet the assent of the people of Lower Canada, because they felt that in their particular position - being a minority, with a different language, nationality and religion from the majority - in case of a junction with the other provinces, their institutions and their laws might be assailed, and their ancestral associations, on which they prided themselves, attacked and prejudiced; it was found that any proposition which involved the absorption of the individuality of Lower Canada - if I may use the expression - would not be received with favour by her people.<sup>164</sup> [emphasis added]

In Macdonald's view, the establishment of a federal system was evidently a practical concession made to Lower Canada. He recognized the unique "individuality" of French-Canada and tempered his vision accordingly.

Although a clear preference for the British model of unitary government was expressed and, despite the general "anti-Americanism" of the time, Macdonald described the American federation as "one of the most skillful works which human intelligence ever created."<sup>165</sup> In Macdonald's view, Confederation would correct some of the American state's defects by marrying federalism to British parliamentary government.<sup>166</sup> Basically, according to Macdonald, the Americans, in establishing their federal system of government, had "commenced, in fact, at the wrong end" by declaring that "each state was a sovereignty in itself."<sup>167</sup> Canada, in contrast, was to have a strengthened

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<sup>164</sup> Macdonald, Sir John A. "Speech on the Quebec Resolutions," in Forbes, H. D. (Ed.). Canadian Political Thought. p. 71.

<sup>165</sup> Ibid., p. 76.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid., p. 77.

General Government.<sup>168</sup> Canada would, according to Macdonald, build on the American model and correct some of its “sovereign imperfections.”

While Macdonald’s support for federalism was contingent, writes LaSelva, “Cartier was an unequivocal federalist.”<sup>169</sup> According to Cartier, federalism best lent itself to the cultural survival of French Canada. The pre-Confederation period, as was seen, formally created both an institutional (with the Quebec Act in 1774) and territorial (with the Constitution Act in 1791) link between the French and Lower Canada. French Canadians, if they supported Confederation at all, generally agreed that federalism would be the best means of cultural survival.

Cartier is, in a sense, the ‘forgotten Father’ of Confederation. Nevertheless, according to LaSelva, his contribution to the debate is essential as it raises an issue left under-developed by the other “Fathers”: the issue of “nationality”. To Cartier, a federal system was not only necessitated by the diversity of the Canadas but would contribute to producing a new federal nationality with multiple loyalties. In contrast to Macdonald who was preoccupied with the American model, Cartier did not assume a common nationality but rather, “Canadian federalism, in his understanding of it, did not presuppose the nation so much as create it.”<sup>170</sup> A federal union would not displace existing provincial and national allegiances but, rather, these identities would co-exist within a common “political nationality”. Cartier’s conception implied that “Canada was to be a nation”, writes LaSelva, “in which multiple loyalties and multiple identities flourished.”<sup>171</sup> Cartier, in short, recognized the intersubjective nature of institutions. A federal structure, in the “forgotten Father’s” view, was not only necessitated by diversity

<sup>168</sup>Ibid.

<sup>169</sup>LaSelva, Samuel. The Moral Foundations Of Canadian Federalism: Paradoxes, Achievements, And Tragedies Of Nationhood. Montreal & Kingston: McGill-Queen’s University Press, 1996, p. 37.

<sup>170</sup>Ibid., p. 40.

<sup>171</sup>Ibid., p. 41.

but would also create and conserve a federal society united by a common “political nationality”.

George Brown’s reasons for supporting the idea of union were quite different and were related to the general position of his Reform Party.<sup>172</sup> The Reform party grew as a result of the Union of Upper and Lower Canada in 1840 under which each unit was given equal representation despite the population differential that favored Lower Canada. However, when the demographics changed in favour of Upper Canadians, the Union arrangement was no longer as appealing to the Reformers. Francophones (who were generally *Bleus*) tended to vote in a bloc and, as mentioned above, allied with the Upper Canadian Conservatives. The Reformers, in short, suffered in the Union scheme. The legislature had been dominated since the 1850s by a *Bleus* coalition of Lower or East Canadians and a small group of Upper or West Canadians. George Brown, author of the report on constitutional options was, thus, a firm supporter of federalism. In fact, Brown was “so anxious to obtain justice for Upper Canada,” explains Peter Russell, “that he preferred the smaller project” of federalism between solely the two Canadas instead of the whole of British North America “since it would be easier to attain.”<sup>173</sup> An asymmetrical (in favour of Upper Canada) “sovereignty-association” arrangement between the two nations was a legitimate option in Brown’s view.

“Federalism” as delineated in the Confederation proposal also fit nicely with the Reform Party’s general political platform and ideology. The Confederation proposal would tackle “representative reform” by establishing the principle of ‘rep by pop’ and by adopting the principle of local self-government.<sup>174</sup> Basically, the Confederation proposal was viewed as consistent with the Reform Party’s democratic principles.

<sup>172</sup>Vipond, Robert C. Liberty & Community: Canadian Federalism and the Failure of the Constitution. p. 18.

<sup>173</sup>Russell, Peter. Constitutional Odyssey. p. 19.

<sup>174</sup>Vipond, Robert C. Liberty & Community. p. 19.

These differences in motive resulted in a somewhat ambiguous Confederation proposal. Despite the appearance of a unified front among the “fathers”, to many critics, the “confederation” proposal contradicted the federal (or “confederal”) principles it was meant to express. An inventory of anti-federal measures were cited by critics. The most important of these were that the provinces were not given the fiscal capacities to fulfil their assigned responsibilities, lieutenant-governors could disallow provincial legislation and would be appointed to the provinces by the federal government, and the federal government was to retain residual power to maintain “peace, order and good government” as well as possess a general power of disallowance.<sup>175</sup> Critics of the proposal suggested that the agreement was really a design for a unitary government in disguise and called for a “genuine” federal system. The BNA Act would later be described as “quasi-federal” by federal experts due to the above unitary features.

The debate dealing with the issue of “unitary” versus “federal” state structures that developed revealed the extent to which actors (some more than others) were implicitly constrained by ideas of what it means to be sovereign. Basically, at the time of Confederation a *Blackstonian* idea of sovereignty as indivisible dominated and many had difficulty reconciling the idea of federalism with their conception of “sovereignty”.<sup>176</sup> Nevertheless, Canada’s unique time and place, it will be demonstrated, enabled Canadians to make the same conceptual distinction that was made in chapter one. Canada’s unique “social episteme” permitted a distinction between “autonomy” or “freedom of action” and “sovereignty” and, in so doing, made the idea of a Canadian “Confederation” possible.

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<sup>175</sup> See Macdonald, Sir John A. in Forbes, H.D. (Ed.). Canadian Political Thought pp. 66-92 and Vipond, Robert C. Liberty & Community. pp. 88-89.

<sup>176</sup> According to Vipond Canadian of the 1860s conceptualized sovereignty as Blackstone did. Sovereignty meant parliamentary sovereignty and was associated with the power to make laws. See Vipond, Robert. Liberty & Community. p. 30.

Some of the greatest critics of the “Great Coalition’s” proposal were Antoine-Aimé and Jean Baptiste Eric Dorion, *Rouge* representatives from Quebec who insisted that the proposal was, in reality, a proposal for a unitary government or Legislative Union. The “Dorions” instead proposed a system where the provinces would retain their “full sovereignty” and delegate powers such as foreign relations, trade, and postal services to the General Government. The Dorions, in short, wanted what they viewed as a “true” federal system, one that would permit the provincial governments, including what would become Quebec, to exercise their “sovereignty”.

The “Dorions” use of the concept of “sovereignty” to anchor their criticism of the proposal, Vipond suggests, clarified the debate by undermining some of the conceptual ambiguity created by the appearance of a unified front by the “Fathers”. The “Dorions”, in his view, forced a more systematic analysis of the implications of the proposal and the debate could no longer be “papered-over”<sup>177</sup> as the implications of “sovereignty” were clarified. In Vipond’s words:

In making sovereignty the focus of their analysis of the Confederation scheme, the Dorions immediately clarified the choices and hardened the alternatives. For if Blackstone was right that sovereignty is indivisible, then, as the Dorions showed, there could really be only two ways of forming a broader political association in British North America. At one extreme, sovereignty could be lodged in some central authority which had the legislative power to make laws for all the colonies or provinces; this was what was meant by a legislative union. At the other extreme, each member of the association could remain sovereign or supreme; this was the legal description of what the Dorions called federal union. In either case the sovereign power could “delegate” law-making authority to some “subordinate” body. In a legislative union authority could be delegated to provincial legislatures in much the same way that authority was traditionally delegated to municipal or county councils or in the way that the imperial Parliament “delegated” power to the colonial legislatures. Conversely, in a federal union authority could be delegated in various ways from the individual sovereign states to a common congress. But in either case, the delegated power ultimately existed at the sufferance of the sovereign. Power could be withdrawn, supervised, influenced and controlled by the one supreme authority.<sup>178</sup> [emphasis added]

<sup>177</sup>Will Kymlicka has argued that part of our current constitutional dilemma is the tendency to attempt to “paper-over” the “deep” differences inherent in a multi-national federation with, for example, concepts such as ‘distinct society’ and a ‘mirage of shared values’. Nevertheless, while this thesis acknowledges the value of clarifying “sovereign” assumptions, it does so for different reasons (as will be discovered as the discussion progresses) than Kymlicka’s. See his *Finding Our Way: Rethinking Ethnocultural Relations in Canada*. Toronto, Ontario: Oxford University Press, 1998, chapter 11 (pp. 147-153).

<sup>178</sup>Vipond, Robert C. *Liberty and Community*. p. 23.

The doctrine of “sovereignty”, as conceived by the Dorions, dictated two clear choices in terms of statecraft: confederation or unitary state. The Canadian proposal, in their view, was of the later variety and for this reason, misnamed. Basically, the idea of “sovereignty” as indivisible created a serious obstacle in the process of constituting “Canada”.

The debate raised by the Dorions has a long history and demonstrates a clear connection between the “mega-constitutional” debate concerning “sovereignty” and Canada’s “mega-constitutional” issues.<sup>179</sup> It underscores the potential usefulness of exploring the concept of “sovereignty” in contemporary times in order to “clarify the choices.” The theoretical issues raised by the Dorions, are neither unique to Canada, nor new. In fact, the conceptual tension between “sovereignty” and “federalism” has existed since the modern states-systems inception. In fact, “[a]ll federalisms, to the extent that they oppose absolute concentration of power at the expense of territorial autonomy (and international organization)”, Riley would argue, “are doctrines of anti-sovereignty.”<sup>180</sup>

Attempts at reconciling these two antagonistic concepts have plagued early theorists of international relations and have led, as Riley argues, to “odd misconceptualizations” of federalism. For example, Bodin (1576), credited previously as

<sup>179</sup>The “Dorions” are an important part of the Quebec sovereigntist’s historical memory. In his Pour un Québec souverain Jacques Parizeau recalls Antoine-Aimé Dorion’s position as such: “En 1867 arriva finalement l’ Acte de l’ Amérique du Nord britannique, la fédération canadienne actuelle. Le parti d’ Antoine-Aimé Dorion, l’ancêtre des libéraux d’aujourd’hui, était opposé à cette fédération. Il ne croyait pas qu’ elle permettrait la reconnaissance du peuple québécois, ni l’ égalité. Dorion voulait que le Québec garde, je le cite, son ‘indépendance propre’, et suggérait de ‘donner les plus grands pouvoirs aux gouvernements locaux (comme celui du Québec), et seulement une autorité déléguée au gouvernement général (du Canada).’ Dorion et les libéraux de l’époque proposaient une formule qui aurait fait du Québec un État pour essentiel souverain, mais associé à ses voisins dans des institutions communes, légères et seulement déléguées. Une idée qui allait resurgir, encore et encore, au sein du Parti libéral. Une idée que nous appelons le partenariat.” p. 119.

<sup>180</sup>Riley, Patrick. “Three 17th Century German Theorists of Federalism: Althusius, Hugo and Leibniz,” in Elazar, Daniel J. (Ed.). Federalism As Grand Design: Political Philosophers and the Federal Principle. Center for the Study of Federalism, Lanham, MD, U.S.A: University Press Of America, 1987, p. 60.

the author of the first modern theory of “sovereignty”, espoused, like the Dorions, a rigid view of federalism as a system of alliances.<sup>181</sup> Pufendorf (17th century), another well-known international relations theorist, was of the opinion that “the essentials of a perfect and regular state require that in it there be a union as makes everything...appear to come, as it were from one soul” and described other states as “irregular” or “monstrous”.<sup>182</sup> A similar sentiment was echoed in 1854 in a Halifax newspaper that insisted that any union of the British North American colonies should be “perfect, unqualified and absolute.”<sup>183</sup> The idea of sovereignty, as was seen in chapter one, had permanent effects on European political thought.<sup>184</sup> The dominance of these ideas, furthermore, was significant to the Canadian Confederation debates. In Canada, “federalism was widely regarded as a sinister doctrine”; one furthermore, that was “offered as the compromise solution.”<sup>185</sup> Difficulties arose when the conceptual implications of this compromise were spelled out.

Canadian history to a certain extent confirms Riley’s suggestion that the dominance of the idea of “sovereignty” has perverted federal theory. It confirms that:

[t]he oddness of all federal theory - its dependence on the concept of sovereignty (as in the doctrine of “states’ rights or state autonomy), despite its real opposition to sovereignty in national states as productive suppression of local autonomy - is due to its having seized on the very concept (sovereignty) which it actually opposed to defend its position more securely. That is, its oddity is due to federalism’s having defined the autonomy of its territorial units in terms of sovereignty, whereas in fact it would have done better to try to overturn the idea of sovereignty *tout court*. All efforts to divide what could only be conceived precisely in terms of total unity drew federal theory into constant paradox and contradiction.<sup>186</sup> [emphasis added]

The Dorions, in their criticism of the Confederation proposal, “seized on” the concept of sovereignty to “defend [their] position more securely”. This tension would, furthermore, re-surface throughout Canada’s history. As will be seen in chapter three, “sovereign”

<sup>181</sup>Ibid., p. 61.

<sup>182</sup>Ibid., p. 61-62.

<sup>183</sup>Waite, Peter. Confederation 1854-1867. Toronto: Holt, Rinehart, and Winston, 1972, p. 28 in Laselva, Samuel. p. 37.

<sup>184</sup>Riley, Patrick. p. 58.

<sup>185</sup>LaSelva, Samuel. p. 37.

<sup>186</sup>Riley, Patrick, p. 52.

discourse would become prominent and would ‘draw federal theory into paradox and contradiction’ as well as harden alternatives. What is most interesting about the debates surrounding Confederation, however, is how these contradictions were conceptually worked out. A unique Canadian theory of federalism would emerge, one furthermore, that provides a useful model in contemporary times.<sup>187</sup>

Due to its unique time and space, the Confederationists, without “overturning the idea of sovereignty tout court” were able to reconcile the idea of local autonomy and “sovereignty”. In his *Liberty and Community*, Vipond presents a compelling argument in this regard. An inchoate rapprochement of federalism and “sovereignty” was made possible in his view by the ideas surrounding “Canada’s” relationship with Britain. In essence, Vipond argues that a conceptual distinction between legislative power and sovereignty was made possible by Canada’s colonial and, in a sense, already “federal” position. In his account, “by 1864 the Canadian colonists had come to expect that Britain would not as a rule interfere in colonial politics” and “Canadians thus understood quite well that sovereignty and legislative power, the source of legitimacy and actual governance, need not be identical.”<sup>188</sup> The Canadian reconciliation of the arguably antagonistic concepts of “federalism” and “sovereignty” was made possible in Canada’s time and space, due to a unique “social episteme” that permitted the same distinction between “autonomy” and “sovereignty” that was made in chapter one. At the time of Confederation, Canadians could draw on various pre-Confederation federal practices both domestic and international.

The “discovery” of this theory of federalism was not only permitted by the distinction between “freedom of action” and “sovereignty”, but also by a certain view of space. The distance between Britain and Canada admitted a reconciliation of spatial

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<sup>187</sup>This will be discussed further in chapter four.

<sup>188</sup>Vipond, Robert C. *Liberty and Community*. p. 30.

separation and political unity. Canadian colonists could more easily accept the idea that provinces could belong to Canada through an intermediate government as they recognized a similar relationship between “Canada” and “Britain”. To many colonists, their Canadian or “territorial” identity did not necessitate rejection of their former British identity, but rather belonging to a distant and territorially separate Britain was expressed through “Canada”. Canada’s relationship with Britain legitimized the idea that territory and sense of identity need not converge.

In chapter one, the relationship between changes in the concept of ownership and the rise of “sovereignty” was discussed. Basically, it was found that the concept of “sovereignty” arose in conjunction with the idea that property is owned exclusively. Canada’s “federal” relationship with Britain, nevertheless, would alter this “sovereign conception”. Just as both Britain and Canada shared ownership of Canadian territory, so too would the provinces and federal government. “The British colonial office in the 1860s was hesitant to endorse Canadian federalism schemes because of this feature,” Elkins suggests, adding that “they thought it odd or illogical to divide the sovereignty of the Crown or of Parliament.”<sup>189</sup> The unique political circumstances in which “Canada” grew would challenge both the ideas of exclusive and of contiguous use of space, or two of the three territorial assumptions underlying “sovereignty”.<sup>190</sup> Canada’s relationship with Britain, clouded the connection between ownership and exclusive use. In fact, it raised the issue of multiple ownership or “shared property”, and permitted a more inclusive idea of how space is occupied.

The Canadian conception of space has, in contemporary times, been described as “animated”. Animism, writes John Ralston Saul, is “an inclusive idea of the planet”; “it

<sup>189</sup>Elkins, David. Beyond Sovereignty: Territory and Political Economy in the Twenty-First Century. p. 14.

<sup>190</sup>Ibid., p. 13. The other third assumption, the assumption of “continuity” refers the idea that “no unit [is] embedded within another, completely surrounded by it.”

is inclusive because it sees everything as interrelated.<sup>191</sup> Defined this way, animism is essentially a federal way of viewing space. Space is not viewed as dominated but, rather, is perceived as shared. Ideas about space are related to the “particular” and in Saul’s words:

Those who have long lived with the sense that they dominate the space they occupy will develop ideas about their relationship to place quite different from those who do not dominate. The former tend to deny any animist view and the latter to accept it as normal.<sup>192</sup>

Although it is overly idealistic to suggest that all Canadians viewed space in an inclusive way, it is significant that there were competing views of how space is occupied. The interdependent nature of Canada’s relationship with Britain permitted a renegotiation of the boundaries of spatial organization. What is “normal” and works in “Canada” is a product of and constrained by its particular time and space.

In a sense, “Canada” was not as constrained by “sovereign” ideas due to its distance and political relationship with Britain. “Sovereignty” was to reside in Britain and, as such, “Canada” could function according to the more flexible principle of “autonomy”. An animist view of space is basically, to use Riley’s description of federalism, “an anti-sovereignty doctrine”. “Canada” was able to circumvent partially the dominant idea of “sovereignty” on its space by making Britain the “sovereign” arbitrator. Nevertheless, with time and as Canada moved towards “sovereignty” the pressures to “normalize” would mount. And, as will be seen in the following chapters, “[w]ith this ‘normalization’, the very idea of Canada has become increasingly impossible.”<sup>193</sup>

Federalism and its corresponding view of space was, nevertheless, made to fit within the institution of “sovereignty”. In Vipond’s account, legislative control was

<sup>191</sup> Saul, John Ralston. Reflections Of A Siamese Twin: Canada At The End Of The Twentieth Century. Toronto, Ontario: Penguin Books, 1997, p. 185.

<sup>192</sup> Ibid., p. 187.

<sup>193</sup> Ibid., p. 196.

divided through federalism and was “rebundled” with the emergence of the concept of “constitutional federalism.”<sup>194</sup> Space, moreover, was similarly “rebundled” in the idea of a singular “Canada”. The idea of “constitutional federalism”, however, was not fully developed. As Verney has demonstrated, “constitutional federalism” worked in conjunction with “imperial federalism”.<sup>195</sup> Essentially, Britain served as the federal umpire and when Canada finally severed its formal ties with Britain in 1982, there would develop many federal institutional and identity-related gaps.

There is, however, another aspect of the “federal principle” and its “bundling” that must be considered before arriving at the “constitutive” basis of Canada. The idea of “federalism” did not arise in a vacuum. Rather, as was demonstrated above, federalism flowed organically from the dualist practices of the Union period. As discussed above, Macdonald acknowledged both federalism’s practicality due to Lower Canada’s “individuality”, as well as attributed the roots of federalism to the dualist practices of the Union period. Cartier also recognized the principle of dualism at the time of Confederation stating the following with regard to the Confederation agreement:

We could not legislate for the disappearance of the French Canadians from the American soil, but British and French Canadians alike could appreciate and understand their position relative to each other. They were placed like great families relative to each other, and their contact produced a healthy spirit of emulation [emphasis added].<sup>196</sup>

Federalism was not only a product of the heterogeneity of space, but also of cultures. Confederation was, as Cartier suggested, also a pact between two great nations or families. The federal state bundled both the “territorial” and “cultural” federalisms constitutive of the pre-Confederation period.

<sup>194</sup> See Vipond, Robert C. Liberty & Community. Chapter 2.

<sup>195</sup> See Douglas Verney’s Three Civilizations, Two Cultures, One State.

<sup>196</sup> Cartier, Georges-Étienne. in Seidle, F. Leslie. “Constitutive Principles And The Elusive Canadian Vision,” in Ibid (Ed.). Seeking a New Canadian Partnership: Asymmetrical and Confederal Options. The Institute for Research on Public Policy, Ottawa, Ontario: Renouf Publishing Co., Ltd., 1994, p. 221.

Dualism, writes Verney, was “the very basis on which French Canadians had consented to Confederation.”<sup>197</sup> Federalism had, from a French perspective, also entrenched cultural dualism and, it was on this basis that it acquired its legitimacy. Federalism was not simply territorial according to the French-Canadian of the time, but rather, “[t]he notion of ‘majority French’ was crucial to the French-Canadian understanding and acceptance of the new Dominion of Canada.”<sup>198</sup> Establishing the province of Quebec was not simply a territorial issue. “Quebec” provided the francophone nation with a state. Confederation was deemed legitimate by francophones by virtue of its perceived recognition of cultural dualism.

Essentially, in the opinion of many francophones, there were two types of “autonomy” operating within federalism: one cultural and the other territorial. Although this idea was not shared by all Canadians (and certainly isn’t shared by Canadians today) it was unquestionably a very powerful idea at the time of Confederation. Confederation, Silver maintains, “was sold to the general public...as a kind of sovereignty-association.”<sup>199</sup> The deal was sold to the French-Canadian public by emphasizing the idea that French Canada would have its own state. Silver explains it as such:

Before Confederation, Quebec and Ontario formed one single province with one government, one legislature. What Confederation did was to break up that united province, and to create a separate province of Quebec and a separate province of Ontario. The pro-Confederation editorialists, speech-makers, and pamphleteers pushed that aspect of the arrangement - that Quebec was going to be separated, that French Canadians were going to have a state of their own which would have complete control over all matters of provincial jurisdiction, and that it was a move towards greater separation. That was the selling point in Quebec.<sup>200</sup>

<sup>197</sup>Verney, Douglas. p. 218.

<sup>198</sup>Bothwell, Robert. “Two Nations Warring?” in a dialogue in *Ibid* (Ed.). Canada and Quebec. p. 37

<sup>199</sup>Silver, Arthur. in conversation in “Two Nations Warring?,” Bothwell, Robert (Ed.). Canada and Quebec. p. 38. This view is reiterated in sovereigntist writings. See, for example, Jacques Parizeau’s Pour un Québec Souverain where he states: “Reste que plusieurs de nos leaders de l’époque ont cru, de bonne foi, que l’entrée du Québec dans la fédération allait satisfaire nos deux objectifs historiques: la reconnaissance et l’égalité. Ils ont présenté cette union comme celle de deux peuples fondateurs.” p. 120.

<sup>200</sup>Silver, Arthur., *Ibid*.

French Canada viewed Confederation in light of their institutional past where they were one of two actors and where “nations,” and not only provinces, were viewed as legitimate actors. Federalism, from this perspective, simply added a state to existing arrangements; it re-established a formal territorial dimension to an already established political history of dualism or “cultural autonomy”. In a sense, it combined the practices under the 1791 constitutional “regime” with those of the union period. Adopting a formal federal system was, from a francophone perspective, not **constitutive** but, rather, was **regulative** in nature.

Pre-confederation politics are an especially important part of francophone historical memory. For this reason, Verney argues “the political history of French Canada is not...adequately described by a study of constitutional pronouncements.”<sup>201</sup> Whereas to English-Canadians, the formal constitutional texts “were symbols of Canada’s evolution toward dominion status,” to francophones they “merely represented changes in the formal structure of government instigated by the British.”<sup>202</sup> Daniel Johnson’s 1966 description of the Fathers of Confederation as men “qui nous amène à notre cinquième constitution: celle de 1867”<sup>203</sup> reflects this historical perspective. The series of formal constitutional changes after Conquest are viewed by francophone scholars, to use a terms currently popular in the international relations literature, as changes in “regime”. They were viewed organically and in terms of continuity. The British North America Act was to be the fifth of these changes.<sup>204</sup> The BNA Act was not constitutive in their view, but was one of many regulative changes over the course of their history.

<sup>201</sup>Verney, Douglas. p. 177.

<sup>202</sup>Ibid.

<sup>203</sup>Johnson, Daniel. *Égalité ou indépendance*. Montreal: Renaissance, 1965, p. 34. in Verney, Douglas. p. 177.

<sup>204</sup>Verney, Douglas. p. 8.

According to Meadwell, at the time of Confederation, two separate but interrelated institutions emerged: “[i]n its origins as a Dominion in the British Commonwealth...,” writes Meadwell, “[Canada] was both consociational and federal”; and, “[o]n both counts, the Canadian state was, from the start, differently designed from the states of Western Europe.”<sup>205</sup> Whereas federalism is generally territorial, consociationalism is a response to institutionalized cultural segmentation or what Charles Taylor has called “deep diversity”. Meadwell furthermore “suspect[s] that there is no free-standing political theory of federalism; a political theory of federalism is always dependent on something.”<sup>206</sup> In Canada territorial federalism grew out of cultural federalism; its origins, as Macdonald observed, lie in the Union period. When assessing the origins or “constitutive basis” of federalism Meadwell argues that “[e]mpirically speaking, this means that when looking at moments of institutional design, it is useful to ask what the formative political question was and, if federalism was part of the design, what role it played” adding that “[t]he corollary is not to mistake the effects of federalism for the effects of something else.”<sup>207</sup>

“Canada’s” formative political question concerned how one may reconcile competing visions and diverse ways of belonging to “Canada” including both territorial diversity and “deep” cultural diversity. Its answer was a conservative one that emphasized bicultural continuity, conservation of territorial diversity as well as continuity with Britain.

The move toward Confederation was characterized by a sort of “philosophical federalism” or a “disinclination to press arguments to their logical conclusion.”<sup>208</sup> Philosophical federalism “would seem to signify a certain conservatism”, writes Verney,

<sup>205</sup> Meadwell, Hudson. “Breaking the Mould? Quebec Independence and Secession in the Developed West,” in Periwal, Sukumar (Ed.). Notions of Nationalism. Budapest: Central European University Press, 1995, p. 133.

<sup>206</sup> Ibid., p. 138.

<sup>207</sup> Ibid.

<sup>208</sup> Verney, Douglas. p. 55.

adding that “conservatism is not the same as reaction.”<sup>209</sup> Rather, conservatism, in the Canadian context “represented a desire to preserve ...[a] mosaic, intellectual, as well as social.”<sup>210</sup> This type of conservatism “came to be the country’s trademark.”<sup>211</sup>

The debate surrounding the Confederation proposal was indeed “philosophically federal”. The nature of the federalism entrenched in the BNA was contested as motives, intention, and meaning both differed and were ambiguously articulated. Macdonald preferred a “unitary state” and thus emphasized the unitary features; Cartier raised the issue of nationality and multiple allegiance; Brown emphasized the issue of ‘rep by pop’ and the importance of local, territorial government; critics such as the Dorions were concerned with provincial autonomy; while francophones generally accepted federalism through a dualist lens, anglophones emphasized unity with Britain. No one vision dominated and, as mentioned above, conservative federalism became the constitutive rule.

In short, while conservative “federalism” may be seen as the “constitutive principle” of Canada, it was legitimated in different ways. There was a sort of ambiguity surrounding its meaning that worked well for “Canada”. Alain Gagnon has aptly observed that “in liberal democratic societies, if you do not have ambiguity, you cannot make it through.”<sup>212</sup> Ambiguity leaves room for the “political”. It leaves room for regulative change. The federal/dualist conversation or “discourse” brought together time, space, and peoples. Formal **federation**, a regulative rule, permitted, due to the particulars of time and space, the rebundling of Canada’s inherent or constitutive

<sup>209</sup>Ibid.

<sup>210</sup>Ibid.

<sup>211</sup>Ibid.

<sup>212</sup>Gagnon, Alain-G. “Discussant’s Comments,” in Seidle, Leslie F. (Ed.). Seeking A New Partnership: Asymmetrical and Confederal Options. The Institute for Research on Public Policy, Ottawa, Ontario: Renouf Publishing Co. Ltd., 1994, p. 98.

federalism.<sup>213</sup> The ambiguity surrounding the debate, furthermore, left room for the “political”; it left room for the “progressive principle”, or regulative change.

The Canadian “bundle” was, furthermore, made possible due to a renegotiation of the boundaries of sovereignty. The distinction made between “sovereignty” and “autonomy” permitted the co-existence of a complex federalism both territorial and multinational in nature to emerge. It permitted a degree of internal ambiguity and left room for politics. Confederation was not a final classically-conceived “sovereign” solution but, rather, a nuanced “federal” one that permitted accommodation of “deep” diversity. Contemporary times more than ever indicate that one must be wary of “final” solutions.

James Tully has suggested that diverse federal states must establish an intersubjective middle ground “regulated” by “conventions of justification”. He believes, furthermore, that the following three conventions provide the moral foundations of Canada’s conservative federalism:

1. The members of the federation should be recognized in their own terms through the negotiations and in the constitution (the convention of mutual recognition and continuity, or self-identification).
2. Constitutional agreements should be based on negotiations that are fair by the customs of each member involved (the convention of multilateral negotiations).
3. Negotiated constitutional agreements should require the consent of those affected and/or their representatives (the convention of consent, or *Quod omnes tangit*, “What touches all must be approved by all”).<sup>214</sup>

According to Tully, if these three conventions are followed then a federal relation may be deemed “just”. Actors must be able to name themselves and must be recognized as such (their continuity must be recognized); the negotiations must be culturally fair; and,

<sup>213</sup>A recent book makes a useful distinction between “federation” and “federalism” where the former refers to the actual structure and the latter to a value concept where “there is a basic presumption of the worth and validity of diversity.” See in Michael Burgess and Alain-G. Gagnon. “Introduction: Building on Traditions and Transitions” in Ibid (Eds.). Comparative Federalism And Federation: Competing traditions and future directions. Toronto: University of Toronto Press, 1993, p. xiii.

<sup>214</sup>Tully, James. “Diversity’s Gambit Declined,” in Cook, Curtis (Ed.). Constitutional Predicament: Canada after the Referendum of 1992. p. 168.

finally, formal constitutional changes must be agreed to. These norms are constitutive of true “diverse federalism” and must, therefore, be kept in mind when assessing change in a “philosophically federal” country such as Canada. These norms, furthermore, were, in Tully’s view, followed at the time of Confederation. In fact, it is his view, that these principles are inherent to the common law tradition, as well as implicitly guided treaty negotiations with First Nations. These rules, in essence, outline how organic, conservative growth occurs within a diverse federation. They set boundaries on what would constitute regulative change consistent with Canada’s constitutive basis. They provide, in Tully’s words, the “moral foundation” of diverse Canadian federalism.

John Ralston Saul’s image of the “Siamese Twins” aptly personifies the essence of Canadian sovereignty. It is really another way of stating that the Canadian “parts” are interdependent; they are both “independent” and “connected”. Canadian “sovereignty” is shared or, to use Tully’s term, “co-ordinate”. The contemporary Canadian concepts of “sovereignty-association” or “sovereignty-partnership” are, therefore, radical in two senses: they are **original** to Canada and they are consistent with Canada’s ideational roots. Saul suggests that this uniqueness is often left unappreciated in Canadian circles proposing that “[w]e tend to miss the dimensions of this originality because of the close relationship in Canada between theory and practice.”<sup>215</sup> We tend to miss this originality because of the importance of the “political” to the Canadian tradition and the tendency to take it for granted.

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<sup>215</sup>Saul, John Ralston. Reflections Of A Siamese Twin: Canada At The End Of The Twentieth Century. Toronto, Ontario: Penguin Books, 1997, p. 122-123.

## Chapter 3:

### The Trudeau-Lévesque Debate: From Federal Dialogue to “Sovereign” Monologues

A nation is...no more and no less than the entire population of a sovereign state...Because no country has an absolutely homogeneous population, all the so-called nation-states of today are also territorial states. And the converse is probably also true. The distinction between a nation-state, a multi-national state, and a territorial state may well be valid in reference to historical origins; but it has very little foundation in law or fact today and is mainly indicative of political value judgments. [emphasis added]

Pierre Elliot Trudeau, *Federalism and the French Canadians*

Within the present federal framework, Quebec sovereignty is a contradiction in terms, a graft rejected by the Canadian political body. The independence we envisage will not be autarchy; we will not cut ourselves off; we do not reject North American values. The independence we envisage is the only way possible to us because... ‘Canada and Quebec cannot continue to live like two scorpions in the same bottle’. [emphasis added]

René Lévesque, *My Quebec*

[...]Il y a depuis maintenant vingt ans deux tendances politiques à peu près cohérentes qui s'affrontent au Québec: d'une part, celle de la souveraineté et, d'autre part, celle de Canadiens d'un océan à l'autre assujettis à la même Charte des droits et libertés, dont les gouvernements provinciaux, c'est -à-dire leur expression politique régionale, sont placés dans une situation d'égalité. La première thèse a été celle de René Lévesque, la seconde a été celle de Pierre Trudeau. Chacune a sa cohérence et, au fond, chacune correspond à la perception que l'on a d'un pays, le Québec ou le Canada. Dans ce sens, les vieux démons de la fin des années soixante sont toujours avec nous. Il est normal que des politiciens, un peu effrayés d'avoir à choisir des voies claires, cherchent entre les deux seules voies claires qui se sont dégagées depuis vingt ans des réconciliations contre nature qui, finalement, sont toujours un peu les mêmes et qui, périodiquement, ne débouchent sur rien parce qu'elles ne peuvent pas déboucher sur quoi que ce soit et nous ramènent au *statu quo*. Parce que, en fin de compte, la seule façon de se sortir de l'incohérence des projets, c'est de revenir au *statu quo*. [emphasis added]

Jacques Parizeau, *Pour un Québec souverain*

The “philosophical federalism”, constitutive of Canada, would be seriously challenged by the 1960s as the ambiguity surrounding the various visions of Canadian federalism was dispelled. Quebec was experiencing what is now referred to as a “Quiet Revolution”, the provinces were growing in strength and the federal government had been, since the 1950s, engaged in a project of economic and social “nation-building”. The differing ways in which Canadian federalism was legitimated were to reach an intense state of conflict.

The 1960s were a period of intense “unbundling”<sup>216</sup> and, therefore, also represented a serious need for new regulative rules. Dualism, once tightly “bundled” within federalism, had been “radicalized” by the “Quiet Revolution”. With the election of Jean Lesage in 1960, the Quebec government embarked on a vigorous modernizing campaign replacing the Catholic Church’s once dominant role as the guardian of the Quebec “nation”. The Rest of Canada (ROC) could no longer ignore the “French fact”. The ambitious state-building project initiated by the Lesage government stretched the boundaries of federalism and challenged the formal constitutional *status quo*.

The conditions of a “constitutional war” breaking-out between the “two nations” at the “bosom” of the Canadian state were looming. Thus, in light of what was deemed a crisis, the Bilingualism & Biculturalism (B&B) commission, appointed by the Pearson government, was given as its mandate to “inquire into and report upon the existing state of bilingualism and biculturalism in Canada and to recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership [emphasis added] between the two founding races.”<sup>217</sup> The commission’s mandate was to consider both the nature of the “unbundling” that was taking place, as well as to recommend various ways in which dualism could be “rebundled” in order to protect the integrity of the federation.

The 1960s were, in McRoberts words, “marked by an extraordinary willingness to examine new and unconventional approaches” to Canadian unity.<sup>218</sup> Furthermore, unlike contemporary times, in the 1960s, there was a more widespread acceptance of the “two-nations view” of Canada. In fact, the “two nations thesis” was the assumption under which the B & B commission was to conduct its research. Echoing the previously discussed idea that dualism existed *within* federalism, Pearson stated, in 1963, that

<sup>216</sup>To remind the reader, “un-bundling” refers to challenging assumptions that are taken for granted.

<sup>217</sup>McRobert, Kenneth. Misconceiving Canada. p. 117.

<sup>218</sup>Ibid., p. 54.

“[w]hile Quebec is a province in this national confederation, it is more than a province because it is the heartland of a people: in a very real sense it is a nation within a nation.”<sup>219</sup> The relevant units, Pearson admitted, were not simply “provinces” but also “nations”. Pearson, in short, acknowledged the “deep” diversity embedded within Canada’s formal federal structure.

Pearson was, however, not alone in this view. All three major parties (Liberal, Conservative and NDP) struggled with, and incorporated to varying extents, a “two-nations thesis” in their party platforms. Many English-Canadian intellectuals also played a leading role in developing this idea often linking it with the need to foster a Canadian nationalism to escape American domination.<sup>220</sup>

Although not everyone was in agreement with developing “Canada” in line with a formal recognition of the “two-nations” view, the 1960s were a period when many were open to accommodation and was characterized by a willingness to consider different views. Dualism, “the view which holds that the most significant cleavage in Canadian society is the line dividing English from French” and “which identifies as the major challenge to domestic statecraft the establishment of harmonious and just relations between the English-speaking and French-speaking communities of Canada”<sup>221</sup> was a basic Canadian assumption. And, whether in a spirit of *realpolitik* or compromise there was a willingness, on the part of many, to engage in a “federal” conversation in a manner very much consistent with Canada’s roots.

The purpose of this chapter is to demonstrate how the “conversation” between competing visions broke down as a result of implicit views concerning what constitutes a “normal”, “sovereign” nation. Basically, the chapter will demonstrate how the

<sup>219</sup>Ibid., p. 40.

<sup>220</sup>See for example Charles Taylor’s “A Canadian Future?,” first published in 1970 and republished in his *Reconciling the Solitudes*, pp. 23-39; George Grant’s *Lament for A Nation*; and, various works by Gad Horowitz.

<sup>221</sup>Cameron, David R. “Dualism and National Unity,” p. 237.

constitutive basis of the Canadian federation was, by the end of the 1960s, endangered as a result of the dominance of classical “sovereignty-thinking”. The co-existence of many visions and ways of belonging gave way to a monolithic vision centered on unity. It will become apparent that the idea of “sovereignty” does not easily shed its classical, *Blackstonian* or “unitary” implications. The “sovereign compromise” of shared autonomy and shared constitutional sovereignty and, thus, the constitutive basis of Canada, was imperilled by the end of the 60s.

Leadership was central to this conversational break-down and two figures, Trudeau and Lévesque, personified the debate. They brought clarity to the “philosophical federalism” that had characterized the 1960s and in Cook’s words, “measured the gap between the federalist and the nationalist.”<sup>222</sup> In light of the “philosophical federalism” of the 60s, by the 70s both Trudeau and Lévesque had concluded:

that the fuzzy, rhetorical debates about Quebec’s place in Canada that had consumed so much energy for the previous decade, were futile. The proposed panaceas - *une province pas comme les autres*, a particular status, a special status... - all missed the point. French Canadians would either be equal partners in a federal system that gave full guarantees to their rights throughout Canada or they would achieve equality through the establishment of a sovereign state. Special status, Trudeau and Lévesque agreed, was neither fish nor fowl.<sup>223</sup>

Both Trudeau and Lévesque were in agreement with the view that the ambiguity and “philosophical federalism” that had permitted the acceptance of the Confederation proposal needed to be dispelled. In the “Dorionian tradition” two “clear” alternatives presented themselves: a “sovereign” Canada or a “sovereign” Quebec. More specifically, the alternatives were both, in a sense, “unitary” with a focus on “Canada” and “Quebec” respectively.

<sup>222</sup>Cook, Ramsay. “The Trudeau-Lévesque Debate,” in his Canada, Quebec, And The Uses Of Nationalism (second edition). Toronto: McClelland & Stewart Inc., 1995, p. 137.

<sup>223</sup>Ibid., p. 142.

Both the Trudeau and Lévesque visions, as will become apparent, contained a federalist element. Nevertheless, for the purpose of “measuring the gap” between the “sovereigntist” and the “federalist”, the monolithic, unitary features of their visions will be focal. The chapter will focus primarily on the Trudeau “vision” as it is viewed by many as the “crux of the present [constitutional] predicament.”<sup>224</sup> The discussion will look at both Trudeau’s theoretical vision with a focus on his seminal *Federalism and the French Canadians* as well as his political practice as Prime Minister and “constitutional architect” and make comparisons.

Trudeau’s *Federalism and the French Canadians* was a collection of pieces he wrote over the 1950s and 1960s and laid the theoretical foundation of his style as constitutional architect. These essays, furthermore, occupied an important Quebec cross-roads. The 1960s, referred to in retrospect as a period of “Quiet Revolution”, represented the modern “awakening” of Quebec. Understanding Trudeau’s writing requires situating it historically.

The pre- “Quiet Revolution” period, or more specifically, the era of “Duplessisism” was one where Quebec nationalism was clerical, conservative and isolationist. Trudeau was highly critical of the Duplessis regime and the nature of the associated nationalism believing that it had impoverished francophone society and thwarted the development of “true” democracy. Essentially, Trudeau attributed the “backwardness” of Quebec society to the “reactionary” nationalism of the Duplessis variety.

In his 1960 article “Some Obstacles to Democracy in Quebec”, Trudeau argued that both the clerical nationalism of francophone society and the unwillingness on the part of anglophones to promote democracy in Quebec accounted for the “backwardness”

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<sup>224</sup>Gagnon, Alain-G. and Guy Laforest. “The future of federalism: lessons from Canada and Quebec,” *International Journal*. Vol. 48, No. 3, (Summer 1993), p. 471.

of Quebec society at the time.<sup>225</sup> Contrary to the popular argument among francophones of the “Montreal school” that stressed the English-Canadian role as the repressive conqueror, Trudeau believed that his people were equally responsible for their plight. Conservative nationalism and the clerical elite had thwarted their democratic and economic development. The solution for Quebecers, according to Trudeau, would be to emancipate themselves from nationalism, the inhibitor of “progress”. Trudeau’s antipathy toward nationalism, particularly Quebecois nationalism, was perhaps the most significant theme in his writing. Trudeau was a co-founder, with like-minded anti-nationalists, of *Cité Libre*, a liberal Quebec magazine, that had as its purpose to critique the repressive Duplessis regime. Initially through his writings, and later in practice, Trudeau made it his mission to emancipate his people from this “backward” and reactionary ideology.

Trudeau’s writings articulated the view that nationalism is necessarily conservative, reactionary and anathema to “progress”. When in the 1960s the Lesage government appeared to be acting in a spirit of modern “progressivism” in the name of the “nation”, Trudeau, therefore, remained sceptical. McRoberts argues that the “Quiet Revolution” “presented Trudeau with a paradox”.<sup>226</sup> Quebec society was “progressing” or “modernizing” while nationalism simultaneously increased. In fact, Quebec leadership claimed to be directed by a *liberal* nationalism.<sup>227</sup> Nevertheless, despite the empirical evidence and convincing rhetoric of the “liberal”, “Quiet Revolutionaries”, Trudeau remained firm in his anti-nationalist stance.

These “Quiet Revolutionaries” were, in Trudeau’s view, not revolutionary at all but, rather, were “counter-revolutionaries”, not fully able to do away with nationalism in the name of progress. His views, in this regard, are related to what he saw as a world

<sup>225</sup> See Trudeau, Pierre Elliott. “Some Obstacles to Democracy in Quebec,” in his *Federalism and the French Canadians*. Toronto: Macmillan of Canada, 1968, pp. 103-123.

<sup>226</sup> McRoberts, Kenneth. *Misconceiving Canada*. p. 59.

<sup>227</sup> *Ibid.*

trend. In essence, Trudeau believed that, in an age of progress, nationalism would soon become anachronistic. Nations, in his words, “belong to a transitional period in world history.”<sup>228</sup> Like Elie Kedourie and others, he believed that nationalism was a culture’s “last gasp before decline.”<sup>229</sup> “For humanity”, wrote Trudeau, “progress is the slow journey towards personal freedom” and “[t]hose responsible for a sudden reversal of this course can be defined as counter-revolutionaries.”<sup>230</sup> Quebec society and its “Quiet Revolutionaries,” despite the apparent progress being made, were still afflicted by what Trudeau calls a “wigwam complex”<sup>231</sup> detrimental to their personal, individual freedom. Hence, according to Trudeau, nationalism was counter-revolutionary in an age of liberal “progress”.

Trudeau’s thought and, as will be seen later, his practice, reflect many of the same views articulated in the mid-nineteenth century Durham report. Basically, Trudeau presented the “Quiet Revolution” as an extension of the inherent reactionary backwardness of Quebec nationalism in a similar way that Durham had after the rebellions.<sup>232</sup> And, as will become increasingly apparent, through his monolithic “sovereign” lenses, Trudeau would portray Quebec’s claims for continuity as illiberal, backward and, basically, inferior in a similar manner as Durham had done in the 1840s.<sup>233</sup>

<sup>228</sup> Trudeau, Pierre Elliott. “New Treason Of The Intellectuals,” in his Federalism and the French-Canadians. p. 177.

<sup>229</sup> See Elie Kedourie’s Nationalism. New York: Frederick A. Praeger, 1960.

<sup>230</sup> Trudeau, Pierre Elliott. “Separatist Counter-Revolutionaries,” in his Federalism and the French-Canadians. p. 209.

<sup>231</sup> In his “Separatist Counter-Revolutionaries,” Trudeau explains what he calls a “wigwam complex” as such: “The truth is that the separatist counter-revolution is the work of a powerless petit-bourgeois minority afraid of being left behind by the twentieth-century revolution. Rather than carving themselves out a place in it by ability, they want to make the whole tribe return to the wigwams by declaring its independence” adding that “[t]hat, of course, will not prevent the world outside from progressing by giant’s strides” and “will not change the rules and the facts of history, nor the real power relationship in North America.” p. 211.

<sup>232</sup> See chapter two.

<sup>233</sup> For more detail see James Tully’s Strange Multiplicity. Chapter 5.

Trudeau's anti-nationalist beliefs were, in his conception, inextricably linked with his theoretical commitment to federalism. An admirer of Acton, Trudeau believed that federalism was the solution to the dangerous forces of nationalism in a multinational state.<sup>234</sup> Trudeau equated federalism with reason and nationalism with emotion and believed that the "emotionalism" inherent in nationalism could be mediated by the checks and balances of "reasonable" federalism.

According to Trudeau, moreover, federalism was the wave of the future. In the end, reason and "rational man" would, in the age of progress, emerge the victor against dying nationalisms such as the Quebec one. Trudeau's long term vision was a liberal one where, with "progress", the whole world would eventually be federally united. The "lasting greatness of Thucydides" wrote Trudeau in 1962, was "that he was able to visualize a world in which Athens would be no more."<sup>235</sup> Once nationalism was finally conquered by reason the world could finally unite.

This trend, in fact, was already evident in Trudeau's view. He believed that sovereignty and nationalism were out-dated concepts in an age of interdependence. World federalism was being realized and, in order to progress further, he wrote in 1962, "the very concept of sovereignty must be surmounted."<sup>236</sup> "[T]hose who proclaim it for the nation of French Canada are", in Trudeau's view, "not only reactionary, they are preposterous."<sup>237</sup> The "sovereign", nationalist era was on its way out, ushering in a "progressive" era of world federalism and reason. French Canadian nationalism was, therefore, counter-productive and remained "backward" in light of world trends. The idea of a "sovereign" Quebec was simply absurd.

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<sup>234</sup>For elaboration of Acton's views see "Nationality," in his Essays On Freedom And Power. Boston, Mass.: The Beacon Press, 1948, pp. 166-195.

<sup>235</sup>Trudeau, Pierre Elliot. "New Treason Of The Intellectuals," p. 177.

<sup>236</sup>Ibid., p. 170.

<sup>237</sup>Ibid.

The timing of Trudeau's anti-nationalist writings coincides with Grant's writing of *Lament For A Nation*. Grant noticed the same trends as Trudeau, however, with "lament" rather than welcome. Grant would have concurred with Trudeau that nationalism was on its way out. As we saw in chapter one, it was Grant's opinion that Canada had already, by the time of *Lament*'s writing, ceased to be a nation. "Globalization" had made the idea of "nations" and "Canada" in particular, antiquated. French-Canadian nationalism was, in Grant's view, also "a last-ditch stand"<sup>238</sup> and, in affectionate condescension, he commented that it were as if the Quebec nationalists had just discovered the anachronistic *Candide*.<sup>239</sup>

Grant, in short, concurred with Trudeau's view that the idea of "liberal nationalism" was a contradiction in terms. Modernization and liberalism were incompatible with nationalism, which was, in his view, inherently conservative. The idea of "liberal nationalism" was, nevertheless, consistent in Grant's view with the "dominant pattern" of human life and particularly characteristic of the Canadian condition. Canadians in his words "desire to have it both ways" and "seek at the same moment objectives that are contradictory."<sup>240</sup> Canadians have always wanted to have it both ways pursuing the benefits of belonging to the North American technological "monolith" and wishing to preserve a distinctive way of life. Nevertheless, in Grant's view, liberal "progress" would obliterate both "Canada" and French on this continent. Grant, however, admired French-Canadian nationalists stating that their nationalism

<sup>238</sup>Grant, George. *Lament For A Nation*. p. 87.

<sup>239</sup>In 1969 Granted stated that "[w]hat is so endearing about the young French Canadians revolting against their tradition is that they sometimes write as if Voltaire's Candide had come off the press last week instead of two hundred years ago. One's enchantment is however limited by the knowledge that their awakening to modernity, which seems to them an expression of independence, in fact leaves them wide open to conquest by a modernity which is at its very heart destructive of indigenous traditions." See his "Canadian Fate and Imperialism," in his *Technology and Empire*. Concord, Ontario: House of Anansi Press Ltd., p. 67.

<sup>240</sup>Grant, George. "Inconsistency ruled in Canada's 70s," *Globe & Mail*, Dec. 31, 1979.

would go “with more than the smirks and whimpers of their English-speaking compatriots- with their flags flying and, indeed, with some guns blazing.”<sup>241</sup>

In short, while both Trudeau and Grant believed that nationalism would eventually become antiquated they felt differently about it. Trudeau welcomed liberal “progress”, while Grant viewed it with antipathy. Grant viewed current trends as a move toward malevolent setters of a “universal and homogeneous state”; Trudeau viewed “globalization” positively as a journey toward personal freedom. Federalism within a sovereign state was a useful interim measure, in Trudeau’s view, that would eventually give way to a world “territorial” (rather than ethnic) federalism and personal freedom from nationalism. “Canadian federalism is an experiment of major proportions” declared Trudeau, that “could become a brilliant prototype for the molding of tomorrow’s civilization.”<sup>242</sup>

Trudeau, however, recognized the reality of the multinational nature of Canada. In his view, the French “fact” was, at least for the time being, a practical reality and “[e]xcept to pinpoint ourselves in the right historical perspective, then, there is not much to be gained in brushing them [nations] aside on the ground that the nation of French Canadians will some day fade from view.”<sup>243</sup> Therefore, “reason”, according to Trudeau, would suggest that English-Canadians must abandon their nationalism and must resist the temptation of pursuing a pan-Canadian nationalism in order to accommodate French nationalism in the interim. Nationalist goals, he suggested in his writings, should be pursued by both groups at the local level. Assimilation, through pan-Canadianism, was simply not a practical reality. “The die is cast in Canada”, Trudeau admitted, “there are two main ethnic and linguistic groups in Canada...each too strong and too deeply rooted in the past, too firmly bound to a mother-culture, to be able

<sup>241</sup>Grant, George. Lament For A Nation. p. 87.

<sup>242</sup>Trudeau, Pierre Elliott. “New Treason Of The Intellectuals,” p. 179.

<sup>243</sup>Ibid., p. 177.

to engulf the other.”<sup>244</sup> Reasonable federalism was Trudeau’s answer to the current reality of nationalisms and ultimate “victory is promised to the nation that rejects its nationalistic obsessions and, with the full support of its members, applies all the powers at its command to the pursuit of the most far-reaching and human ideal.”<sup>245</sup>

Essentially, Trudeau’s first response as a political theorist, as Gagnon and Laforest have also observed, was to deal with competing nationalisms with “reason”. However, upon examination of Trudeau’s writings as well as its expression in practice, it becomes evident that he was not completely convinced that “pure” reason is always practicable. In short, a survey of his “Federalism, Nationalism, and Reason” indicates that he was of the opinion that federations must, at times, use nationalism and, indeed, more of it, to assure cohesion.

In the above discussed piece, Trudeau delineates the states-systems evolution from what he refers to as the “territorial state” legitimated and held together by divine right, tradition and force to the “nation-state” legitimated by the idea of “natural affinities.”<sup>246</sup> The transition was succinctly stated as such:

it might be said that in the past the (territorial) state had defined its territorial limits which had defined the people or nation living within. But henceforth it was to be the people who first defined themselves as a nation, who then declared which territory belonged to them as of right, and who finally proceeded to give their allegiance to a state of their own choosing or invention which would exercise authority over that nation and that territory. Hence the expression ‘nation-state’. As I see it, the important transition was from the *territorial state to the nation-state*.<sup>247</sup>

More specifically, the way in which the state is legitimated had changed. While the state had once been legitimated and “bundled” by tradition and coercion, with the transition to “nation-state”, the people became the legitimate moral “sovereign” bundled by nationalism. Trudeau’s use of the word “territorial” to describe the former state form is

<sup>244</sup>Ibid., p. 178.

<sup>245</sup>Ibid., p. 180. The most far reaching human ideal is personal freedom in Trudeau’s view. His conception of freedom essentially, involves ‘freedom from’ context or an organic whole. Grant, in contrast, conceives of freedom as ‘freedom through’ context or knowledge of one’s place in the whole.

<sup>246</sup>Trudeau, Pierre Elliott. “Federalism, Nationalism, and Reason,” p. 185.

<sup>247</sup>Ibid.

misleading, however, as “sovereign” states, of both the “territorial” and “nation-state” varieties are, as was seen in chapter one, by definition, territorial.<sup>248</sup> Essentially, what Trudeau is describing is the impact of a “regulative” rule (that “nations” are the legitimizers of the “sovereign” territory) within the institution of “sovereignty”. The transition from “territorial” to “nation-state” had changed the nature of the “sovereignty” game.

The use of the above nomenclature, however, is telling with regard to Trudeau’s views of nationalism. Later in the same article, Trudeau argued that “[b]ecause no country has an absolutely homogeneous population, all the so-called nation-states of today [emphasis added] are also territorial states.”<sup>249</sup> “[T]he distinction between a nation-state, a multinational state, and a territorial state” was therefore, in Trudeau’s view, irrelevant; it “may well be valid in reference to historical origins” but, nevertheless, “has little foundation in law or fact [emphasis added]” and “is mainly indicative of political value judgments.”<sup>250</sup>

In an attempt to clarify, Trudeau, furthermore, distinguished between two types of nations: the “juristic” nation as “no more or no less than the entire population of a sovereign state” and the more ambiguous “sociological nation” referring sometimes to linguistic, cultural or ethnic attributes. Trudeau emphasized that it is difficult to define what is meant by a ‘sociological’ nation and stated “[a]s Humpty Dumpty once told Alice, a word means just what one chooses it to mean” adding that those using it will just have to hope that what is meant by it is properly understood.<sup>251</sup> In the end, only the idea of ‘juristic’ nation is clear. “Nationhood”, he declared, is “little more than a state of mind.”<sup>252</sup>

<sup>248</sup>The significance of this will be discussed in detail later.

<sup>249</sup>Trudeau, “Federalism, Nationalism, and Reason,” p. 187.

<sup>250</sup>Ibid., p. 188.

<sup>251</sup>Ibid.

<sup>252</sup>Ibid., p. 189.

The only clear distinction between the two types of nations is that one, the “juristic” nation, represents the *status quo* and is “territorial”, while, the other challenges the territorial integrity of the state and is apparently something else. In short, a ‘sociological’ nation is at work, “when a tightly knit minority within a state begins to define itself forcefully and consistently as a nation” and thus “is triggering a mechanism which will tend to propel it toward full statehood.”<sup>253</sup> The ‘sociological’ nation is one that wishes to become a ‘juristic’ one.

With the rise of the “nation-state”, Trudeau observed, a paradox emerged: the very ideology used to legitimate the state could also be used by a minority within the state to destroy it. The idea of “nation-state” is, for this reason, self-destructive. Federalism emerged as a stabilizer. According to Trudeau, it emerged as a response to this paradox. Federalism developed, as a “regulative rule” to deal with contradictions that developed within the institution of sovereignty.

In light of this contradiction, reason would suggest that nationalism is an inappropriate way to legitimize the state both at the ‘juristic’ and ‘sociological’ levels. “[I]f nationalism is encouraged as a rightful doctrine and noble passion, what is to prevent it from being used by some group, region, or province within the nation?” asked Trudeau.<sup>254</sup> Sociological nationalisms are disruptive to stability and may be encouraged by the “juristic” nation if nationalism is used at that level. Rational federalism emerged in response to challenges that ‘sociological’ fragmentation pose to the juristic state in an age that recognized the principle of self-determination.<sup>255</sup> The “juristic” state, for federalism to work, must also act rationally.

Nevertheless, despite his acrimony towards nationalism, Trudeau realized nationalism’s potential as a political tool as well as its enticing nature. Both the “juristic”

<sup>253</sup>Ibid., p. 188.

<sup>254</sup>Ibid., p. 192.

<sup>255</sup>Ibid.

and “sociological” nations, Trudeau expressed in his writing, will be tempted to employ nationalism for cohesion and to preserve the fragile consensus upon which the state rests. Reason alone, despite preference, will not always suffice. Nationalism is the “rule” within the “nation-state” game. The modern state, in Trudeau’s words “since it is physically and intellectually difficult to persuade continually through reason alone...is tempted to reach out for whatever emotional support it can find...[h]ence from the emotional appeal called nationalism is derived a psychological inclination to obey the constitution of the state.”<sup>256</sup>

In fact, federations, inherently less stable than unitary states, would appear to require a stronger dose of nationalism *at the federal level*. “If the heavy paste of nationalism is relied upon to keep a unitary nation-state together,” Trudeau reasoned, “much more nationalism would appear to be required in the case of a federal nation-state.”<sup>257</sup> Apparently, more nationalism *at the federal level* is sometimes necessary, in Trudeau’s view, to thwart the nationalism of a minority “people” or, at least, it was Trudeau’s opinion that the lure of nationalism will be more intense in federations. Foreshadowing his strategy after the 1980 referendum on sovereignty in Quebec, Trudeau stated in his 1965 work that:

One way of offsetting the appeal of separatism is by investing tremendous amounts of time, energy, and money in nationalism, *at the federal level*. A national image must be created that will have such an appeal as to make any image of a separatist group unattractive. Resources must be diverted into such things as national flags, anthems, education, arts councils, broadcasting corporations, film boards; the territory must be bound together by a network of railways, highways, airlines... In short, the whole of the citizenry must be made to feel that it is only within the framework of the federal state that their language, culture, institutions, sacred traditions, and standard of living can be protected from external attack and internal strife.<sup>258</sup> [emphasis added]

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<sup>256</sup>Ibid., p. 189.

<sup>257</sup>Ibid., p. 192.

<sup>258</sup>Ibid., p. 193.

Thus, according to Trudeau, one answer to the challenge of the nationalism of a minority “people” within a federal state is the creation of a single juristic nation through a vigorous campaign of nation-building. In an era of nation-states and, thus, in an era where the “nation” is viewed as the legitimate actor, nationalism must be employed despite the preferability of “reason”. In already unstable federal systems, nationalism, may become the only *reasonable* alternative. Or, to follow Trudeau’s argument, employing nationalism may constitute necessary “practical irrationality.”<sup>259</sup> The juristic “nation”, when faced with secession potential, must, at times, be more tightly “bundled” in order to compete with regional nationalism/s.

Trudeau, however, tempered this above option by stating that “[i]t is, of course, obvious that a national consensus will only be developed in this way if the nationalism [at the federal level] is emotionally acceptable to all important groups within the nation.”<sup>260</sup> A nationalism reflective of the whole and worthy of primary allegiance must be cultivated at the federal level in order to compete effectively with regional nationalisms.

A federal compromise must, moreover, be altered with care “giving a little more regional autonomy here” and “a bit more centralization there” while “taking great care to preserve the delicate balance upon which the national consensus rests.”<sup>261</sup> Furthermore, such prudence “must increase in direct proportion to the strength of the alternatives which present themselves to the federated groups.”<sup>262</sup>

Failing to follow this advice, Trudeau argued in his writings, would lead minorities to shift their allegiance to a neighbouring state, to seek independence, or, to make unreasonable demands on the other members of the federation. In short, “a critical

<sup>259</sup>Gagnon, Alain-G. and Guy Laforest. “The future of federalism: lessons from Canada and Quebec,” p. 475.

<sup>260</sup>Trudeau, “Federalism, Nationalism, and Reason,” p. 193.

<sup>261</sup>Ibid., p. 194.

<sup>262</sup>Ibid.

point can be reached in either direction beyond which separation takes place, or a civil war is fought.”<sup>263</sup> According to Trudeau, furthermore, at this critical point, no amount of nationalism can save the federation and “the great moment of truth arrives when it is realized that in the last resort the mainspring of federalism cannot be emotion but must be reason.”<sup>264</sup> Nevertheless, almost 35 years later, Canadians are still waiting for Trudeauian “rational catharsis”.

To recapitulate, Trudeau’s argument in his “Federalism, Nationalism, and Reason,” is as follows: 1. Reason, inherent in federalism, is the preferable political principle; 2. nationalism, however, remains a powerful political idea and may be used by ‘sociological’ nations and could, therefore, threaten the state; 3. using nationalism may, therefore, sometimes be justified to ensure the integrity of the state and victory of the federal principle; nationalism may constitute “practical irrationality” in the name of eliminating irrationality at the regional level; 4. Nationalism at the federal level may contribute to legitimizing nationalism at the regional level; 5. a federation may reach a point of crisis when nationalism loses its political potency as a unifier and may in fact result in a polarization between extreme alternatives (separatism or civil war); 6. members of a federation will experience, at the moment of crisis, a cathartic revelation of “truth” when it is realized that federalism is reason.<sup>265</sup> As will be demonstrated, Trudeau put this into practice as Prime Minister and just as he had predicted, Canadian constitutionalism has gone full circle back to number one. Federal constitutional strategy has gone from trying to fight nationalism with nationalism back to the necessity of “reason”. The question then arises as to what is “reasonable” within Canada.

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<sup>263</sup>Ibid.

<sup>264</sup>Ibid.

<sup>265</sup>A similar summary of Trudeau’s argument in “Federalism, Nationalism, and Reason,” is made in Alain-G. Gagnon and Guy Laforest. “The future of federalism: lessons from Canada and Quebec,” p. 475.

Oliver has noted that, although Trudeau had some advice for those defending the “juristic” state, he had little to say about how a “sociological” minority may defend itself against the imposition of “juristic” nationalism.<sup>266</sup> Oliver suggests, moreover, that Trudeau’s asymmetrical treatment of the two nationalisms was a result of three factors: his belief that sociological nationalism leads to instability, his view that sociological nationalism will inevitably lead to secession, and perhaps most ponderous, his “visceral” hate for the sociological nationalism of French Canada.<sup>267</sup>

Oliver’s analysis appears accurate and his first point is certainly linked with the second. Trudeau acknowledged the inherent instability of federations stating that “what Ernest Renan said about the nation is even truer about the federated nation” that “[l]’existence d’une nation est...un plébiscite de tous les jours.”<sup>268</sup> Although federations will necessarily be somewhat unstable, the principle of self-determination of nations (in the sociological sense) is, in Trudeau’s view, what ultimately threatens the integrity of the federation. As was seen above, “sociological” nations, according to Trudeau, inevitably wish to become “juristic” states. Reflecting the view that allegiance is ultimately singular, minority nationalism would lead to secession if allowed to follow its natural course.

Trudeau’s writing, in essence, reflects a Dorionian view of federalism as hierarchy; it reflects the “oddity” of federal theory due to its reliance on the fetters of the idea of classical, indivisible “sovereignty”.<sup>269</sup> According to Riley, the origin of the idea of secession may be discovered within this tension.<sup>270</sup> As was seen in chapter two, the

<sup>266</sup>See Oliver, Michael. “‘Laurendeau et Trudeau’: leurs opinions sur le Canada” in Hudon, Raymond and Réjean Pelletier (Eds.). *L’engagement de l’intellectuel: mélanges en l’honneur de Léon Dion*. Quebec: Les Presses de l’Université Laval, 1991, p. 351 in Gagnon, Alain-G. and Guy Laforest. “The future of federalism: lessons from Canada and Quebec,” p. 476.

<sup>267</sup>Oliver, Michael. in Gagnon, Alain-G. and Guy Laforest. “The future of federalism: lessons from Canada and Quebec,” p. 476.

<sup>268</sup>Trudeau, Pierre Elliott. “Federalism, Nationalism, and Reason,” p. 192.

<sup>269</sup>See Riley, Patrick. “Three 17th Century German Theorists of Federalism: Althusius, Hugo and Leibniz,” p. 52.

<sup>270</sup>The origin of the problem of secession originates, in Patrick Riley’s view, from “[t]he notion that a

idea of “sovereignty” forces a conception of federalism as a system of alliances of “sovereign” states or absorbs its essence with the idea of a single indivisible sovereign at the federal level. When a crisis emerges two extreme alternatives will appear with the idea of secession arising from the former and civil war from the latter. True federalism, as was discovered in chapter two, is an “anti- (classical) sovereignty” doctrine, one, furthermore, that, when divorced from the idea of classical “sovereignty”, would not force such extreme options.

Oliver’s final point is especially instructive. Trudeau did indeed appear particularly hostile toward French-Canadian nationalism. Trudeau’s above distinction between the “territorial” and “nation-state” models is instructive in this regard. Simply put, Trudeau’s distinction appears to imply that a “sociological nationalism” cannot become a “territorial nationalism”. More specifically, Trudeau was of the opinion that French Canadian nationalism cannot become a “territorial”.

Essentially, Trudeau’s analysis was clearly biased against French-Canadian nationalism and more appropriate to the nature of Quebec society and nationalism in the pre-1960 period. Trudeau’s anti-nationalist views as well as his belief that nationalism would eventually fade into history resulted in his missing the full implications of the “Quiet Revolution”. The 1960s represented the modern territorialization of the Quebec nation as well as the realization on the part of the ROC of the full implications of the 1867 federal compromise. The “Quiet Revolution” represented the territorialization of dualism within the “province” or territory of Quebec. From that time on, Quebec would be constrained by the constitutive basis of its territory in the same manner “Canada” is.

federal system is legally the effect of a *contract* between sovereigns has created permanent problems from which the modern federal state, for all its difference from the *foedus* of old, has not recovered. The idea that a polity can be founded in a contract between sovereign or quasi-sovereign member-states led naturally to the idea of secession, to the idea of simply breaking a disagreeable contract whenever any fact or pretext of bad faith on the part of any other party arose.” p. 51. Secession is the result of a “sovereign” contradiction where local autonomies “seize...on the very concept (sovereignty) which [they] actually opposed, to defend [their] own position more securely.” p. 28.

Some sovereigntists would later deplore the implications of this territoriality. The bitterness engendered by the constraints that territory imposes on the sovereignty movement are reflected, for example, in Parizeau's remarks after the 1995 Quebec referendum blaming "money" and the "ethnic" vote for the sovereigntist defeat.<sup>271</sup> More recently, at a Bloc Québécois federal party general council meeting, hard-line sovereigntists, including Parizeau, argued that Gilles Duceppe's (the party leader of the BQ) proposal that any resident of Quebec should be eligible for citizenship in a sovereign Quebec, was too open.<sup>272</sup> Most sovereigntists, however, define what is meant by a "Quebecker" territorially; they maintain that in order to become a sovereign state, it would be necessary to convince, not only francophones of *pure laine* but, rather, a democratic majority within the territory, of the desirability of independence. This bias against French-Canadian nationalism as well as the assumption that nations will inevitably wish to become sovereign states unless rebundled into a single nation at the federal level explain Trudeau's practical strategy as Prime Minister.

By the early 1960s Trudeau was contemplating a strategy other than writing to combat Quebec nationalism: to go to Ottawa and put his theory into practice. Trudeau's vision would be implemented and change the course of Canadian history. "Trudeau's writings" that were in McRoberts words "nothing less than an attempt to reconceive Canada on the basis of his own beliefs" would be put in practice.<sup>273</sup> The "philosophical federalism" and spirit of accommodation characteristic of the early 1960s was to eventually be replaced, at the federal level, by a single monolithic liberal one: the Trudeau vision.

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<sup>271</sup> See Parizeau Jacques. "On se crache dans les main et on recommence," Transcription du discours prononcé après l'annonce des résultats du référendum, au Palais des congrès de Montréal, le soir du 30 octobre 1995 in his Pour un Québec souverain. Montréal: Québec: VLB (éd.). 1997, p. 143.

<sup>272</sup> Richer, Jules. "Who are real Quebecers? Parizeau asks BQ," Winnipeg Free Press. April 19th, 1999.

<sup>273</sup> McRoberts, Kenneth. Misconceiving Canada. p. 63.

The 1960s, as was mentioned, represented a period of “unbundling”. The “regulative rule” of federalism, in short, could no longer contain the related reality of cultural dualism. The Lesage Liberals had, during the “Quiet Revolution”, been busy radicalizing dualism and more firmly grounding it in the institutions provided by federalism (the Quebec state). In Quebec, the nationalists in the 1960s “took the dualist logic embedded within Canadian federalism”, McRoberts recalls, and “modified” (or “up-dated”) it to justify a profound change in Canadian federalism.<sup>274</sup> New regulative rules were urgently needed. Consideration of “asymmetrical” federal options in the 1960s was a result of this reality. In fact, in the view of many, asymmetry was the only “reasonable” federal alternative.

Nevertheless, with the arrival of Trudeau on the scene, the “reasonable” federalism of the early 1960s would be abandoned. As Prime Minister, Trudeau would be tempted, in a way he had predicted in 1965 that federal governments are, to use nationalism to rebundle the federation. Rather paradoxically, given his contention that Quebec nationalism could not, by definition, be “liberal”, one of Trudeau’s first goals was to construct a “liberal nationalism” at the federal level that all members of the federation could feel “emotional” about. His practice would uncover the extent to which Trudeau was implicitly guided by a “classical” definition of sovereignty as well as the constraints that this conception imposed. It would also, rather ironically given his self-proclaimed federal label, reveal his anti-federal guiding principles or, at the very least, the poverty of his federal theory.

Central to his “rebundling” vision was the idea of individual bilingualism *ud as mare ud as mare*. Trudeau, faced with the impacts of the “Quiet Revolution” and the territorialization of language within Quebec, attempted to reverse this process by shifting

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<sup>274</sup>See McRoberts, Kenneth. “Living with Dualism and Multiculturalism,” in Rocher, Francois and Miriam Smith (Eds.). New Trends in Canadian Federalism. Peterborough, Ontario: Broadview Press, 1995, pp. 109-132.

emphasis on the territory of Canada as a whole. In essence, he wished to rebundle Canada into a single bilingual nation, and reverse the territorial federalization of the French language. In fact, Trudeau was not prepared to accept anything less. In a 1969 interview with the *Toronto Star* he declared that:

If I don't think that we can create some form of a bilingual country, I am no longer interested in working in Ottawa. If I want to work as an English-speaking person I'll look for a job in another country or I'll go and work in Europe or I'll look for a job in Washington...What attaches me to this country is the belief that the French language can have certain rights. I think it's true for many French Canadians who believe in federalism...It's the only view that can make any sense.<sup>275</sup>

Trudeau's conception of federalism did not support the territorialization or federalization of language but rather required bilingualism coast to coast. Canadian territory as a whole would have to be bilingualized in order to create a national community at the federal level. If not, Trudeau was not interested in "Canada".

What was not certain, however, was that other francophones shared Trudeau's views. Although they certainly must have shared Trudeau's desire to feel "at home" in Ottawa, what is not certain is that federal bilingualism was viewed as enough. History and federalism had territorialized both French and English and, therefore, although, coast to coast bilingualism was a welcome addition, it could not replace the Quebec state as the primary guarantor of the French language.<sup>276</sup> Language is, as we saw in chapter one, generally territorial, and in Canada, it was increasingly so by the 1960s. While the idea of pan-Canadian linguistic dualism may have been a more reasonable "regulative rule" in the past, demographics were increasingly working against francophone minorities in other provinces. Basically, Lévesque's characterization of his fellow francophones as "dead ducks" was in line with the demographic trends.

<sup>275</sup> Westell, Anthony. "If Canada doesn't want bilingualism, I want out," *Toronto Star*, February 8, 1969 in McRoberts, Kenneth. *Misconceiving Canada*. p. 63.

<sup>276</sup> Majoritarian province-building, guided by territorial "sovereignty-thinking," had territorialized language outside Quebec. Until the 1970s Quebec had the best record in terms of respecting minority language rights. The Manitoba Schools Question and Ontario's Regulation 17 are two historical examples of policy aimed at territorializing the English language outside Quebec.

The Trudeau dualist strategy, consistent with what Cameron calls the “sociological approach”, begins with the premise that dualism is constitutive of Canada and defines the two communities in non-institutional terms.<sup>277</sup> According to “sociological dualists” since there is extensive inter-penetration of the linguistic communities, no one political jurisdiction may be viewed as responsible for their protection or management. The “sociological” approach to dualism, not surprisingly, is popular with the federal government, the only government representing all citizens of Canada, as it assigns it an important role. Nevertheless, within this approach, all governments, as members of the federation, are, in theory, equally responsible for dualism and “[t]hus embedded in this approach, there is a bias against recognizing any one provincial government as having special standing or responsibility that might properly receive constitutional recognition.”<sup>278</sup> The “sociological” dualist views “Quebec, as a matter of constitutional principle, ...[as] a province like the others, and any arrangements or liberties extended to her must in principle be applicable to the others as well.”<sup>279</sup> The “sociological” approach accepts dualism, but only on the basis of symmetry and is inherently liberal. The “sociological” approach seeks to de-federalize duality by “bundling” it in the larger Canadian whole.

The “institutional” approach, consistent with the views of both the “Quiet Revolutionaries” and sovereigntists, begins with the same premise as those who adopt a “sociological” one (that dualism is constitutive of Canada), however making a “hard-headed judgment, namely, that a minority culture that does not enjoy concrete expression in a set of political institutions is unlikely in the long run to endure.”<sup>280</sup> Although Trudeau would become famous for his “sociological” approach, he too had

<sup>277</sup> Cameron, David R. “Dualism and National Unity,” in Redekop, J. (Ed.). Approaches to Canadian Politics. Scarborough, Ontario: Prentice-Hall Canada Inc., 1978, p. 238.

<sup>278</sup> Ibid., p. 239.

<sup>279</sup> Ibid.

<sup>280</sup> Ibid.

recognized the validity of the institutional argument in his early writings. In 1965, Trudeau observed that “[i]t has long been a custom in English Canada to denounce the Privy Council for its provincialist bias” adding that “it should be considered that if the lawlords had not leaned in that direction, Quebec separatism might not be a threat today: it might be an accomplished fact.”<sup>281</sup> His statement implicitly accepts the particular regulative importance of federalism in relation to Quebec. The “institutional dualists” are suspicious of the “sociological” approach as it neglects the issue of political power and its role in working out accommodations. It is, in this way, similar to theories of nationalism, writes Cameron, in that it asserts that cultural survival depends on political power.<sup>282</sup>

According to an “institutionalist”, a minority culture must find a way of becoming a majority as it cannot depend on the goodwill of the majority. “The logic of federalism in this respect is that a minority can be given political power, can be turned into a majority, in those culturally sensitive areas that require it, but can be treated as a portion of the population as a whole in those matters which are deemed to be common throughout the system and not intimately related to culture.”<sup>283</sup> This was indeed the logic of federalism at the time of Confederation as was seen in chapter two. In fact, Canadian Confederation represented the first time in the history of the states-system that federalism was used for this purpose.<sup>284</sup> It gave an institutionalized collective dimension to Canadian dualism.

The “sociological” and “institutional” approaches are ideal types that can no doubt be combined.<sup>285</sup> The findings of the B & B commission were instructive in this regard. The commission, while recommending a overall “sociological” or “personal”

<sup>281</sup> Trudeau, Pierre Elliott. “Federalism, Nationalism, and Reason,” p. 198.

<sup>282</sup> Cameron, David R. p. 240

<sup>283</sup> Ibid.

<sup>284</sup> Kymlicka, Will. Finding Our Way: Rethinking Ethnocultural Relations in Canada. Toronto: Oxford University Press, 1998, p. 139.

<sup>285</sup> This will be discussed in more depth in Chapter Four.

approach to language, recognized strengths in both approaches. It suggested, therefore, a “hybrid model” that emphasized “personality” while nevertheless tempering it with territoriality. The B & B commission emphasized the importance of the “collective” element in language rights carefully distinguishing between bilingual individuals and bilingual states. The “bilingual individual”, the commissioners realized, is a rare species and it was, therefore, their opinion that it is not the responsibility of the state to attempt to create bilingual individuals. In fact, “if everyone in a bilingual state becomes completely bilingual,” the commission report stated, “one of the languages is rendered superfluous.”<sup>286</sup> The report, for this reason, emphasized both the importance of first languages and the need to ensure their continued viability.

Kenneth McRoberts, one of Canada’s foremost experts on Canadian language policy, has demonstrated how although the B & B commission, in the end, adopted a generally “personal” approach to language rights there were, nevertheless, important concessions made to the principle of “territoriality” and “collective” dimensions.<sup>287</sup> The commission, in fact, originated the term “distinct society” and legitimated the idea that Quebec, in the words of the commissioners, “constitutes an environment where the aspirations and needs of four out of five francophones in Canada can be satisfied” adding that “[t]he mere fact of this concentration leads to a spontaneous French way of life and makes that way of life easier to organize.”<sup>288</sup> The French language, as with any language, in Laurendeau’s words, “sets its seal on [its] milieu.”<sup>289</sup> The B & B

<sup>286</sup>McRoberts, Kenneth. Misconceiving Canada. p. 88.

<sup>287</sup>The “personal” approach to language rights is one that places primacy on the individual and assigns uniform citizen rights to language across the whole country. The “territorial” approach permits territorial variation and admits a collective dimension. In the context of a particular territory (whether a “province” or federal government), personality favours minorities and territoriality, majorities. See Kenneth McRoberts’ Misconceiving Canada, pp. 89-89 for comparative examples.

<sup>288</sup>McRoberts, Kenneth. Misconceiving Canada. p. 89.

<sup>289</sup>Laurendeau, André. “The Conditions for the Existence of a National Culture,” in Forbes, H.D. (Ed.). Canadian Political Thought. p. 271.

commission acknowledged that language creates a cultural “realm” and made explicit connections between language and culture as well as emphasizing their territorial nature.

After considering various language regimes and despite Canada’s demographic proximity to the “Belgium” territorial model, the B & B commission recommended the personal approach in the name of unity.<sup>290</sup> Francophone minorities, regardless of their precarious state, were viewed as an important symbolic force of national cohesion. Personal bilingualism was, nevertheless, to be tempered by territorial restrictions both in Quebec and outside Quebec. Some examples included: the fact that provinces, with official language minorities of less than ten percent would not be declared officially bilingual, “bilingual districts” were to be established, unilingual language units were to be established in the federal civil service and Quebec, on André Landereau’s insistence, was to be encouraged to have a unilingual French face in the private sector. “The commission’s concessions to territoriality”, McRoberts recalls, “were [nevertheless] lost on Pierre Trudeau.”<sup>291</sup> They were lost in the name of Trudeau’s “liberal” nation-building strategy.

The territorialization of language rights, however, was not all that was lost. Due to his assumptions concerning nationalism and sovereignty, Trudeau was, from the outset, unable to accept the idea of biculturalism. Culture, in Trudeau’s conception, is inherently territorial and collective, and, for this reason, the notion of biculturalism was unacceptable given his preferred “personal” or individual approach as well as his related fear of secession. Given the views expressed in his writing, it is not surprising that he was unwilling to pursue formally a policy of biculturalism. As Prime Minister, he would

<sup>290</sup>The Belgium model, however, is a hybrid. It is currently composed of three territorial regions, (the Flanders, Walloon and Brussels Regions) responsible primarily for economic matters and three “personal” communities (the Flemish-speaking, French-speaking and German-speaking) responsible for cultural affairs, education and certain personalized services. It is, in short, a territorial-personal hybrid. The potential of non-territorial federalism will be discussed in chapter four.

<sup>291</sup>Ibid., p. 92. In addition, the information in this paragraph is taken from the same source.

instead seek a new way of regulating or, perhaps more accurately, reconstituting the cultural make-up of Canada.

Trudeau was unable to accept the idea of a bicultural Canada due to his liberal, universalist assumptions and his implicit conception of sovereignty. In Trudeau's view, as expressed in his "Federalism, Nationalism, and Reason," there are three choices within the Canadian context: a single nationalism at the federal level that accounts for cultural particularity, secession of the 'sociological' nation, or "liberal" federalism based on reason or functionalism. A similar opinion was reflected in a critique of the bicultural premise of the commission's mandate, authored by Trudeau's colleagues, that appeared in *Cité Libre* after the release of the commission's preliminary report. The critique suggested that the principle of biculturalism was both a theoretical and practical figment as it was really, echoing Trudeau's views about the nature of minority nationalism, an argument for separate states in disguise. The critique stated:

Political science is very familiar with the idea of equality between individuals within the same state, but the idea of equality between peoples underlies the concept of national sovereignty, and it would have been interesting to see how the Commission intends to interpret its mandate without being led necessarily to propose the division of Canada into two national states.<sup>292</sup>

Constrained by a *Blackstonian* or *Dorionian* idea of "sovereignty" these liberal critics were unable to imagine but the extreme options. Canadian political science should be quite familiar with the idea of equality between two cultures within a state (or at least a federal state with two units divided on the basis of establishing a cultural majority in each unit), as it was proposed in George Brown's constitutional report before Confederation. However, Trudeau's liberal colleagues were unable to fathom a cultural federalism consistent with Canada's roots. Instead two options appeared to present themselves: a "liberal", "universal and homogenous" state or two "equal" sovereign states. As will be seen later in the chapter, George Brown's constitutional option would

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<sup>292</sup>McRoberts, Kenneth. *Misconceiving Canada*. p. 121.

be picked-up and radicalized by “sovereignists” and give birth to the idea of “sovereignty-association”.

The inability to “imagine” a bicultural “Canada”, however, also reflects a certain view of federalism: a hierarchical and purely territorial one. This model is essentially an American one where it was decided at the time of the Civil War that the states would be equal to each other but subordinate to the federal “nation”. The Canadian “experiment” however, as was seen in chapter two, was a very different one. Federalism was used to permit two nations to become majorities in their respective states. In Canada, federalism permitted a degree of national secession *within* a federal state. The American model of federalism is basically incompatible with the Canadian one as it is intolerant of cultural asymmetry.<sup>293</sup> The Canadian federation is a different “life form” and Canadians are, as Charles Taylor observed, very much on our own in terms of creating federal models.<sup>294</sup> Trudeau’s “American” view of federalism would empty the Canadian model of its meaning.

Given his assumptions, the question before Trudeau was how one could account for diversity in a way that would “bundle” Canadian identity into a single territorial unit. Trudeau’s answer was his policy of “multiculturalism” that bundled what Charles Taylor calls “deep diversity” within “first level diversity.”<sup>295</sup> Essentially, Trudeau would

<sup>293</sup> Will Kymlicka has described how States were not permitted entry into the American federation if they would form an “ethnic” minority within the State. In his words: “[i]n the nineteenth century it would have been possible to create states dominated by the Navaho...or by Chicanos, Puerto Ricans, or native Hawaiians. At the time when these groups were incorporated into the United States, they formed majorities in their homelands. However, a deliberate decision was made not to use federalism to accommodate the self-government claims of national minorities. Instead, it was decided that no territory would be accepted as a state unless these national groups were outnumbered within it. In some cases this was achieved by drawing boundaries so that Indian tribes of Hispanic groups were outnumbered (Florida). In others it was achieved by delaying statehood until the numbers of anglophone settlers was great enough (Hawaii, the Southwest). As a result, none of the fifty states can be seen as ensuring self-government for a national minority in the way that Quebec ensures self-government for the Québécois.” in his Finding Our Way: Rethinking Ethnocultural Relations in Canada. pp. 136-137.

<sup>294</sup> Taylor, Charles. “A Canadian Future?,” in his Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism. p. 25.

<sup>295</sup> Charles Taylor distinguishes between these two levels of diversity in many of his works. In his “The Deep Challenge of Dualism”, in Gagnon, Alain-G. (Ed.). Quebec: State and Society (Second Edition).

"rebundle" dualism *personally* as the Fathers of Confederation had done *institutionally* with federalism. Trudeau's regulative strategy would be to dilute the federal, "institutional bundle" with a unitary, non-governmental, "sociological" one. It would turn diversity on its head and "bundle" dualism within first level diversity rather than the reverse.

Both federalism and multiculturalism originated in dualism. In Cameron's words, although the policies of multiculturalism and dualism are viewed as antagonists today, "it is probably true to say that the existence of a large French-Canadian community in British North America created the conditions within which both the form and theory of cultural pluralism could take root in Canada."<sup>296</sup> Cartier had already predicted in the 1860s that dualism would produce a "healthy spirit of emulation."<sup>297</sup> Dualism, as Cartier had predicted, provides the foundation for inter-cultural dialogue. Multiculturalism, born of dualism, was a "regulative rule" developed by Trudeau to rebundle the "Canada" into a single territory.

Nevertheless, there was an important difference in "regulative" intention between the "Fathers" and Trudeau. The transition from dualism to federalism at the time of Confederation was "organic" or conservative and was therefore consistent with Canada's "constitutive basis". There was an understanding that the "regulative rule" acknowledged both "provinces" and "nations" as legitimate actors. At the time of Confederation, federalism added, rather than eliminated identities and actors. Federalism

Scarborough, Ontario: Nelson Canada, 1993, the distinction is made as such: first level diversity is a situation where "[t]here are great differences in culture and outlook and background in a population that nevertheless shares the same idea of what it is to belong to Canada.. patriotism or manner of belonging is uniform, whatever their other differences, and this is felt to be a necessity if the country is to hold together" (p. 94). A situation of "deep diversity" would exist "where a plurality of ways of belonging would also be acknowledged and accepted" for example where "a Quebecois(e), Cree, or a Dene, might belong in different ways; that they were Canadian through being members of their nations." (p. 94).

<sup>296</sup>Cameron, David R. "Dualism and National Unity," p. 242.

<sup>297</sup>Cartier, Georges-Etienne. in Seidle, F. Leslie. "Constitutive Principles And the Elusive Canadian Vision," in Ibid (Ed.). Seeking a New Canadian Partnership: Asymmetrical and Confederal Options. p. 221.

grew out of dualism and honoured the principle of continuity. In contrast, while Trudeau added constitutional identities, he had as his intention to eliminate “nations” as legitimate actors. Basically, his purpose was not only “regulative” or accommodative. He wanted to re-define Canada’s constitutive basis or to reiterate McRoberts “constitute [and “rebundle”] Canada on the basis of his own beliefs.” In so doing, furthermore, he would make regulative accommodation within “Canada” increasingly difficult.

Trudeau’s nationalizing vision had as its zenith the patriation and the Charter of Rights and Freedoms. The 1982 constitutional amendments were, in Vandycke’s words, “the end of illusions” as the differences between the Quebecois and English-Speaking Canadian visions that had existed since the time of Confederation (unitarianism vs. federalism, centralization vs. decentralization, union of provinces or of peoples), were brought to the forefront and replaced by the Trudeau vision.<sup>298</sup> It represented a ideational *coup de force* and reflects, as Vandycke and others have observed “a particular moment in the history of Québec and Canada.”<sup>299</sup> The amendments reflect in Vandycke’s view “the power relations between the two levels of government following the failure of the 1980 referendum on sovereignty-association.”<sup>300</sup> They were ahistorical and excluded not only Quebec “sovereignist” visions of “Canada”, but also competing federalist ones, both in Quebec and in the Rest of Canada (ROC).

Academics, both Quebecois and English-speaking Canadian, such as Gagnon, Laforest, Cairns, McRoberts, Russell, Morton, Webber and others, have firmly declared the nation-building nature of the Charter.<sup>301</sup> It is generally acknowledged by these

<sup>298</sup> Vandycke, Robert. “The 1982 Constitution and the Charter of Rights: A View from Quebec,” in Rocher, Francois and Miriam Smith (Ed.). New Trends in Canadian Federalism. Peterborough, Ontario: Broadview Press, 1995, p. 133.

<sup>299</sup> Ibid, p. 133.

<sup>300</sup> Ibid.

<sup>301</sup> See Gagnon, Alain-G. and Guy Laforest. “The future of federalism: lessons from Canada and Quebec,” pp. 470-491; Laforest, Guy. Trudeau And The End Of A Canadian Dream. Montreal & Kingston: McGill-Queen’s University Press, 1995; McRoberts, Kenneth. Misconceiving Canada; Russell, Peter H. “The Constitution, Citizenship and Ethnicity,” in Laponce, Jean and William Safran (Eds.). Ethnicity and Citizenship: The Canadian Case. Great Britain: Frank Cass & Co. Ltd., 1996, pp. 96-106; Morton, F. L.

academics that the Charter has standardized public policy, entrenched the idea of equal individuals and provinces and promoted a non-territorial, or, more specifically, non-territorial and anti-federal culture of constitutional minoritarianism. Russell has emphasized the Charter's effects on judicial review both in terms of standardizing policy, as well as its potentially harmful effects on democracy. Alan Cairns has described the 1982 amendments as a general shift to a citizen's constitution. It has also, in his view, engendered "constitutional minoritarianism"<sup>302</sup> and created new non-governmental constituencies that he calls "Charter Groups". The Charter is anti-federal, in Cairns' view, in so much as it promotes a new kind of territoriality or, more accurately, a kind of *non-territoriality*. The combined effects of the Charter, according to him, both de-legitimized elite accommodation and challenged federal territorial ideas of space.

Trudeau recognized the non-territorial nature of Charters. He would later describe the adoption of charters as "in keeping with the purest liberalism" and "[a]s such they **transcend the accidents of place and time** [emphasis added], and partake in the essence of universal Humanity."<sup>303</sup> Charters, furthermore, transcend nationalism and the parochial, and "[t]hey are therefore not coercible by any ancestral tradition, being vassals neither to their race, nor to their religion, nor to their condition of birth, nor to their collective history."<sup>304</sup> Trudeau was apparently, in his view, reconstituting Canada in the name of humankind.

The Canadian Charter, although not a "vassal" for "race" or "religion", did not, despite his rhetoric, completely "transcend the accidents of place and time." Although

"The Charter and Canada outside Quebec," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 91-114; Webber, Jeremy. Reimagining Canada: Language, Culture, Community, and the Canadian Constitution. Kingston & Montreal: McGill-Queen's University Press, 1994.

<sup>302</sup>Section 15 (equality rights), Section 25 (Aboriginal peoples), section 28 (gender equality), and section 27 (multiculturalism as a rule of interpretation).

<sup>303</sup>Trudeau, Pierre Elliott. "The Values of a Just Society," in Axworthy, Thomas S. and Pierre Elliott Trudeau (Eds.). Towards A Just Society: The Trudeau Years. Toronto, Ontario: Penguin Books, 1992, p. 407-408.

<sup>304</sup>Ibid., p. 408.

the provisions of the Charter make it difficult to accommodate Quebec through asymmetry (as the constitutional saga professes to), the Charter, unlike, for example, the U.S. Bill of Rights, makes explicit cultural references and constitutionalizes bilingualism. “The conflict between Canada and Quebec does not, in essence,” write Laforest and Gagnon, “turn on the philosophy of liberalism.”<sup>305</sup> The Charter, rather, encompasses a complex mix of individual and collective rights. Citing the fact that universal rights of Canadians such as freedom of expression and freedom of association can be overridden by the notwithstanding clause (section 33) while language rights (sections 16-23) are shielded from attack, Laforest and Gagnon conclude that “[t]he desire to create a nation and promote a pan-Canadian code of fundamental values was his primary motive [emphasis added] rather than the expression of any particular liberal philosophy.”<sup>306</sup> The notwithstanding clause, one of the few purely federal elements of the Charter, was, nevertheless, a major concession to the provinces and one that Trudeau accepted “with a heavy heart.”<sup>307</sup> Apparently, subjecting language rights to this clause would have broken his heart. Trudeau could not, despite what he believed, rationally disengage himself from the social constitutive reality of “Canada”. Trudeau’s attempt to legislate for humanity and transcend the accidents of time and place, in short, failed.

The events that took place surrounding the debate over an appropriate amending formula were indicative of the nation-building intentions, anti-federal nature, as well as the fetterous conception of “sovereignty,” inherent in Trudeau’s vision. The debate over amending formulas, however, was not a new one, but, rather, it extended back to the first federal-provincial conference in 1927. “The debate over a Canadian amending formula involved nothing less than the question of who or what should be constitutionally sovereign in Canada” explains Russell, elaborating that “[i]f the written Constitution is

<sup>305</sup> Gagnon, Alain-G. and Guy Laforest. “The future of federalism: lessons from Canada and Quebec,” p. 479.

<sup>306</sup> Ibid.

<sup>307</sup> Trudeau, Pierre Elliott. “The Values of a Just Society,” p. 417.

the country's highest law defining the powers of its governments and the rights of its citizens, then the combination of people or governments or legislatures which is empowered to change the Constitution is sovereign.<sup>308</sup> The time had come, Trudeau felt, to decide whether Canada would ever be "truly" sovereign. And, as at the time of Confederation, the nature of Canadian "sovereignty" was highly contested. In Trudeau's words:

The first ministers failed to agree on the amending process in 1927, under Mackenzie King's leadership, under Bennett in 1931, under St. Laurent in 1950, under Diefenbaker in 1960, under Pearson in 1964, and under Trudeau in 1971. The first ministers failed because they could not come to a consensus on the nature of Canadian sovereignty. [emphasis added] They could not decide whether that sovereignty ultimately rested with the provinces, who, by coming together, made up a country called Canada, or whether it resided in some undefined combination of federal state and provinces, all existing in their own right and each exercising a share of the overall sovereignty... There were only two ways to solve the conundrum. The government of Canada could accept the "compact theory", recognizing that our country was nothing more than a community of communities, in which fundamental powers (including the power to patriate the constitution) flowed from the provinces that had freely united to form a loose confederation. Or the government of Canada, as the sole body empowered to act in the name of all Canadians, could reject the compact theory, hold that Canada was something more than and different from the sum of its parts, and proceed to proceed unilaterally.<sup>309</sup>

The above statement could have been made at the time of Confederation. The options were: compact or what the Dorions deemed "true" federalism; unilateralism or the unitary option; and the compromise of shared autonomy and "constitutional sovereignty" where all governments (federal and provincial) would exist "in their own right and each exercising a share of the overall sovereignty."<sup>310</sup> Nevertheless, due to the dominance of classical "sovereignty-thinking", the choices were reduced to two: the compact or federalism as a system of alliances option and the unilateral option.

Trudeau's 1965 statement that federalism "is a pact or quasi-treaty in the sense that the terms of that compromise cannot be changed unilaterally"<sup>311</sup> was disregarded as

<sup>308</sup>Russell, Peter. "Can the Canadians Be a Sovereign People?", p. 670.

<sup>309</sup>Trudeau, Pierre Elliot. "Patriation and the Supreme Court," *Cité Libre*, October-November, 1998, p. 60.

<sup>310</sup>Ibid.

<sup>311</sup>Trudeau, Pierre Elliot. "Federalism, Nationalism, And Reason," p. 191.

the temptation to use the “heavy paste of nationalism”<sup>312</sup> at the federal level grew. Sterling Lyon, Premier of Manitoba at the time, warned that proceeding with the Charter unilaterally would tear the country apart. Nevertheless, Trudeau invoked the juristic nation and decided to proceed unilaterally. “I was convinced that the time had come”, Trudeau wrote later, “for Canada to choose to be or not to be.”<sup>313</sup> Despite Trudeau’s rhetoric, however, “to be or not to be” appears to remain the Canadian question.

As is well-known, the process was referred to the Supreme Court, and in what Trudeau acknowledged as the “Canadian way”, both unilateralism and unanimity were rejected. The Court, in short, supported both sides, and forced a political compromise by, in Trudeau’s words, “inventing” a convention of “substantial provincial consent.” Trudeau would later state bitterly: “[c]ourts deal with disputes which they must resolve on an either/or basis: the plaintiff wins or he loses.”<sup>314</sup> The Canadian court “majority tried to say “maybe” instead of “yes” or “no” and did so in regard to a highly politicized issue.”<sup>315</sup> Trudeau wanted a final solution to the “sovereignty dilemma” which he acknowledged was not the “Canadian way”. In trying to make Canada “normal”, furthermore, the Canadian “experiment” would become increasingly more difficult.

The process surrounding the patriation of the Charter violated the three conventions characteristic of a “just” federal relation discussed in chapter two: recognition/continuity, multilateral negotiations, and consent. As was discussed above, Trudeau would have proceeded unilaterally, violating the second principle. This, as was also seen above, was related to his disdain for the first principle, that of continuity and recognition. Due to the dominance of classical “sovereign” assumptions, as well as his long-term liberal vision, Trudeau considered the recognition of nations (at least,

<sup>312</sup>Ibid., p. 192.

<sup>313</sup>Trudeau, Pierre Elliott. “The Values of A Just Society,” p. 421.

<sup>314</sup>Trudeau, Pierre Elliot. “Patriation and the Supreme Court,” p. 66.

<sup>315</sup>Ibid.

'sociological' ones) contradictory within a single state, and their continuity backward in light of world trends.

Trudeau, in the end, however, did not violate these principles in his dealings with all constitutional actors. After his failed attempt to establish the legitimacy of unilateral patriation, he was willing to recognize provinces, to a certain extent Aboriginal peoples as well as many liberal identities. Trudeau, nevertheless, recognized these identities in a way that was consistent with his personal vision. Actors were not recognized on their own terms but, rather, were made to fit within his monolithic vision.

Around the same time as Trudeau, another charismatic leader, René Lévesque, appeared on the political scene with a vision equally as clear and seemingly "normal" as the one espoused by Trudeau: a "sovereign" Quebec. The time had come, Lévesque believed, for "Quebec" rather than "Canada" to be or not to be. "Like any other normal people" wrote Lévesque in 1977 "Quebeckers will soon have to decide among themselves their preferred political status and their national future."<sup>316</sup>

Lévesque had come to similar conclusions as Trudeau regarding the nature of Canadian federalism. The concepts of multinational federalism, asymmetry, and "distinct society" were all inherently contradictory. "Binational federations such as the Canadian federation, or multinational federations" wrote Lévesque "are to my mind paths which turn into cul-de-sacs."<sup>317</sup> Lévesque concurred with the Trudeauian perspective cited above that although "political science is very familiar with the idea of equality between individuals within the same state", "the idea of equality between peoples underlies the concept of national sovereignty."<sup>318</sup> Lévesque asserted that "[w]ithin the present federal framework, Quebec sovereignty [and thus, equality] is a contradiction in terms"<sup>319</sup> as the "logic of the federal system calls for Ottawa to oppose Quebec's

<sup>316</sup> Lévesque, René. My Quebec. Agincourt, Ontario: Methuen Publications, 1979, p. 163.

<sup>317</sup> Ibid., p. 150.

<sup>318</sup> McRoberts, Kenneth. Misconceiving Canada. p. 121.

<sup>319</sup> Lévesque, René. p. 75.

attempts at autonomy [emphasis added].”<sup>320</sup> “Canada and Quebec,” he argued, quite simply, “cannot continue to live like two scorpions in the same bottle.”<sup>321</sup>

Lévesque basically described the same “nationalist” *cul-de-sac* that was put forward in Trudeau’s writing. Nationalism will be pursued at both the level of federal “juristic” nation and at the level of the minority “sociological” nation and create deadlock. History had confirmed this and, in Lévesque’s recollection, “[e]very Quebec government since the beginning of the twentieth century has attempted intergovernmental guerilla [emphasis added] warfare” and it had led “each time... to a federal counter-offensive [emphasis added].”<sup>322</sup> Lévesque believed that due to this “reality”, as Trudeau had also predicted, a crucial point will come where there exists only two “nationalist” options: civil war or secession. The “two nationalist scorpions”, in short, could not co-exist indefinitely and, in Lévesque’s view, a crucial point had come. Quebec was either in or out of Canada as the only two clear alternatives had presented themselves: a “sovereign” nation called “Canada” or a “sovereign” nation called Quebec. “[I]t was,” in Lévesque’s view, “time to choose between the Canadian option and the Quebec option.”<sup>323</sup>

Lévesque, however, was not anti-federal but, rather, like Trudeau, he was a federalist at the international level. “On a world scale I am federalist” he asserted, adding that the reason is “very simple...[i]f we do not one day succeed in eliminating two of the horsemen of the Apocalypse, war and hunger, I think that there will be tragedy in the world.”<sup>324</sup> In Lévesque’s view “[s]uch possibilities of chaos could be avoided if we were to adopt the elements of a mini-federalism” adding “this potential trend should be encouraged.”<sup>325</sup> “Transfer payments” and co-operation between nations at the

<sup>320</sup>Ibid., p. 74 - 75.

<sup>321</sup>Ibid.

<sup>322</sup>Ibid., p. 76.

<sup>323</sup>Ibid., p. 76.

<sup>324</sup>Ibid., p 139.

<sup>325</sup>Ibid.

international level would be a positive development. The need for federalism at the world scale was, in Lévesque's words, "obvious".

World federalism would both assure that the "mighty" and "beasts of prey" were "declawed" and leave others to "breathe".<sup>326</sup> World federalism, furthermore, would be consistent with post-colonial cultural awakening and its associated nationalism. Nationalism and federalism (at the world level) were, in Lévesque's opinion, compatible and, "[o]ne could very well adopt a minimal degree of federalism on a world scale, while remaining extremely nationalistic - nationalist is the sense of national sovereignty, and the affirmation of one's identity [emphasis added]."<sup>327</sup> Subjecting a state to constraints on its autonomy at the international level is not incompatible with national sovereignty. In Lévesque's view, sharing autonomy while retaining one's identity as an equal was possible at the international level but was a contradiction in Canada.

Although both Lévesque and Trudeau were advocates of world federalism they viewed its progression differently. The crux of their differences in this respect was a result of their divergent views concerning the eventual fate of nationalism in an era of globalization. Whereas Trudeau (at least in theory)<sup>328</sup> could, as Thucydides had, picture a day when "Canada" would be no more, Lévesque was fond of citing Toynbee, who had once suggested that "when the trumpets of the last judgment sound, only two peoples are sure of being there - the Chinese...and us! [the Québécois]."<sup>329</sup> Essentially, while Lévesque believed that cultural continuity was both possible and desirable, Trudeau believed the opposite, that it was both detrimental to liberal progress and doomed.

<sup>326</sup>Ibid.

<sup>327</sup>Ibid.

<sup>328</sup>In his "Federalism, Nationalism, And Reason," Trudeau follows a discussion of the necessity of reason and functionalism with the comment that "[w]ho knows? humanity may yet be spared the ignominy of seeing its destinies guided by some new and broader emotion based, for example, on continentalism." p. 196. According to his logic Canada's separate existence (from the U.S.) is "reasonable". One is only left to wonder how, if common values and utility rather than culture and identity (as expressed in nationalist emotionalism) guide "reason", why this is so.

<sup>329</sup>Lévesque, René, p. 157.

The difference between the Lévesque and Trudeau visions cannot, however, be summarized by juxtaposing two “universalist” ideologies: liberalism and nationalism or reason and emotion as Trudeau would put it. Whereas Trudeau’s long-term vision was a monolithic universalist one that would welcome efforts to move more quickly toward what Grant calls a “universal and homogeneous state”, Lévesque’s vision combined elements of both conservatism and liberalism in a way that is very much consistent with Canada’s roots. It embraced what has often been considered a central Canadian contradiction: the desire to be both connected and separate and to both conserve diversity and progress. Lévesque, in a very Canadian way, believed in the possibility of having it both ways.

Basically, Lévesque’s vision was a “federal” one and his federal commitments were most evident in his tailor-made concept of “sovereignty-association” or “sovereignty-partnership”. These notions, often described as paradoxical were, more accurately, redundant at the international level. As was seen in chapter one, the concept of “sovereignty-association” is descriptive of the international system itself. Expressing the superfluity of the ‘association’ or ‘partnership’ qualifier, Parizeau would later state that “on ne peut être contre le partenariat, plus qu’on ne peut être contre la vertu ou contre la maternité” adding that “cette réalité n’implique pas que l’on doive parler de ‘soveraineté-vertu’ ou de ‘soveraineté-maternité.’ Pourquoi alors la soveraineté-partenariat?”<sup>330</sup> Attaching the word ‘association’ is, furthermore, dangerous in Parizeau’s view as it reflects a false view that if Quebecers show that they “love” Canadians enough that Canadians will give them their blessing. Or, what is worse, if partnership were emphasized, it could become the focus of the sovereignty movement and displace and the goal of sovereignty. In Parizeau’s words:

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<sup>330</sup>Parizeau, Jacques. Pour un Québec souverain. p. 48.

Le danger est alors grand que nous retombions dans le piège de 1980, d'autant plus que certains ou bien l'ont oublié et ne souviennent que de la 'belle époque', ou bien l'ont pas vu et croient encore que si on aime suffisamment les Canadiens, ils nous donneront leur bénédiction...L'entente du 12 juin 1995...J'en ai examiné mot par mot quatre versions successives. Celle qui a été signée nous permet d'éviter les pièges [de renforcer l'idée de partenariat]. À condition que l'on se souvienne de son contenu. Ce qui pourrait arriver de pire, c'est qu'elle [les arrangements de partenariat] soit transformée en icône...L'objectif est la souveraineté, pas le partenariat.<sup>331</sup> [emphasis added].

In essence, Parizeau, as leader of Quebec, wanted to clarify things to ensure that the idea of "partnership" implied in Lévesque's idea of "sovereignty-association" did not become the dominant political metaphor. Lévesque's qualifier was important as it both expressed his support for a measure of continuity with the Rest of Canada (ROC), as well as his commitment to a "federal process" of achieving "sovereignty".

In essence, Lévesque's idea of "sovereignty-association" revealed that the constitutional conventions of "just" federal relations, more specifically, the principles of continuity/recognition, multilateral negotiations, and consent, are, to some extent, implicitly part of his vision. Although, quite obviously, secession is discontinuous, the "association" dimension was an attempt to temper the idea of rupture by emphasizing the continuity of space, both economic and political, that the "ROC" and a sovereign "Quebec" would share. "We do not want a breach," wrote Lévesque, "we want the readaption of two societies, a coexistence which would allow them both [emphasis added] to breathe in their own ways, while enabling them to continue to co-operate both politically and economically in essential areas to their mutual advantage." "The word 'separatism', which alludes to brutal rupture, is too negative a term for what we are proposing" he asserted.<sup>332</sup> Although the idea of an economic customs union was a central part of the "association" dimension of Lévesque's vision, he also proposed that "we could go as far as the abolition of exclusive [emphasis added] citizenship" and, through negotiation between equals, move toward "the creation of joint passports."<sup>333</sup>

<sup>331</sup>Ibid.

<sup>332</sup>Lévesque, René. My Quebec. p. 72.

<sup>333</sup>Ibid., p.73.

Lévesque, in short, was not guided by a monolithic view of “sovereignty” and, in fact, upon winning a referendum would, quite remarkably, consider “unbundling” Quebec’s territory by abolishing exclusive citizenship.

Lévesque’s vision also included elements of Tully’s second principle of “just” federal relations, that of negotiation (nevertheless, primarily bilateral rather than multilateral in nature). More specifically, Lévesque, unlike some hard-line separatists that would follow him, rejected the legitimacy of a unilateral declaration of independence (UDI) preferring instead “negotiated sovereignty”. When challenged by others about the non-negotiable or absolute nature of sovereignty, Lévesque replied as such:

We must put a stop to this nonsense. This kind of statement is just a play on words. It is obvious that in a certain sense sovereignty is not negotiable. If Quebec expresses its wish to be a sovereign state (even if it does so within a framework of negotiation, because we do accept that certain things must continue and that there must be association between the two peoples), what we negotiate beyond that will essentially be association. But if we negotiate association, by definition we will achieve sovereignty.<sup>334</sup>

Sovereignty may indeed be negotiated in Lévesque’s view. The process of negotiation itself is, furthermore, instrumental as it would imply that “Canada” recognized the “sovereign identity” of “Quebec”. Negotiation between Quebec and Canada as “equals” would, by its very nature, result in “achieving” sovereignty. Those that are hostile toward ‘association’ have “retained too absolute an idea” according to Lévesque and, “in a situation where one is talking of keeping some things in common and separating the rest, obviously civilized people will negotiate.”<sup>335</sup>

Tully’s last principle, that of consent, would be inherently part of negotiation between two equal sovereigns. Unlike Parizeau’s view that seeking the ROC’s “blessing” through negotiation would detract from the objective of sovereignty, Lévesque’s vision emphasized the idea of partnership and need to create space for

<sup>334</sup>Ibid., p. 104.

<sup>335</sup>Ibid., p. 69.

co-operation in areas agreed upon by both parties. "Sovereignty-association", as conceived by Lévesque, would permit recognition of the "Quebecois" identity as "equal" and recognizes the Quebecois desire to be negotiated partners in certain areas.

Lévesque's vision was, nevertheless, quite obviously guided primarily by monolithic "sovereign" assumptions. It was premised on the view that a single nation is supreme in a state. His vision was one that considered the national, sovereign state form to be "normal" and, more importantly, the only way for "peoples" to be viewed equally. "Sovereignty" for Quebec, in his view, was the "logical conclusion" of the Quebec-Canada experiment.<sup>336</sup>

Quebec, nevertheless, would be faced with the same nationalist *cul-de sac* in which Canada now finds itself. Quebec would also be faced with the constitutive reality of its territory and, in fact, would perhaps, rather ironically, have to consider some type of federal arrangement. A "sovereign" Quebec would, for example, turn the two-nations thesis on its head by creating a new anglophone minority. Furthermore, a "sovereign" Quebec would also be multicultural and, perhaps most importantly, would have to accommodate Aboriginal calls for self-government. Despite what some, such as Trudeau, might have suggested, there was no reason to believe that Quebec would handle these issues any more intolerantly than Canada. However, the perceived conceptual impossibility of equal co-existence between diverse groups, inherent in the Quebec "sovereigntist" vision leads one to question how, according to their logic, Aboriginal nations could be accommodated on an equal basis. Quebec sovereignty, according to Lévesque's logic, would simply replace the "bottle" only to find new "scorpions".

Trudeau may have been right, *malgré lui*, that "the very concept of sovereignty must be surmounted"<sup>337</sup> and that "the Austinian concept of sovereignty could only be

<sup>336</sup>Ibid. p. 159.

<sup>337</sup>Trudeau, Pierre Elliott. "New Treason of the Intellectuals," p. 170.

thoroughly applied in a world crippled by the ideology of the nation-state.”<sup>338</sup> We have, as the Trudeau and Lévesque polarized “monologues” suggest, exhausted our “sovereign” alternatives. Challenging “sovereign” assumptions, as was seen in chapter two, is what made the Canadian “experiment” possible. The sovereign monologues characteristic of the Trudeau-Lévesque debate must be replaced by a diverse federal dialogue. In Wittgenstein’s words: “[a] *picture* held us captive. And we could not get outside of it, for it lay in our language and language seemed to repeat it to us inexorably.”<sup>339</sup>

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<sup>338</sup> Trudeau, Pierre Elliott. “Federalism, Nationalism, and Reason,” p. 195.

<sup>339</sup> Wittgenstein, Ludwig. Philosophical Investigations. tr. G.E.M. Anscombe, Oxford: Basil Blackwell, 1967, s 115 in Tully, James. Strange Multiplicity. p. 58.

## Chapter Four:

### **“Canada” Through Friendship: Recovering and Reinvigorating The Canadian Dialogical Model**

Dialogue is not a capacity of those who think they are the sole proprietors of truth or of those whose minds are ruled by systematic skepticism. Rather, truth reveals its beautiful but covered face only to those wayfarers who go on their journey of discovery hand in hand with other human beings.

Seyyed Mohammad Khatami

The Trudeau-Lévesque debate and its legacy would have Canadians believe that the Canadian “experiment” is doomed to failure. Attempts at accommodation, these two, would suggest, necessarily lead to *cul-de-sacs*. Canadian discourse appears, on the surface, to confirm this, describing the current constitutional situation as an “impasse” or, in English, a “dead-end”. This type of language smacks of inevitability and reflects, as was demonstrated, the “sovereign chains” of modern discourse. Nevertheless, in every day life, when one reaches a *cul-de-sac*, one turns around, goes back, tries to figure-out where a wrong turn was made and moves forward. *Cul-de-sacs* force one to “backtrack” as well as to question one’s directions.

It is the view of this thesis that the Canadian “impasse” is, to a certain extent, ideational. The Canadian constitutional process as well as perceived institutional options are stifled by sovereign fetters. Canadians have, what Wittgenstein calls a ‘craving for generality’ that is inconsistent with Canada’s constitutive diversity. Canadians are, in short, unable to imagine solutions to the constitutional crisis because the problem is filtered through monolithic, sovereign lenses and “frozen” visions. The purpose of this chapter is to demonstrate how challenging the “sovereign” assumptions of exclusivity, continuity (in terms of not permitting a legislative unit to be embedded within another) and contiguity as well as their territorial basis will lead to both a more fruitful constitutional process and new institutional alternatives.

“Sovereignty”, as was seen in chapter one, although it constrains, is, nevertheless, a flexible concept that can absorb “unbundling” or regulative change. It was also demonstrated that “unbundling” at the international level is what makes room for diplomatic space and, basically, political dialogue between states. Briefly put, “unbundling” at the international level legitimizes interdependencies.

Similarly, as was seen in chapter two, “unbundling” at the “particular” level or, in this case, the Canadian level, was both made to fit within the institution of “sovereignty” and adapted to the context. More specifically, the conceptual distinction between “autonomy” and “sovereignty” permitted by Canada’s already federal position in relation to Britain ideationally legitimized “anti-sovereign”, federal “unbundling”. At the time of Confederation, the boundaries of “sovereignty” were renegotiated in order to create space for many ways of belonging to the Canadian state. “Unbundling” sovereignty is the way in which both the international system as a whole and particular states account for their “sovereign” imperfections and adapt to change. In light of the Canadian *cul-de-sac* imposed by the chains of monolithic visions, it is time to consider both old and new ways of “unbundling” at both the international and particular levels.

The process in which “unbundling” occurs at the international level, as was seen in chapter one, is through dialogue or practice. The states-system’s constitutive basis, the existence of a single legitimate authority on a defined territory, is regulated by pragmatic dialogue that “changes the rules of the game as states go along”; inter-state practice changes, across time, both the scope of, and what is considered, legitimate authority. At the international level, furthermore, states, as sovereign units, are recognized as equal societal participants in the regulative dialogue. A state’s continuity is recognized, they are participants in regulative dialogue, and their consent is required if they are to absorb constraints. The international system, basically, functions according to Tully’s three principles characteristic of a “just” federal relation: that of recognition/continuity, multilateral (or bilateral) negotiations and consent. The way in which regulative change

is conducted legitimately at the international level, this chapter will demonstrate, provides the basis of a ‘hidden constitutional language’ appropriate to diverse federations such as the Canadian one.

As was discussed in the preceding chapter, the principles of consent, continuity and multilateral negotiation that underlie “just” federal relations were violated during the Trudeau era as the patriation of the constitution was imposed without Quebec’s consent and without recognizing its continuity. Aboriginal peoples, furthermore, did not consent (on their own terms) to patriation. Furthermore, although the consent of nine provinces was secured, Trudeau would have proceeded unilaterally. He would have, to use a term to describe the preferred process of “hard sovereigntists” such as Parizeau, unilaterally declared Canadian independence.

The third chapter also highlights that Quebec sovereigntists, at least of the Lévesque variety, seek equality and recognition through sovereignty by virtue of the perceived impossibility of realizing these goals within a federal state. Lévesque’s commitment to federal “partnership” or “association” with Canada at the international level only serves to highlight that it is the perceived ideational limits of sovereignty that change the nature of federal relations as one passes through “sovereignty” from the domestic to the international realm.

Overcoming the Canadian *impasse* involves challenging the exclusivity of the dialogical process to the international level by re-invigorating Canada’s constitutional roots and adopting an inclusive mentality. It involves nothing less than turning sovereignty on its head and flattening it in order to permit a domestic, federal dialogue similar to the one engaged at the international level. Hierarchical federalism at the domestic level must, in short, give way to the horizontal variety at the international level. The concept of “partnership” has recently been invoked to capture the essence of this proposed inclusive style of constitutional dialogue. The idea of partnership must guide regulative change in Canada as it does at the international level. Partnerships have been

likened to friendships and, in Laforest's words, they represent "the desire to understand - to understand oneself and to understand the other."<sup>340</sup> They represent a commitment to the principles of recognition, negotiation and consent that guide relations at the international level.

"Friendship" is seen as the highest form of association by political theorists and the most pure of loves by philosophers and theologians alike. For example, relationships of "friendship" are conceived by Christian theologian C.S. Lewis as a form of reciprocal and inclusive love that may be distinguished from the absorbing, exclusive nature of "Eros". Friendship is, in his view, the least appreciated and understood of loves but, nevertheless, also the most rewarding. In his *The Four Loves* he states:

Those who cannot conceive Friendship as a substantive love but only as a disguise or elaboration of Eros betray the fact that they have never had a Friend. The rest of us know that though we can have erotic love and friendship for the same person yet in some ways nothing is less like a Friendship than a love-affair. Lovers are always talking to one another about their love; Friends hardly ever about their Friendship. Lovers are normally face to face, absorbed in each other; Friends, side by side, absorbed in some come interest. Above all, Eros (while it lasts) is necessarily between two only. But two, far from being the necessary number for Friendship, is not even the best. And the reason for this is important.<sup>341</sup> [emphasis added].

Friendship does not absorb or assimilate the "other" but rather joins the "other" as a partner at his/her side. Eros may be likened to nationalism or universal ideologies that tend to absorb. Friends need not talk about their friendship as it is found in the practice of being friends. Lovers talk about their love and, in doing so, absorb each other.

Furthermore, according to Lewis, multiplicity is the rule of friendship as its richness is found in its interdependent nature. For example, as Lewis analogizes, "if, of three friends (A, B, and C), A should die, then B loses not only A but 'A's part in C', while C loses not only A but 'A's part in B.'"<sup>342</sup> "For this [friendship] love", writes

<sup>340</sup>Laforest, Guy. "Standing in the Shoes of the Other Partners in the Canadian Union," in Gibbins Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: The Institute for Research on Public Policy (IRPP), 1998, p. 52.

<sup>341</sup>Lewis, C.S. The Four Loves. Great Britain: Fount Paperbacks, 1998, pp. 57-58.

<sup>342</sup>Ibid., p. 58.

Lewis, “to divide is not to take away.”<sup>343</sup> Friendship “exhibits a glorious ‘nearness by resemblance’ to heaven itself where the very multitude of the blessed...increases the fruition which each has of God...Every soul, seeing Him in her own way, doubtless communicates that unique vision to all the rest.”<sup>344</sup> Friendship interdependencies enable expression of multiple visions and, through dialogue, realization of a common pursuit. Lovers desire unity, they wish to become one. Friendship is, in contrast, a form of dialogical federalism.

As Laforest reminds us, the concept of “partnership” is not new to Canadian political discourse and “[b]efore being taken up by Quebec sovereigntists, the concept of partnership had, in recent Canadian history, played an important role in the theory and practice of federalism.”<sup>345</sup> The B & B commission’s mandate, to remind the reader, was to inquire into the way in which the federation could be developed to reflect a bicultural partnership. Furthermore, Lévesque was also committed to partnership. “The lesson to be learned from this dual origin,” Laforest concludes, is that “there is no real chasm between federalists and sovereigntists [and] thus, the concept of partnership could serve as a bridge between the two.”<sup>346</sup>

Canadian history is, in fact, full of examples of partnership. Although both examples of partnership and domination may be found upon survey of a Canadian history book, examples of coalition government, dualist political practices and treaty partnership with First Nations abound. Diversity, as was seen in chapter two, was a real obstacle in light of the perceived boundaries of sovereignty. Nevertheless, compromises through negotiation were made and a federal system of interdependent autonomies was created. There is, upon examination of Canadian history, real bite to arguments that invoke the “spirit” of the constitution.

<sup>343</sup>Ibid.

<sup>344</sup>Ibid.

<sup>345</sup>Laforest, Guy. “Standing in the Shoes of the Other Partners in the Canadian Union,” p. 52.

<sup>346</sup>Ibid.

Although history may be interpreted in many ways, whether through the lens of domination or accommodation to suit the interests of a particular group, Tully would suggest that beneath these interpretations lies a ‘hidden constitutional language’. Drawing upon Wittgenstein, Tully suggests that “there is a way of grasping a rule which is not in *interpretation*, but which is exhibited in what we call “obeying the rule” and “going against it” in actual cases.”<sup>347</sup> Following Wittgenstein, one understands a political rule, not by theory but by assembling examples of practice and looking for overlap. Understanding the nature of the constitutional ‘game’ he would suggest “consists in assembling reminders for a particular purpose”<sup>348</sup> in the context of a dialogue with the “other(s)”.

Examination of history is, therefore, important to understanding as it provides the context in which to draw examples. Looking at examples through time and space allows one to produce what Wittgenstein calls a “perspicuous representation” or “survey” that “produces just that understanding which consists in ‘seeing connexions.’”<sup>349</sup> Tully, after examining Canadian history, has concluded that the three principles of a “just” federal relationship, discussed in previous chapters, constitute instances of connective overlap across time and space. These federal rules are both intercultural and historical and emerge by examining examples where practices are viewed as just or unjust by the actors involved. The rules are grasped by examining cases in which actors are viewed as “obeying the rule” or “going against” them.

These rules or what Tully calls ‘hidden constitutions’ are most evident upon historical examination of European contact with non-Europeans, and more currently by

<sup>347</sup> Wittgenstein, Ludwig. *Philosophical investigations*. tr. G.E.M. Anscombe, Oxford: Basil Blackwell, 1967, ss. 198-201 in Tully, James. *Strange Multiplicity: Constitutionalism in an age of diversity*. Cambridge: Cambridge University Press, 1995, p. 106.

<sup>348</sup> Wittgenstein, Ludwig. *Philosophical investigations*. ss. 71, 127. in Tully, James. *Strange Multiplicity* p. 109.

<sup>349</sup> Wittgenstein, Ludwig. *Philosophical investigations*. s. 122. in Tully, James. *Strange Multiplicity*. p. 110.

considering the way in which immigrants are treated, and the context in which women wish to be treated “equally”. As a diverse country with a common-law and a non-revolutionary tradition, the idea of partnership is an especially important part of Canada’s inheritance. This tradition has frustrated both Canadian nationalists and sovereigntists alike. Our courts do not always rule on a “yes” or “no” basis and the “maybes” can be extremely frustrating to those who wish to impose a single vision as was seen with Trudeau’s reaction to the Supreme Court reference concerning the amending formula for patriation as well as reactions to the more recent Supreme Court reference concerning the legality of Quebec sovereignty. Remarkably, as will be elaborated below, Canada is the only country to have established rules for a peaceful negotiated secession.

Recognizing and negotiating with the “other” is the substance of the “conservative” tradition in Canada. The conventions of justice, discussed in previous chapters, are what permit organic regulative change in a diverse federation such as the Canadian one. Conducting constitutionalism through dialogue is in agreement with Canada’s roots.

“Just” dialogue involves recognizing the “other” as both different and equal on their own terms. It involves, as Laforest has suggested, “putting oneself in the other partner’s shoes”<sup>350</sup> and recognizing the “other” not by self-projection but rather in terms of the partners’ perception of self. The outcome of the dialogue cannot be known in advance. Dialogue implies mediation and negotiation between equals and consists of “finding and inventing *intermediate cases*.<sup>351</sup> The dialogical process, in short, allows for regulation of seemingly contradictory principles where hybridity is the rule. The Canadian “philosophical federalism” or the tendency to avoid pressing arguments to their

<sup>350</sup> See Laforest, Guy. “Standing in the Shoes of the Other Partners in the Canadian Union,” in Gibbins, Roger and Guy Laforest (Ed.). *Beyond the Impasse: toward reconciliation*. pp. 51-79.

<sup>351</sup> Wittgenstein, Ludwig. *Philosophical investigations*, s. 122 in Tully, James. *Strange Multiplicity*. p. 110.

"logical" conclusion, as well as the close relationship in Canada between theory and practice, were discussed in chapter two. Taken together, these two Canadian characteristics reflect a dialogical perspective. In Canada there is no such thing as "logical" conclusions. As Hardin put it: "[t]o get at the Canadian circumstance and through it, to identify, and to escape from the riddles with no answers, is above all to see the country in terms of its contradictions - the contending forces that underlie the character of the people..."<sup>352</sup> The Canadian contradictions are worked out through practice, and to seek to eliminate them is to violate Canada's constitutive basis. Rather paradoxically, given Canada's diverse constitutive basis, seeking to eliminate Canada's contradictions, is "un-Canadian". Practical hybridity through dialogue rather than imposed theoretical purity is, in short, the rule of both Canadian and Wittgensteinian "games".

Trudeau was, in a sense, right when he suggested that Canadian federalism is "reasonable" or pragmatic. The BNA act was, in Trudeau's words, a "wise compromise" and a "sensible constitution." "Reading that document today," he remarked in the 1960s, "one is struck by its absence of principles, ideals, or other frills; even the regional safeguards and minority guarantees are pragmatically presented, here and there, rather than proclaimed as a thrilling bill of rights" as the Americans had done. "[T]he Canadian nation seems founded on the common sense of empirical politicians who had wanted to establish some law and order over a disjointed half-continent" and "[i]f reason be the governing virtue of federalism, it would seem that Canada got off to a good start."<sup>353</sup> As constitutional architect, nevertheless, Trudeau's epistemology contradicted the ontology of his unit. Trudeau proceeded scientifically wishing to control Canada's diversity. In the end, he was not guided by pragmatic concerns but, rather, was guided by a monolithic

<sup>352</sup>Hardin, Herchel. *A Nation Unaware: The Canadian Economic Culture*. Vancouver, B.C.: J.J. Douglas Ltd. North, p. 10.

<sup>353</sup>All quotations in paragraph are taken from Trudeau's "Federalism, Nationalism, and Reason," p. 197.

"liberal" vision that, regardless of his intent, could not be completely disengaged from Canada's constitutive reality. The dialogical constitutional approach permits a practical reconciliation of this epistemology-ontology contradiction.

Some would cite the "failure" of Meech Lake and especially Charlottetown Accords as evidence that dialogue is not possible. For example, Barry Cooper, in his Western analysis of what he calls the Canadian "Never-Ending Story", doubts Canada's ability to "constitute itself as a sovereign people." "Quebec", in his view, is at the center of the Canadian "problem" and the solution is either "deconfederation" or for the Quebecois to adopt "liberal" values.<sup>354</sup>

Alan Cairns, in a less prescriptive account, has noted the increased balkanization of identity in Canada. The Charlottetown Accord represents the drift, in Cairns view, to three solitary nationalisms: Quebecois, Aboriginal and "haltingly" ROC (Rest of Canada). During the Charlottetown negotiation process, constitutional actors were, in his view, playing the "multinational game" by federal rules. Basically, according to Cairns, although all three nations (Aboriginal, Quebec and ROC) implicitly acknowledge the "other's" existence, dialogue between the Quebec and the ROC "nations" is confined by Canada's federal system, amending formula and pan-Canadian rights regime that constrain the options of political articulation. While "Quebec" is trapped in the idea of "province", ROC is unable to respond to Quebec due to its institutionally encouraged "Canada/ROC" split personality. Canada's institutional structure, in Cairns' view, limits political dialogue between these nations.

Nevertheless, in light of the above discussion, what is most interesting about Cairns' analysis of the Charlottetown Accord was its comparison of the reception of Aboriginal and Quebecois nationalisms on the part of the ROC. Basically, Cairns argues

<sup>354</sup>See Barry Cooper's "Looking Eastward, Looking Backward: A Western Reading of the Never-Ending Story," in Cook, Curtis (Ed.). Constitutional Predicament: Canada after the Referendum of 1992. pp. 89-111 as well as Bercuson, David J. and Barry Cooper. Deconfederation: Canada without Quebec. Toronto: Key Porter Books, 1991.

that the Rest Of Canada was more open to accommodation with respect to Aboriginal peoples due to both their separate institutional history and resulting psychic separateness in terms of identity. “ROC nationalism dresses itself in the guise of pan-Canadian nationalism,” writes Cairns, and “its sense of self includes Quebec.”<sup>355</sup> In contrast, “[p]sychologically, an elaborate constitutional recognition of Aboriginal difference is much less disturbing to the non-Aboriginal ROC sense of Canadian peoplehood, which historically marginalized Aboriginal people.”<sup>356</sup> Aboriginal people, furthermore, “are not thought of in federal terms.”<sup>357</sup> Basically, past institutional decisions have constrained future institutional ones. Institutional dialogue is cumulative and Aboriginal people have been able, for this reason, to escape certain federal and ideational constraints due to negative differential treatment in the past.

The Aboriginal component of the Charlottetown package was extensive. To illustrate: the inherent Aboriginal right to self-government was recognized and would have established a third order of government; existing Aboriginal treaty rights were confirmed and, furthermore, were to be interpreted in a ‘broad and liberal manner’ consistent with their ‘spirit’ as understood by Aboriginal peoples; Section 25, the non-derogation clause in the Charter, was to be strengthened; Aboriginal peoples were to have a role in Supreme Court nominations (to be negotiated at a later date); they were to have guaranteed representation in the Senate over and above their provincial or territorial representation; a principle of double-majority, requiring the consent of both a majority of Senators and a majority of Aboriginal Senators in matters deemed materially affecting Aboriginal people, would have been considered; the nature of house representation, moreover, would have been placed on the agenda for further negotiation. In general, the

<sup>355</sup> Cairns, Alan C. “The Charlottetown Accord: Multinational Canada v. Federalism,” in Cook, Curtis (Ed.). Constitutional Predicament: Canada after the Referendum of 1992. Montreal & Kingston: McGill-Queen’s University Press, 1994, p. 55.

<sup>356</sup> Ibid., p. 54.

<sup>357</sup> Ibid., p. 37.

Accord reflects a commitment to negotiated, consensual and culturally sensitive relations between Aboriginals and non-Aboriginals.<sup>358</sup>

The asymmetrical treatment of Quebecois and Aboriginal nationalisms was, indeed, remarkable. The usual perceived “sovereign” constraints were, to a large extent, set aside. Questions of overlap or double-representation for Aboriginal peoples in federal and provincial institutions, for example, were not addressed to the extent they are when considering proposals of asymmetrical federalism to accommodate Quebec. The sovereign principles of territorial and ideational exclusivity, continuity and contiguity were significantly violated and, often, without question. In fact, self-government would have even applied to Aboriginals without a land-base; it would have included “non-territorial” government. As Cairns put it, the most basic “sovereign” questions regarding “What degree of institutional differentiation of a people is compatible with the nation-state form?” with respect to the Aboriginal proposals were never asked. As Cairns observed: “Analogous questions, of course, also applied to Quebec, but here the questions are not new” adding that “a well-developed discourse was at hand to address them, which Pierre Trudeau ensured was vigorously employed.”<sup>359</sup>

The disinclination on the part of ROC to use Trudeauian anti-nationalist discourse with respect to Aboriginal proposals was due, to some extent, to a rather paradoxical (in light of the nature of Trudeauian discourse) assumption of “mirror representation.” Essentially, whereas Trudeau, as a Quebecois, was viewed as a legitimate representative of Quebecois interests, he was not viewed as representative of Aboriginals. One is only left to wonder how the ROC would have received Aboriginal proposals if there had existed an Aboriginal leader with a similar “liberal” vision. Trudeau’s leadership and legacy illustrate both the importance of leadership and confirm the need to adopt a

<sup>358</sup>This information is taken from a reproduction of the Charlottetown Accord that appeared in the appendix of Cook, Curtis (Ed.). Constitutional Predicament: Canada after the Referendum of 1992. pp. 225-249.

<sup>359</sup>Ibid., p. 51.

dialogical or what Hollis and Smith call an “understanding” methodological approach. Actors are not interchangeable in Canada. The Trudeau-Lévesque debate, discussed in chapter three, confirms Cairns idea that Canadian institutions encourage a “split personality”; not only in ROC but also in Quebec.

The Charlottetown Accord negotiations and the asymmetrical generosity toward Aboriginal peoples dispels the general myth that ROC’s sense of Canadian nation and its “liberalism” necessarily limit the degree to which diversity can be constitutionally accommodated. Even Barry Cooper, who, as noted above, would “de-confederate” Canada in order to remove the “illiberal” Quebecois element, has described Aboriginals as “one exception to our general principle of citizen equality,”<sup>360</sup> based on the principle of legal continuity with the Crown. The way in which Aboriginal nationalism is received highlights the way in which past institutional decisions and related monolithic identities freeze constitutional relations between ROC and Quebec. It also underscores the way in which Canada’s historical relationship with Britain still permits ideational flexibility with regard to actors that have not been fully included in Canada’s domestic institutional structure. Aboriginals are viewed, to some extent, as quasi-international actors, and, as such, their proposals for self-government are more generously received. In fact, there was, for this reason, “a concern on the part of some First Nations that the provisions [of the Charlottetown Accord] would ‘domesticate’ the treaties or take them out of an international dimension.”<sup>361</sup> Although Aboriginal treaties are not formally recognized, in Canadian courts, as international treaties but rather “are viewed as being somewhere between contracts and international treaties, with a status that is termed ‘sui

<sup>360</sup>Becuson, David J. and Barry Cooper. Deconfederation: Canada without Quebec. p. 169 in Cairns, Alan. “The Charlottetown Accord: Multinational Canada v. Federalism,” p. 54.

<sup>361</sup>Turpel, Mary Ellen. “Aboriginal Peoples’ Struggle for Fundamental Political Change,” in McRoberts, Kenneth and Patrick Monahan (Eds.). The Charlottetown Accord, the Referendum, and the Future of Canada. Toronto: University of Toronto Press, 1993, p. 128.

generis'... First Nations maintain that they are international in character."<sup>362</sup> The ROC, to a certain extent, as the above discussion indicates, implicitly accepts this reading.

The above discussion illustrates the extent to which the implementation of the Trudeau vision has constrained perceived constitutional options as they relate to the "Quebec" question. The amending formula and the Charter have, respectively, provincialized, and pan-Canadianized the Canadian "social episteme", as well as contributed to the polarization of "solitudes". The ROC "split personality" described above illustrates the extent to which, in Cairns reading, ROC identity either absorbs Quebec with its pan-Canadianism or, conversely, "bundles" itself as a separate nation in order to respond to Quebec. In short, although flexible dialogue is possible, as evidenced by negotiations with Aboriginals, ROC and Quebec perceptions are "frozen" in past institutional decisions and their purportedly inherent nationalist *cul-de-sac*.

Many have suggested that Canada should re-organize itself as a multinational federation in order to better reflect these three "national" solitudes.<sup>363</sup> However, although this may be one of many constitutional alternatives, it is debatable as to whether this would accurately reflect the complex nature of Canadian identity. More specifically, it is questionable as to whether the ROC views itself as a "nation". ROC nationalism, as Cairns admits, is a counter-nationalism elicited in response to Quebec.<sup>364</sup> A partnership approach involves seeing the "other" as they "introduce" themselves. Trying to make a "nation" out of what is left of Canada reflects the poverty of modern constitutional concepts and the desire for "neat" solutions. It misrepresents ROC, Quebecois and Aboriginal diversity and is, to cite Wittgenstein, a "mis-analogy". To remind the reader,

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<sup>362</sup>Ibid.

<sup>363</sup>See, for example, Philip Resnick's Toward A Canada-Quebec Union. Montreal & Kingston: McGill-Queen's University Press, 1991 and Will Kymlicka's Finding Our Way: Rethinking Ethnocultural Relations in Canada. Toronto, Ontario: Oxford University Press, 1998.

<sup>364</sup>Cairns, Alan. "The Charlottetown Accord: Multinational Canada v. Federalism," p. 34.

the partnership approach implies that the “solutions” are not known until the dialogue has been engaged. They appear through the practice of negotiated constitutionalism.

Tully has demonstrated the way in which compromise middle-grounds that enable a rapprochement of seemingly contradictory principles have been found in Canada’s courts. He suggests, for example, that the court ruling on Bill 101 (*Quebec v. Ford et al.*) represents an example where two claims to continuity were in conflict and a compromise middle-ground was found. Bill 101 was, to remind the reader, challenged as in violation with the right of freedom of expression to an extent unjustifiable in a free and democratic society. Both the Quebec and Supreme courts concurred, in short, that the Bill violated their respective Charters. Nevertheless, as Tully has delineated, the Supreme Court, by applying the *Oakes test*<sup>365</sup> to the ambiguous first section<sup>366</sup> of the Charter found a compromise solution. It was argued by the Court that to honor the continuity of French in Quebec did not require the exclusivity of French on commercial signs but, rather, that “marked predominance” would meet the claims to continuity of both the French majority and anglophone minority. The Court suggested a “hybrid solution” that would recognize both constitutive features of Quebec.

The recent Supreme Court ruling concerning the legality of Quebec secession confirms its tendency toward practical “hybridity”, as well as the importance of the rules of continuity, multilateral negotiation, and consent to our legal tradition. The principle and practice of federalism in Canada were described by the Supreme Court as “a legal response to the underlying political and cultural realities that existed at Confederation

<sup>365</sup> The Oakes test uses the three following criteria to assess the extent to which freedom of expression could be limited: 1. The means should not be arbitrary and must achieve the objective; 2. the means should impair the freedom as little as possible; 3. the costs should be proportional to the benefits. See Tully, James. “Diversity’s Gambit Declined,” in Cook, Curtis (Ed.). Constitutional Predicament: Canada after the Referendum of 1992. Montreal & Kingston: McGill University Press, 1994, p. 185.

<sup>366</sup> Section 1 of the Charter requires that if a right is violated the court must determine whether the law should nevertheless stand as the kind of “reasonable limit” that can be “demonstrably justified in a free and democratic society”.

and continue [emphasis added] to exist today.”<sup>367</sup> The federal system was, in the Court’s view, a formal framework in which Canada’s constitutive diversity is worked out through practice. Furthermore, the Supreme Court justices recognized the conservative principle as it relates to Canada’s federal diversity and the division of autonomy, both territorial and non-territorial, that it entails. Canadian federalism requires that “the [territorial] autonomy of provincial governments to develop their societies within their respective spheres of jurisdictions”<sup>368</sup> be respected. The courts also recognized the continuity of “non-territorial” linguistic minorities acknowledged in both the former BNA Act and in the Charter. Aboriginal continuity must also be respected, according to the ruling, and may perhaps “be looked at in...[its] own right.”<sup>369</sup>

Nevertheless, what is perhaps most remarkable and unique about the ruling is the legal requirement of reciprocally negotiated secession. Although many observers anticipated a requirement that Quebec negotiate its disengagement from Canada, as Russell observes, “what is more of a surprise is the Court’s finding that the federal government and the other provinces would equally be obliged to enter into negotiations with Quebec if the sovereigntists won ‘a clear majority on a clear question.’ ”<sup>370</sup> “This reciprocal obligation to negotiate,” writes Russell, “arise[s] from the principles of federalism and democracy which require the other constituent members of the federation [to] give due weight to an expression of the democratic will of the people of a province for constitutional change.”<sup>371</sup> The Courts, as was done at the time of patriation, ruled that negotiation and compromise were the rules of Canadian federalism. In light of the Court’s “middle-ground” decision “[t]he only clear losers are the extremists: extreme federalists who deny that Quebec’s secession is legally possible under any constitutional

<sup>367</sup>line 43 of the ruling. See Peter Russell’s “The Supreme Court Ruling, A Lesson in Democracy,” *Cité Libre*, October-November 1998, p. 30.

<sup>368</sup>Ibid., line 58.

<sup>369</sup>Ibid., line 81.

<sup>370</sup>Russell, Peter H. “The Supreme Court Ruling, What Democracy Is All About,” p. 31.

<sup>371</sup>Ibid.

process, and extreme sovereigntists who view Quebec as already free from any obligation to observe the norms of Canada's constitutional order.<sup>372</sup> Practical dialogue rather than final solutions is the rule of the Canadian "game".

The Supreme Court reference also illustrates the extent to which a dialogical approach to constitutionalism is useful in terms of absorbing regulative change at the international level. The reference put before the court also questioned the legality of a UDI in terms of international law. The Court ruled that the right to self-determination is restricted to "situations of former colonies" where "a people is oppressed"; circumstances that were ruled "manifestly inapplicable in Quebec under existing circumstances."<sup>373</sup> The international rule with regard to the legality of secession, discussed in chapter one, requires that the territorial integrity of the existing sovereign state be respected unless a definable "people" seeking self-determination is oppressed. Although there is room for interpretation as to what constitutes oppression, the two alternatives are rather polar: *status quo* v. clear oppression and thus, self-determination. This type of rule leads to the type of *cul-de-sacs* discussed in chapter three. The Court, furthermore, avoided the ambiguous question as to what constitutes a "people", as well as eschewed the issue of appropriate amending formula. These questions would, apparently, be left to negotiation. The Supreme Court's ruling reflected both the impact (on Canada) of international regulative change as it relates to the nature of legitimate authority as well as Canada's ability to mediate it through its particular dialogical tradition.

The dialogical reasoning characteristic of our legal system must be employed at the political level. During the Charlottetown Accord negotiations, the notion of "distinct society", for example, was viewed by some as antithetical to the continuity of various

<sup>372</sup>Ibid., p. 34.

<sup>373</sup>Ibid., line 138 in Russell, Peter. p. 32.

First Nations cultures. However, this assumes that the Quebecois vision is unilateral and that a “distinct” Quebec government would wish to pursue a vigorous policy of assimilation. Nevertheless, as Tully put it, “the vision behind the distinct society clause for most Quebecers is multilateral, of Quebec as a *société globale*.<sup>374</sup> This criticism reflects a Trudeauian bias against the “sociological nation”, as well as a misconception concerning the compatibility of liberal and collective rights. There are, of course, members of the Quebec sovereigntist movement, such as Jacques Parizeau, who espouse a more **unilateral** vision of Quebec.<sup>375</sup> These sovereigntists, however, are in the minority, and the inability on the part of ROC to “imagine” a Quebec that would be as accepting and accommodating of diversity reflects a similar spirit of dominance and universalist “sovereignty-thinking”. The word “nationalist” does not capture the diversity of Quebec any more than the word “liberal” explains the ROC. Although Quebec and Canadian “nationalists” may place different emphasis on collective or individual rights, both “nationalist” ideologies are, in a very Canadian way, hybrids.

The principle of the equality of provinces was also considered by many as inherently incompatible with the notion of “distinct society”. The principle, far from being self-evident, as many would suggest, is contestable on many fronts. The concept, first of all, assumes that the relevant units are “provinces”, and equality is then defined simply in relation to them. This is a misanalogy and, as was seen in chapter two, is also ahistorical. Formal federalism was a regulative rule and a practical device used to “bundle” both national and territorial diversity. The nature of the association that would result between “equals” changes, as the sovereigntists have made us aware, with the issue of what the relevant unit of analysis is.

<sup>374</sup>Tully, James. “Diversity’s Gambit Declined,” p. 188.

<sup>375</sup>Nevertheless, as we saw in chapter three, despite the intentions of other more “moderate” sovereigntists, the inability to overcome the idea that many nations cannot co-exist equally in a single state would have to be overcome.

Furthermore, philosophically, the nature of “equality” itself is far from self-evident. As William Connolly put it, “equality” is an “essentially contestable concept.”<sup>376</sup> It is, to put it in practical, political terms, negotiable. Many of Quebec’s demands could, in fact, be expressed in purely liberal terms whether in terms of “equality of opportunity”, affirmative action or what feminists would call “substantive equality.” In fact, Will Kymlicka, a well-respected Canadian philosopher, has cogently argued that cultural context is a primary “liberal” good.<sup>377</sup> There is, in short, a great deal of room for negotiation of these seemingly contradictory principles through what Wittgenstein calls “analogical activity”. However, in order to be “just”, the negotiation process must allow actors to express the way in which they want to be treated “equally”. A “Just Society”, despite what Trudeau would have us believe, does not exist in a vacuum but rather, is inherently contextual. One cannot, as was demonstrated in chapter two, legislate scientifically for “humanity”. The epistemology employed must suit the inherently social nature of the unit. As Tully so aptly put it: “[a] theory is always an example or two mistaken as the comprehensive view of all possible examples.”<sup>378</sup> The Trudeau vision and its legacy must be viewed a one example or vision among many and, indeed, one account of the nature of “liberalism”. Similarly, the Quebec sovereigntist vision must be relegated to one vision among many.

Relaxing one’s “sovereign” or modern assumptions, however, not only encourages a more inclusive process, but also reveals new institutional alternatives. Challenging the concepts of exclusivity, continuity, and contiguity and their relation to territoriality provide new institutional “examples” to work with. These new “examples”, moreover, need not replace the old but, rather, may be combined to form new hybrids.

<sup>376</sup>Connolly, William. The Terms of Political Discourse (Third Edition). Princeton, New Jersey: Princeton University Press, 1993.

<sup>377</sup>See Kymlicka, Will. Liberalism, Community and Culture. Oxford: Clarendon Press, 1989.

<sup>378</sup>Tully, James. “Diversity’s Gambit Declined,” p. 196.

“Unbundling” sovereign assumptions allows institutional solutions to be tailored to fit the “problem” rather than the reverse.

Charters are generally “non-territorial” in the sense that they are a way of protecting both non-territorial cultural minorities and non-territorial identities against the territorial majority. Canada has a history of employing both non-territorial and territorial solutions with regard to cultural diversity. This, of course, was done at the time of Confederation with the territorialization of a francophone majority in Quebec combined with a non-governmental, “non-territorial” rights regime for language minorities in both Quebec and the ROC. Nevertheless, as Canadian history demonstrates, these rights were vulnerable to the will of the provincial territorial majority. The Manitoba Schools question and Ontario’s *Regulation 17* are only a couple of historical examples of how “non-territorial” diplomatic space has been violated. These examples reflect the dominance of a state tendency, when guided by sovereign ideas, to “bundle” its territory and constitute historical instances of “unjust” federal relations. The history of linguistic minorities illustrates the way in which “just” federal relations appear by examining instances of following and going against rules as these above examples are, in retrospect, viewed as “unjust” by both COQ (Canadians outside Quebec) and the Quebecois.

As was demonstrated in chapter three, when “non-territorial” Charters are applied to a federal system with already institutionally-defined territorial minorities, they can have the opposite effect: to “bundle” one territorial unit at the expense of another. Single charters, when applied to federal states, can, briefly put, have a de-federalizing impact. “Non-territorial” solutions can have a territorializing impact depending on the unit considered.

Relaxing “sovereign” assumptions and adopting a “partnership episteme” allows one to “imagine” asymmetrical rights regimes. The first step in this process, however, is abandoning the imposing liberal-collective rights dichotomy, a distinction with a purpose as Schneiderman argues “not to elucidate differences but to emphasize disagreements in

principle beyond repair.”<sup>379</sup> There is, for example, upon comparative examination of the Charter of Rights and Freedoms and the Quebec Charter of Human Rights and Freedoms, a great deal of convergence between Quebecois and ROC rights commitments. A majority of Quebecers, furthermore, for the most part, support, in principle, the rights enumerated in the Canadian Charter. Quebecois and ROC conceptions of rights diverge most significantly with regard to language rights. More specifically, francophones in Quebec are, in contemporary times, more willing to sacrifice anglophone language rights if they are seen as a threat to the fundamental character of Quebec.<sup>380</sup> This final point, however, must be tempered by the fact that Western populist movements, as expressed in, for example, Reform Party policy, would also support territorial homogenization of language. The general overlap between Quebecois and ROC visions of rights, as well as the existence in both Quebec and ROC of alternate language rights visions, highlights the poverty of the liberal-collective dichotomy. It underscores, in short, both “liberal overlap” and the particular nature of Trudeau’s Charter.

Constitutionalism has as its purpose, as Schneiderman has argued, both to legitimize political authority and to integrate society under the banner of its basic beliefs.<sup>381</sup> As demonstrated above, the Quebecois and the ROC share many basic values. The most central issue with regard to the Charter, save language rights, is not its content as much as its perceived lack of legitimacy. The issue of legitimacy, however, is also strongly debated among federalists and sovereigntists. Federalists emphasize as evidence of Charter legitimacy, the approval of Quebec MPs as well as polls that indicate both that the patriation exercise and Charter were well-received in Quebec.<sup>382</sup> They argue that René Lévesque would never have co-operated and measure legitimacy

<sup>379</sup> Schneiderman, David. “Human Rights, Fundamental Differences? Multiple Charters in a Partnership Frame,” in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. p. 149.

<sup>380</sup> Ibid., p. 153.

<sup>381</sup> Ibid., p. 164.

<sup>382</sup> See, for example, Trudeau’s “The Values of a Just Society,” p. 423.

through the previously discussed Supreme Court interpretation of “substantial provincial consent”. Nationalists, on the other hand, cite conflicting polls and argue that it is not the House but rather the Quebec National Assembly that speaks on behalf of Quebecers. Quebec nationalists argue, furthermore, that a Quebec veto exists in convention and regard the Supreme Court ruling as in historical disagreement with Canadian federal practice.<sup>383</sup> In light of the above discussion, both in this chapter and in chapter two, federalists, to a certain extent “confuse legality with legitimacy.”<sup>384</sup> The Supreme Court’s ruling and the process surrounding patriation was viewed by Quebecois nationalists not as illegal but rather as a “moral rupture.”<sup>385</sup> Patriation resulted, from a Quebec nationalist perspective, in a breach of “authentic authority,”<sup>386</sup> regardless of its

<sup>383</sup>Ibid., p. 152. See also, Laforest, Guy. *Trudeau And The End Of A Canadian Dream*. Montreal & Kingston: McGill-Queen’s University Press, 1995. Although when compared to Trudeau’s unilateralism, the Supreme Court’s amending formula ruling (discussed previously) represented a compromise solution, it did not recognize “nations” and, as such, did not recognize Quebec in the manner in consistent with its self-image.

<sup>384</sup>Sneiderman, David, p. 152.

<sup>385</sup>It was described as such in the Bélanger-Campeau report.

<sup>386</sup>Howard Adelman argues that Quebec secession is morally legitimate by distinguishing between what he call “authentic” and “formal” authority. See his “Quebec: The Morality of Secession,” in Carens, Joseph H. (Ed.). *Is Quebec Nationalism Just? Perspectives from Anglophone Canada*. Montreal & Kingston: McGill-Queen’s University Press, 1995. ‘Authentic authority’ according to Adelman “is not rooted in one’s role in an institutional structure but comes from an authentic source, either because that source is the ground of other authority or because it is the one most knowledgeable” “A state truly has authority” he writes “to the extent that its decisions are willingly complied with without any resort to commands.” It therefore “requires recognizing an authentic authority for the state...[and] [o]nce the authentic authority is established, division of roles and responsibilities can be subdivided in numerous ways to suit contemporary realities and a wide variety of conditions and circumstances.” (p. 176). Although this thesis disagrees both with Adelman’s conception of sovereignty (he equates it with a “people” or “nation” on p. 181) and conclusions (that Quebec is already, “psychically” or morally sovereign because authentic authority lies with the Quebec rather than Canadian state) his distinction between “authentic” and “formal” authority is useful. Examining his article, is also useful to illustrate the tendency toward the monolithic. He concludes that, since Quebec is a nation whose “authentic authority” and primary loyalty lies with Quebec, then Quebec secession is legitimate. In the end, furthermore, Adelman’s analysis relies on the idea of formal “role” as it relates to authority. The Quebecois, in his view, since they already possess a “sovereign” government are entitled morally to secede. In contrast, with regard to Aboriginal self-government “recognition of self-government and of landownership is not the same as recognition of the sovereign rights of a people that can be exercised over a specific territory...[n]ormally you can’t take your little piece of territory with you when you opt out of the state or a nation...unless a group views itself as a nation and has a political unit with jurisdiction over a specific territory that it entrusts as the embodiment of that will, the political unit is not sovereign and the group is not truly a nation, but a minority within a nation.” (p. 188). Although Adelman’s distinction between “authentic” and “formal” or “role” authority is useful, his analysis of their location is constrained by “sovereign” territorial assumptions.

formal legitimacy. Although the Quebecois share many of the same values as those in the ROC, many wish to belong to Canada through Quebec. Shared values alone, as Norman has convincingly argued, constitutes a “myopic” vision of unity in a state characterized by “deep” diversity.<sup>387</sup>

Relaxing universalist assumptions would allow Canadians to consider multiple citizenship regimes that could reconcile Trudeau’s prized value of “freedom” with multiple ways of belonging. This could be accomplished either through interpretative clauses, such as the contested ‘distinct society’, or by establishing multiple Charter regimes and, for example, constitutionalizing the Quebec Charter. Basically, this approach would territorialize national belonging as was done with federalism at the time of Confederation. Multiple charters would compliment multiple territorial governments. Territorially differentiated multiple charters represent one example of how “deep diversity” may be accommodated in federal states.

Nevertheless, as Trudeau recognized, within every territorial majority lie minorities. While asymmetrical territorial application of a Charter, or multiple Charters, may protect Quebec’s minority interest within Canada, the issue of minorities both within Quebec and within the ROC must also be addressed. Basically, partnerships would have to be created within and across these units. Briefly put, there would have to be partnerships within partnerships.

The problematic nature of perspicuous territorial solutions is highlighted when Aboriginal proposals for self-government are considered. The Canadian Charter, or even a single “Aboriginal Charter”, is not necessarily, as many Aboriginal organizations argue, reconcilable with Aboriginal diversity. Some Aboriginal leaders have, in fact, proposed that each band decide whether the Canadian Charter will apply to their government and

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<sup>387</sup>Norman, Wayne. “The Ideology of Shared Values: A Myopic Vision of Unity in the Multi-nation state,” in Carens, Joseph H. (Ed.). Is Quebec Nationalism Just? pp. 137-159.

suggest that the option of creating their own rights-regime be available. Complex multiplicity of rights regimes and asymmetry, in short, take on a new meaning in an Aboriginal context. What may, however, result in the most new ground in terms of rights constitutionalism would be examining the ideas that underlie Charter application to non-territorial government. Proposals for self-government without a land-base require imagining the differential application of rights **within a single territory**. Aboriginal diversity both territorial and non-territorial may, in short, inspire a re-evaluation of the principles of both governmental and rights-regime territorial continuity.<sup>388</sup> Aboriginal self-government may necessitate a more vigorous “unbundling” of “sovereign” assumptions.

The inherent problem with clear territorial as well as strictly personal “solutions” with regard to francophone-anglophone relations in Canada is apparent in the Meech Lake summary of the complex reality of dualism. The agreement describes:

...the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada.

In order to reflect this reality, new ways of relating on a majority-minority basis must be imagined. Transcending the Trudeau-Lévesque *cul-de-sac*, in short, requires looking for hybrid solutions by highlighting ideational overlap. It was discussed in chapter three that, while both Trudeau and Lévesque operated on the assumption that dualism was constitutive of Canada, each took a different approach: one “personal” (or what Cameron, in the preceding chapter, called ‘sociological’) and the other “institutional” (and generally, territorial). Upon further challenge of sovereign assumptions about territoriality and all-purpose government, one can uncover the possibility of institutional middle-ground between these two antagonists. Both territorial and “non-territorial”

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<sup>388</sup>Institutional continuity, to remind the reader, refers to not having a governmental unit territorially embedded or surrounded by another.

minority concerns could be met if the two scorpion visions in that famous bottle were shaken and their stinging tails clipped. In fact, perhaps two new arachnids such as friendly spiders spinning overlapping webs would emerge.

In the proceeding chapter Trudeau's distinction between the "territorial state" and the "nation-state" was discussed. In light of the first chapter, it was argued that this comparative differentiation is somewhat misleading as both the "territorial" and "nation" states are territorial. Trudeau also distinguished between the concepts of "juristic" and "sociological" nations. The "juristic" nation, to remind the reader, corresponded with the existing territorial "nation" and the "sociological" nation with a territorial minority. Trudeau believed that the "sociological" minority would inevitably desire independence if nationalism rather than reason were the governing principle. Upon closer inspection, however, one sees that the minority nation is seen as a threat in Trudeau's view by virtue of its territorial concentration and institutional expression in Quebec. Trudeau, basically, implicitly acknowledges the territorial nature of Quebec nationalism. It was, furthermore, by virtue of this territorial, institutional threat, that he attempted to "rebundle" Canada into a single territorial nation.

Pan-Canadian bilingualism, consistent with the "sociological" approach to dualism, is, nevertheless, premised on the non-territorial (or at least, non-territorially federal) nature of minorities. The sociological approach to dualism, consistent with Trudeau's vision, emphasizes, as was seen in chapter three, the extensive inter-penetration of the linguistic communities and concludes that, for this reason, no one political jurisdiction may be viewed as responsible for their protection and management. According to the "sociological" argument, all provinces, as well as the federal government, are equally responsible for protecting linguistic minorities, and Quebec is, therefore, in principle, reduced to a province like the others.

To remind the reader, the "institutionalists", including Quebec separatists, argue that a "sociological" perspective neglects the issue of political power. Cultural

minorities, from this perspective, need concrete governmental representation if they are to survive. This was, as discussed previously, the logic behind the federal system as it relates to Quebec. The logic of cultural federalism, as was cited in chapter three, is “that a minority can be given political power, can be turned into a majority, in those culturally sensitive areas that require it, but can be treated as a portion of the population as a whole in those matters which are deemed to be common throughout the system and not related to culture.”<sup>389</sup>

Challenging “sovereign” territorial assumptions, and drawing from these two seemingly polar approaches, enables one to imagine more nuanced compromise solutions. The federal principle could, for example, be extended to include non-territorial linguistic minorities. “Unbundling” territory through personal federalism could reconcile Trudeau’s concern for pan-Canadian Official Language minorities with the institutionalist’s argument about political power. Novel solutions to minority-majority relations may be found by “unbundling” territory.

Few academics have considered the potential of non-territorial federalism in Canada.<sup>390</sup> In his 1993 article that questions whether “L’heure du fédéralisme personnel est-elle arrivée?,” Laponce explores this question and answers it contingently in the negative. In general, democratic states “sont des bêtes territorial” according to Laponce and “c’est sur la base d’unités spatiales contiguës qu’ils [democratic states] préfèrent [emphasis added] administrer une justice qui perce les groupes pour atteindre les individus.”<sup>391</sup> Laponce recommends, therefore, the institutional territorialization of language in Quebec, New Brunswick, Nunavut and on Aboriginal reserves.

<sup>389</sup> Cameron, David R. “Dualism and National Unity,” p. 240.

<sup>390</sup> Jean Laponce’s “L’heure du fédéralisme personnel est-elle arrivée?,” in Jean Lafontant (Ed.), *L’État et les minorités*, Manitoba: Les Éditions du Blé, 1993, pp. 55-65 and David Elkins’ *Beyond Sovereignty: Territory and Political Economy in the Twenty-First Century* are two rare works that deal with this subject in a Canadian context.

<sup>391</sup> Laponce, Jean. p. 63.

Nevertheless, although personal federalism is of limited applicability, it may, in his view, be useful in conjunction with territorial federalism. More specifically, Laponce concludes that although political organization should, in general, remain territorial, *personal federalism* would be a useful way of encouraging the linguistic and cultural continuity of dispersed francophones and Aboriginals.

At this point, a distinction should be made between personal, non-territorial federalism and territorial “unbundling”. Essentially, whereas personal federalism would have the individual as its unit, territorial “unbundling” involves creating “enclaves” or smaller territorial units within existing territorial units where the new unit becomes a territorially defined group. Whereas personal federalism would not necessitate territorial concentration and would involve choice, in the case of territorial “unbundling”, a new territorial majority (and also, to a certain extent, minorities) would be created.

David Elkins is, most likely, the only Canadian political scientist to have explored the potential of non-territorial federalism in any depth.<sup>392</sup> In his view, non-territorial, personal government, is the wave of the future, and its flexibility very useful in dealing with cultural majority-minority issues. Elkins concurs with Laponce about the viability of personal federalism for dispersed francophone minorities in the ROC. Elkins envisions the creation of two new “provinces”, one francophone and the other Aboriginal. While the former, he asserts, could be modelled purely on the personal model, the latter would, in his view, have to include elements of both the territorial and the personal models. As Canadians are well-aware, land claims are central to Aboriginal conceptions of justice. For this reason, what Elkins calls the “Aboriginal Peoples Province” would more likely “be land-based without the assumptions of contiguity and

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<sup>392</sup>See Elkins, David J. Beyond Sovereignty.

continuity.<sup>393</sup> Personal federalism could, furthermore, be employed to empower Aboriginals that are “dispersed”, as is the case in some urban centers. It could also be used in conjunction with land-based self-governing units.

A personal-territorial hybrid model may also be appropriate to Elkins proposed province of “La Francophonie”. For example, certain provinces, especially New Brunswick, may wish to create both what the B&B commission called unilingual or bilingual territorial districts that are either to a certain degree self-governing within the province or that are federally linked with francophone minorities in other provinces. Federalisms could exist both within and transcend current provincial boundaries.

The option of “reciprocal accords” dealing with minority education rights has also been raised. The concept, however, is not new but, rather, first entered Canadian discourse in 1977 when the Lévesque government invited the other provinces to engage in bilateral negotiation with regard to minority education rights. At the time, Quebec’s Assemblée Nationale was about to pass Bill 101 that would restrict English education to children of whom one parent had been educated in English in Quebec. As McRoberts has delineated, although the Premiers initially supported the proposal, Trudeau avidly denounced it. It was subsequently discussed at a First Minister’s conference and rejected by all the ROC’s Premiers. It was argued by both the Premiers and Trudeau that fundamental rights are non-negotiable.<sup>394</sup> Nevertheless, a provision for “reciprocal accords” was inserted in Bill 101 despite the outcome of the conference, and remains there today.<sup>395</sup>

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<sup>393</sup>Ibid., p. 153.

<sup>394</sup>That many Premiers deemed language rights as fundamental highlights the importance of context to liberalism.

<sup>395</sup>See McRoberts, Kenneth. “Linguistic Minorities in a Canada-Quebec Partnership,” in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, pp. 204-205.

The Quebec government has a long history of providing government funding to francophone organizations in the ROC. Similar relations, in fact, date back to the late 19th century according to Silver. In his view, as one may remember from chapter two, although Confederation was primarily about gaining a homeland, of becoming a territorial majority, in the late 19th century French Quebecers began to identify with the Métis, French minorities and fellow Catholics in other provinces. Silver describes these relations as a form of “extra-territoriality.”<sup>396</sup> Rather interestingly, furthermore, he attributes these extra-territorial francophone relations to an understanding of British Imperialism. British imperialism legitimized, in his view, the notion of a homeland interfering in “extra” territory.<sup>397</sup> The legitimization of territorial “unbundling” within Canada was influenced, in Silver’s view, by international relations ideas and practical “unbundling”. Federation, cultural *federalism* and “extra-territoriality” were all, to a certain extent, legitimized by Canada’s historical relationship with Britain.

Nevertheless, as was discussed in chapter three, the rise of neo-nationalism in the 1960s, resulted in an increased territorialization of Quebec identity. The “Quiet Revolution” and the rise of separatist movements, shifted the *francophone, pan-Canadian*, focus to a *Quebecois, state-centered*, one. “Extra-territorial” francophones were largely deemed “dead ducks” and the idea of “reciprocal accords” lost ground.

The idea of “reciprocal accords”, however, has re-surfaced recently in Quebec sovereigntist proposals. Lucien Bouchard, for example, has proposed the creation of a *Secrétariat de la Francophonie d’Amérique* if Quebec were to become sovereign. Nevertheless, the idea of inter-territorial francophone co-operation is not limited to the “sovereigntists”. For example, *Le Conseil de la langue française* published a

<sup>396</sup> Silver, A. I. The French-Canadian Idea of Confederation, 1864-1900. Toronto: University of Toronto Press, 1982, in Elkins, David J. p. 222.

<sup>397</sup> Ibid., pp. 222-223.

document in 1994 arguing that the Quebec government had an “extra-territorial” responsibility for the “French fact”, including both francophones outside Quebec and the Acadiens. The following year, furthermore, Louise Beaudoin, Quebec Minister of Canadian Affairs, announced a policy similar to the one proposed in the Conseil’s document, based on “partnership” through “dialogue and active solidarity.”<sup>398</sup> The idea and potential of reciprocal accords in Canada is common to both domestic and international partnership proposals.

Relaxing “sovereign” assumptions also raises the possibility of non-contiguous, extra-territorial governments. This option differs from the above ones as it would entail a province, such as Quebec, offering services directly in another province. McRoberts has raised this possibility. “In principle” he writes “there is no reason why support for the “opposite minority” could not entail the direct provision of educational and social services.”<sup>399</sup> Contracts could be negotiated between Quebec and COQ (Canada outside Quebec) for this purpose, involving, perhaps, border populations crossing into the other nation to receive services in their own language. In fact, in principle, “[i]t could even go so far as governments maintaining institutions in the other “nation”.”<sup>400</sup> Such an arrangement could, furthermore, prove mutually advantageous as the “host” government would be freed from developing bilingual policy.<sup>401</sup>

Challenging “sovereign” assumptions permits innovative approaches to *cultural* institutional accommodation. Canadian institutions have always provided for the expression of multiple identities. Closing the nationalist *cul-de-sac* requires that Canadians question further both their spatial and social “epistemes”. Canadians must adopt a dialogical approach and examine new institutional alternatives.

<sup>398</sup>For more details see Kenneth McRobert’s “Linguistic Minorities in a Canada-Quebec Partnership,” in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. p. 201.

<sup>399</sup>McRoberts, Kenneth. “Linguistic Minorities in a Canada-Quebec Partnership.” p. 202.

<sup>400</sup>Ibid.

<sup>401</sup>Ibid., p. 203.

Canadian culture is, as Hardin has argued, a “public enterprise” one.<sup>402</sup> Canadians, more than Americans, believe in the idea of “liberty through” rather than “liberty from” government. Basically, Canadians are “institutionalists” and notions of personal federalism for Canada’s linguistic minorities, as well as Aboriginal self-government are consistent with this tradition.

Challenging “sovereign” territorial assumptions, however, is not only useful in terms of highlighting procedural and institutional examples of “cultural” accommodation but, rather, also encourages a broader look at the way in which Canadian institutions are territorially constrained. Official Language minorities are only one of many “non-territorial” minorities in Canada. Questioning territoriality and adopting an inclusive style of constitutionalism may lead to a consideration of how other non-territorial, “Charter Groups” can be accommodated. It may, in short, contribute to the debate about “intra-federal” means of non-territorial institutional representation.

The question of electoral reform, for example, has been on the agenda for decades. In 1969, Alan Cairns, one of the pioneers in this area, noted the tendency of Canada’s *first-past-the-post* system to over-reward the party winning the largest share of the popular vote, to penalize minor parties with diffuse national support, and to over-reward parties with concentrated regional support.<sup>403</sup> He argued that the major parties were more reflective of the national electorate in terms of popular vote rather than seats and that Canada’s regional identities were often unfairly represented within the governing party.<sup>404</sup> Basically, Canada’s electoral system distorts, at times, the territorial representation of identities.

<sup>402</sup>Hardin, Herchel. A Nation Unaware: The Canadian Economic Culture. North Vancouver, B.C.: J. J. Douglas Ltd., 1974, pp. 136-140.

<sup>403</sup>Cairns, Alan. “The Electoral System and the Party System in Canada 1921-1965,” Canadian Journal of Political Science. Vol. 1, 1968, pp. 55-80 discussed in Gibbins, Roger and Loleen Youngman. “The Institutional Expression of Multiple Identities: The Electoral Reform Debate,” in Bateman, Thomas, M. J. and Manuel Mertin and David M. Thomas (Eds.). Braving the New World: Readings in Contemporary Politics. Scarborough, Ontario: Nelson Canada, 1995, pp. 211-212.

<sup>404</sup>Gibbins, Roger and Loleen Youngman, p. 212.

However, the central theme of electoral reform has now shifted to an emphasis on the declining importance of territory in Canadian political culture. The focus, as Gibbins and Youngman have noted, is not so much on the regional representation within national parties and governments but rather the unrepresentative nature of Parliament itself. Parliament, it is argued, should “mirror” the nation, “legislatures should serve as a “portrait of the nation,” reflecting not only its regional character and the relative strength of its political parties, but also its social, ethnic, racial, and gender compositions.”<sup>405</sup> The current focus poses, in Gibbins and Youngman’s view, “a more vigorous challenge to the institutions of Canadian federalism; the challenge is not only to accommodate more effectively the traditional territorial and linguistic cleavages within the Canadian political community but, at the same time, to accommodate a growing number of non-territorial interests.”<sup>406</sup> Non-territorial interests broaden the scope of the debate and force consideration of both formal and informal institutions.

This reform agenda has been justified on many fronts. One argument holds that if a parliament does not, over time, begin to reflect the diversity of its population, its democratic legitimacy may be questioned. Others emphasize that when a parliament mirrors its population it enhances the feeling of belonging in the community. “Mirror representation” is desirable, according to this argument, as it “bundles” identities. More controversially, still others suggest that “mirror representation” will alter the nature of politics. This argument is similar to the one that has been put forward by some feminist theorists who argue that injecting “feminine values” will pacify politics and alter the nature of legislative behaviour in general. Diversifying parliament, following this argument, is a political good in itself.<sup>407</sup>

<sup>405</sup>Ibid., p. 213.

<sup>406</sup>Ibid.

<sup>407</sup>Ibid., pp. 213-214.

Without exhausting the alternatives, reform to party nomination systems, affirmative gerrymandering, reserved representation, and various types of proportional representation have been proposed.<sup>408</sup> The first option is perhaps the least controversial and could involve simply changing certain conventions of party practice including both centralizing control of party nominations and reforming electoral finance laws. The second would involve re-drawing territorial constituencies in order to concentrate a particular minority vote. This option would be constrained, nevertheless, as many minorities are scattered rather than territorially concentrated. The idea of reserved representation is perhaps the most radical. It is, in a sense, the “electoral reform” equivalent of personal federalism as it would permit the individual to choose whether to “rebundle” their identity culturally or to remain part of the territorial constituency. Proportional representation proposals are perhaps the most flexible as they could permit the expression of multiple identities and increase voter choice. These reform measures, furthermore, could be combined with our existing institutions; they could be combined with both territorial reform and personal federalism. The above proposals simply represent new examples to work with. For example, Gibbins and Youngman conclude the following after examining the above discussed electoral reform options:

[T]he most probable scenario for successful electoral reform is one that brings together Senate reformers and feminists. While this coalition may strike some as unlikely, it could well emerge through a shared commitment to reform based on the STV model. By themselves, neither Senate reformers nor feminists are likely to generate enough public enthusiasm for electoral reform to occur but together they might just pull it off.<sup>409</sup>

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<sup>408</sup>For a more detailed discussion of these options see Gibbins and Youngman.

<sup>409</sup>Gibbins and Youngman, p. 220. The STV (Single Transferable Vote) system allows the voter to rank candidates on a list according to whatever preferences or identities he/she wishes to. With the STV system it is not necessary, as it is with the PR (Proportional Representation) system, to vote along party lines. The STV model would be compatible with some Senate Reform proposals as to approximate ‘mirror representation’, a larger, perhaps provincial constituency would be ideal. See Gibbons and Youngman, pp. 217-218.

The above idea of a STV model partnership between feminists and Senate reformers is an example of a Wittgensteinian “intermediate case”. The partnership approach involves looking for overlap through dialogue. Territorial and non-territorial identities are not necessarily irreconcilable. Multiple identities force us to become creative “public entrepreneurs” and, in contemporary times, Canadians must welcome non-territorial partners into the dialogue.

Upon examining the past “mega-constitutional” processes there is good reason to believe that a great deal of overlap between “liberal” and “cultural/national” identities exists, and that compromise is possible. More specifically, past “mega-constitutional” negotiation appears to indicate that “liberal” identities divide along cultural and, at times, territorial lines. The debate between feminists surrounding the “distinct society” clause during the Meech Lake Accord negotiations, indicates, for example, that feminine identity does not necessarily supersede territorial/national identity. More specifically, while feminists in ROC were concerned about the impact of the “distinct society” clause on Quebecois women’s Charter protection, the latter supported the clause and wished to express their femininity *through* Quebec. Similarly, native women, for the most part wish to be have their “equality” expressed *within* the context of Aboriginal self-government. The complex interdependence of various “territorial/national” identities and “non-territorial/liberal” ones is, moreover, evident upon consideration of various Charlottetown coalitions. The Native Women’s Association’s protest due to its absence in the self-government negotiation process, for example, garnered intercultural support. Mary Ellen Turpel describes the Native Women’s ability to garner the support of non-Aboriginal women’s organizations such as the Legal Education Action Fund (LEAF) as “interesting”, noting that “[i]t also gathered support from unlikely sources, like

Preston Manning of the Reform Party.”<sup>410</sup> Territorial “unbundling”, both cultural and “liberal”, creates “diplomatic space”.

Most of the current Canadian literature dealing with constitutional reform focuses on “catching-up” with what is perceived as territorial/national “solitudes”. Proposals for a “Canada-Quebec”<sup>411</sup> union, “tripartite confederalism”<sup>412</sup>, and “confederal-federal”<sup>413</sup> hybrids abound. While these options have considerable merit and indeed, creatively challenge the boundaries of “sovereignty-thinking”, they over-simplify Canada’s “complex interdependence” and beg the question of why these units would wish to co-exist. The above discussion indicates that although re-organizing Canada as a multi-national federation may provide an inchoate “partnership” framework, further territorial “unbundling” would be needed both across and within the three “national” units. Canadian unity requires territorial- “non-territorial” hybridity.

As discussed above, international political processes, and territorially “unbundled” institutions exemplify how a multi-national, and generally diverse federation, such as the Canadian one, may be regulated. The principles, discussed earlier, of continuity, multilateral negotiation and consent that guide international “unbundling” should be employed at the domestic level. These principles are what constitute, in Tully’s view, the rules of a “just” federal relation.

Institutional territorial “unbundling” is, furthermore, what provides the room for “diplomatic space” at both the domestic and international levels. International organizations such as the United Nations, the International Monetary Fund (IMF), and the

<sup>410</sup>Turpel, Mary Ellen. “The Charlottetown Discord and Aboriginal Peoples’ Struggle for Fundamental Political Change,” in McRoberts, Kenneth and Patrick Monahan (Eds.). The Charlottetown Accord, the Referendum, and the Future of Canada. Toronto: University of Toronto Press, 1993, p. 133.

<sup>411</sup>See Resnick, Philip. Toward A Canada-Quebec Union. Montreal & Kingston: McGill-Queen’s University Press, 1991.

<sup>412</sup>See Verney, Douglas and Diana M. Verney. “A Canadian Political Community? The Case for Tripartite Confederalism,” Journal of Commonwealth and Comparative Politics. Vol. 12, No. 1, (March 1974).

<sup>413</sup>See, for example, Gibbins, Roger. “The Institutional Parameters of a Canada-Quebec Partnership,” in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. pp. 275-300

North Atlantic Treaty Organization (NATO) are non-contiguous federal arrangements that provide societal links between states. These organizations, furthermore, are often specialized. The absence of a “sovereign” in the international realm permits flexible, specialized, non-territorial, institutions that fit the “problem” to emerge. Human rights legislation at the international level provides, in a similar way as at the domestic level, for non-territorial overlap and inter-societal dialogue. States, as was seen in chapter one, create “non-territorial” space in which to co-operatively manage and protect their “sovereignty”. It is a bottom-up approach that recognizes the continuity of states, occurs through negotiation, and requires consent. Sovereign “unbundling” is the substance of international societies.

If Canada were to be re-organized as a multi-national partnership, it would find itself caught up in a similar procedural “logic” domestically as it finds itself internationally. And, indeed, the distinction between the two realms, domestic and international, may become blurred. This ambiguity is reinforced when one compares “federalist” and Quebec “sovereigntist” proposals for “association” or “partnership”. For example, a paper presented at a Bloc Quebecois convention in April 1999 offered the following models of partnership as alternatives following a referendum “victory”: 1. informal economic integration; 2. economic union; 3. economic union with sectoral political partnerships; 4. economic union with confederation; 5. and economic union with confederal and **federal** arrangements. The third option, according to the document, could provide for multiple or dual citizenship and would create non-territorial, specialized space (as is characteristic of all international institutions) for partnership ; the fourth is a confederal model that would consolidate “political partnership through a genuine political union without compromising the sovereignty of the member countries” and “holds out the possibility of **union citizenship** [emphasis added]”; the final option could entail either a “confederal” or “federal” model. It would, according to the document, perhaps include a “qualified majority” or “weighted vote” along EU model

lines. Remarkably, this model would, in economic matters, allow for the representation of regions within Canada. According to the document, the disadvantage of this model, however, is “that it limits the sovereignty of the partners, both Quebec and Canada, more than the other models.”<sup>414</sup> “Sovereignty” is apparently, according to the authors of the document, a matter of degree and not kind. Sovereignty is, however, most significantly, a question of equality. As the sovereigntist document stated:

The models outlined above express sovereigntists’ partnership ambitions to varying degrees. It will be up to Quebec and Canada to define the scope of that ambition. It may evolve with time, but it clearly cannot be achieved unless there is equality between the partners, and this can only come about if Quebec is sovereign.<sup>415</sup>

The concept of partnership, as mentioned earlier, could serve to narrow the gap between the Canadian/Quebec “federalist” and the Quebec “sovereigntist”. Overlap and “intermediate cases” exist within these degrees.

However, “sovereignty” is not a matter of degree but rather is a question of “kind”. Although “autonomy” may be divided at both the international and domestic levels, “sovereignty” denotes a particular “life form”. A sovereign state is characterized by the existence of a single legitimate authority on a defined territory. A “sovereign” Quebec would necessarily be constitutionally separated from Canada and, the nature of “partnership”, despite practical overlap, would be qualitatively different at the international and domestic levels.

The notion of partnership was likened above to the idea of friendship. Friendship is, however, only one type of “partnership” and the crux of the difference between the international and domestic realms lies in contrasting the nature of the “partnerships” involved. More specifically, while domestic partnerships may be likened to “friendships”, partnerships at the international level are utilitarian and are a response to

<sup>414</sup>Dans l’intérêt de tout le monde,” Document de travail du Chantier de réflexion sur le partenariat présenté au Bloc Québécois à l’occasion de son Conseil général des 17 et 18 avril 1999 à Rivière-du-Loup, p. 15.

<sup>415</sup>Ibid., p. 16.

the problem of anarchy. Friendships, in contrast, are an issue of identity and represent a different level of commitment and interdependence between actors. Friendship implies a relationship rather than simply a relation. Partners at the international level are “allies” and an ‘ally’, as Lewis has observed, is qualitatively different from a ‘friend’. He states:

Others again would say that Friendship is extremely useful, perhaps necessary for survival, to the individual. They could produce plenty of [biblical] authority: ‘bare is back without brother behind it’ and ‘there is a friend that sticketh closer than a brother.’ But when we speak thus we are using *friend* to mean ‘ally’. In ordinary usage *friend* means, or should mean, more than that. A Friend will, to be sure, prove himself to be also an ally when alliance becomes necessary; will lend or give when we are in need, nurse us in sickness, stand up for us among enemies, do what he can for our widows and orphans. But such good offices are not the stuff of Friendship. The occasions of them are almost interruptions. They are in one way relevant to it, in another not. Relevant because you would be a false friend if you would not do them when the need arose; irrelevant, because the role of benefactor always remains accidental, even a little alien to that of Friend.<sup>416</sup>

As a form of “love”, friendship is a feeling. It is not utilitarian and there is not a duty to be anyone’s friend. The utilitarian relations are taken as a “given” in friendship relationships. “Friendship”, writes Lewis, “is unnecessary like philosophy, like art, like the universe itself...[i]t has no survival value; rather is it one of those things which gives value to survival.”<sup>417</sup> While transfer payments, health care, and flood relief may be provided within political friendships, they do not constitute the substance of the friendship. Help is offered between friends by virtue of their friendship rather than the reverse. Friendship partnerships represent the desire to live together as well as a sense of interdependent identity. They represent a commitment, as Webber has suggested, to a common, ongoing, conversation.<sup>418</sup>

Friendship constitutionalism does not restrict identity-related choices in a manner characteristic of international society. One does not have to call oneself “sovereign” in order to be recognized domestically. Rather, friendship partnerships allow the “other” to name themselves in a manner consistent with how they wish to be recognized. There can

<sup>416</sup>Lewis, C. S. The Four Loves. pp. 65-66.

<sup>417</sup>Ibid., p. 67.

<sup>418</sup>See Webber, Jeremy. Reimagining Canada: Language, Culture, Community, and the Canadian Constitution. Kingston & Montreal: McGill-Queen’s University Press, 1998, pp. 309-319.

also, within domestic friendships, exist “distinct societies”, “provinces”, “territories”, “nations”, and infinite ways of expressing identity. Domestic friendships allow partners to name themselves in the manner in which they wish to be recognized.

Questioning the exclusivity of territory and identity need not, however, challenge the “institution” of sovereignty as a whole. Constitutionalism is, to remind the reader, a way in which practical territorial “unbundling” is “rebundled” to fit within the institution of “sovereignty” as a whole. Constitutionalism regulates the particular nature of a state’s sovereignty. A constitution, in short, becomes the single legitimate authority within a particularly-defined territory. Its particularity is, in a way, negated as it becomes one of many “equal” sovereign units and is recognized as such by international society.

The potential threats to the institution of sovereignty as a whole were discussed in chapter one. To remind the reader, it was argued in that chapter that in order to overturn the sovereign states-system, there would have to be a general change in spatial and social “epistemes”. This could occur, for example, if societies and units within a single sovereign state were to begin to view international society and institutions as the legitimator of their identities. The possibility of a world state and the proliferation of non-territorial “liberal” identities that appear to have a “diminished territorial state of mind” were also discussed as a potential threat. The Canadian case, nevertheless, appears to suggest that many “post-modern” identities wish to belong through a territorial community rather than transcend it.

Unmanageable fragmentation and unlimited demands for “sovereign” recognition was also mentioned, in chapter one, as a potential threat to current political organization. The above discussion, however, illustrates that this could be managed by dividing autonomy within states. The perceived desirability of establishing cultural autonomy arrangements within states, however, is not new. As Ruth Lapidot has demonstrated, following both World Wars, many states, in order to reconcile the competing principles of self-determination and the principle of nationalities with the idea of sovereignty,

considered and implemented autonomy arrangements.<sup>419</sup> The concept of "autonomy" is very much in vogue today in international circles as its potentiality has gained new importance in light of increasing ethnic tension following the end of the Cold War.<sup>420</sup> The ubiquity of intra-state ethnic unrest has lead some academics to comparatively study past examples of "autonomy" arrangements. Upon comparative study of various autonomy arrangements implemented after the First and Second World Wars, Lapidoth, for example, concludes that the following factors may increase the prospects of success:

1. A regime of autonomy should be established with the consent of the population intended to benefit from it.
2. The regime should be established with the consent, express or implied, of a foreign state to which the autonomous group may have ethnic or other affiliation.
3. The regime should be beneficial for both the state and the population of the autonomous region.
4. The local population should be permitted to enjoy the formal or symbolic paraphernalia of self-determination, such as a flag, an anthem, and an officially recognized language.
5. The division of powers should be defined as clearly as possible.
6. If activities of the central government in spheres that are under its authority directly affect the autonomous region, the local authorities should, if possible be consulted.
7. An organ for cooperation between the central government and the local authorities should be established. Its composition, powers, responsibilities, and procedures should be established, as far as possible, in advance.
8. Modes and mechanisms for settling disputes between the center and the local authorities should be established with maximum detail.
9. Under certain circumstances it may be preferable to establish the autonomy in stages, that is, to transfer the relevant powers (and perhaps also the territory involved) gradually.
10. The prospects for success are greater if both the central government and the autonomous authorities are based on democratic regimes.
11. Every regime of autonomy must include guarantees for the respect of human rights, including the principle of equality and non-discrimination among all the inhabitants. Similarly, a minority that lives within an ethnic group that has been granted autonomy should enjoy minority rights.
12. A rather similar stage of economic development and standard of living in the autonomous region and in the state as a whole may enhance chances of success.
13. If autonomy is established for a limited period, the procedure to be followed at the end of that period should be established.
14. If the autonomy arrangement includes a commitment to certain rules of behaviour, it may be helpful if those rules can be based on international norms...

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<sup>419</sup> See Ruth Lapidoth's Autonomy: Flexible Solutions To Ethnic Conflicts. Washington, D. C., U.S.A.: United States Institute Of Peace Press, 1997.

<sup>420</sup> Lapidoth, Ruth. Autonomy; Hannum, Hurst and Richard B. Lillich. "The Concept Of Autonomy In International Law," The American Journal Of International Law. Vol. 74, 1980, pp. 858-889; Hannum, Hurst. Autonomy, sovereignty, and self-determination: the accommodation of conflicting rights. U.S.A.: University of Pennsylvania Press, 1990; Dinstein, Yoram. Models Of Autonomy. New Brunswick, NY: Transaction Books, 1981.

15. The most important and indispensable condition for a successful autonomy is a prevailing atmosphere of conciliation and goodwill. The condition must be generated by an energetic and sustained effort to explain and to engage in patient dialogue.

16. Autonomy should be established before relations between the majority in the state and the majority in the region deteriorate considerably. If there is hatred and frustration, it is too late, and autonomy will not be able to soothe the strained atmosphere.<sup>421</sup> [emphasis added]

Continuity, negotiation and consent are, in Lapidoth's view, the foundational principles guiding the successful implementation and regulation of autonomy arrangements. Her work represents a comparative "Wittgensteinian survey" and the above constitute, in her view, intercultural and, to a certain extent, inter-temporal overlapping norms. Canada, by adopting a dialogical approach in a spirit of goodwill, could provide an international example of successful implementation of a rich "autonomy" arrangement. Canadians should take particular note of Lapidoth's final point as one can not be sure that the goodwill would exist, for example, in the event of a majority vote in Quebec on sovereignty.<sup>422</sup>

Nevertheless, autonomy arrangements, as conceived in the bulk of the international relations literature remain, in certain respects, hierarchical. They are, in short, often perceived as existing, in a sense, *under* a sovereign government rather than *between* two autonomous governments.

Moreover, the proposed models neglect the issue of international representation and participation. Although not all autonomous regions would necessarily desire such representation and, in fact, many autonomous regions are happy to leave foreign and international politics to the central government, the Canadian case may raise the issue of how domestic partnerships would be projected onto and accommodated within the international stage. Basically, the Canadian case may question the singularity of Canada's voice or number of legitimate governmental participants at the international level. While it is possible, for example, that Quebec nationalists would be content with

<sup>421</sup>Lapidoth, Ruth. Autonomy: Flexible Solutions To Ethnic Conflicts. pp. 199-201.

<sup>422</sup>For a more in-depth discussion of the possible scenarios in the event of a "yes" vote on sovereignty see Young, Robert A. The Secession of Quebec and the Future of Canada. Montreal & Kingston: McGill-Queen's University Press, 1998.

international recognition via a multi-national constitution, there is good reason to believe that they would want to participate directly in the international realm.<sup>423</sup> Essentially, the international recognition of a constitutionalized “Canada-Quebec”<sup>424</sup> partnership could constitute either a new international unit or constitutionally formalize a new way of conducting Canada’s international relations. For example, international relations could be specialized or divided and Quebec’s participation in such international forums such as *La Francophonie* could be constitutionally recognized. As Latouche has noted, this already exists, to a certain extent, in *practice*. As a participant in *La Francophonie*, Quebec already enjoys an ambiguous international status. Nevertheless, projecting friendship on the international stage may involve entering the international stage as a new two- or multiple- headed unit. Although this would be somewhat problematic given the “sovereign” structure of international society and its institutions, it may indeed provide a ideational push toward new regulative rules, or even contribute to the legitimization of new, more flexible, spatial constructs. As Latouche suggests: “[a] CQIP [Canada-Quebec International Partnership] might very well be received - perhaps not with enthusiasm but with a great deal of interest - by all societies possessing an already significant partnership dimension and which are looking to give this dimension institutional foundations that transgress the canons of the Treaty of Westphalia.”<sup>425</sup> Projecting Canadian partnership at the international level may require nothing less than a full rejection of the constraints imposed by international dimension of “sovereignty”.

However, more generally, the recognition of partnerships at the international level may offer an example of how new regulative rules governing the

<sup>423</sup>Daniel Latouche. “Quebec, see under Canada: Quebec nationalism in the New Global Age,” in Gagnon, Alain-G. (Ed.). *Quebec: State and Society (Second Edition)*. Scarborough, Ontario: Nelson Canada, 1993, pp. 40-63.

<sup>424</sup>The “Canada-Quebec” example is used as, in general, most Aboriginal approaches to self-government propose that foreign relations be left to the federal government.

<sup>425</sup>Latouche, Daniel. “Projecting a Canada-Quebec Partnership on the International Stage: Some Logical Speculations,” in Gibbins, Roger and Guy Laforest (Eds.). *Beyond the Impasse: toward reconciliation*. p. 347.

‘self-determination-territorial integrity’ *cul-de-sac* could be developed. Gidon Gotlieb, has recently offered a unique perspective in this regard, proposing the implementation of a “states-plus-nations” approach both internationally and domestically.<sup>426</sup> His “states-plus-nations” approach, essentially, involves the recasting of the following related concepts:

- **Status**- the extension of the international system of states to make room also for a system of nations. This can occur through the gradual opening of international organizations, as well as the granting of a new international status to participating new nations (as distinct from states), albeit in a manner that does not require the creation of new territorial states.
- **Competence** - the deconstruction of the sovereignty of states and the redistribution of some of its attributes to different hands. The way to accomplish this is through the allocation of jurisdictional, functional, and territorial competence along new principles.
- **Borders** - the delimitation of a variety of boundary lines and functional borders for different purposes, such as for security arrangements. This approach borrows, for populated territories, practices that are analogous to those of urban zoning.
- **National home distinct from state** - the recognition of the notion of a “national home” (patrie or heimat), which is embedded in the consciousness of many nations. A national home is an entity with defined geographic limits that can, but often do not, correspond to state boundaries. It is an entity that exists over, and sometimes beyond, state limits: a national-home regime would stipulate the national rights to be enjoyed in the national home without prejudice to the integrity of the states involved. It would constitute an overlay, so to speak, over an existing state.
- **Citizenship** - the adoption of different layers of personal status expressing the links between the individual and the state, as well as those between the individual and the nation. These can be embodied in a distinction between “citizenship,” derived from the state, and “nationality,” derived from the nation.
- **Forms of association** - the creation of new kinds of attachments or union among nations and peoples on the one hand, and between nations and states on the other. This can occur through the establishment of functional associations of peoples side by side with the association of states.<sup>427</sup> [emphasis added].

Gotlieb’s approach highlights the potential of territorial and non-territorial hybridity at both the international and domestic levels. His work, in essence, represents how the principles discussed above in relation to domestic Canada, could be applied on a world-scale. For example, it proposes the recognition of new “unlike” units and multiple citizenship regimes. Remarkably, it puts forward the idea of personal federalism arrangements that transcend state boundaries and are represented at the international

<sup>426</sup> Gotlieb, Gidon. *Nation Against State: A New Approach To Ethnic Conflicts And The Decline Of Sovereignty*. New York, NY, U.S.A.: Council on Foreign Relations Inc., 1993.

<sup>427</sup> Ibid., pp. 3-5.

level. States and nations would exist side by side as friends do (rather than face to face as lovers do).

In an “age of cultural diversity” Canadians could become leading entrepreneurs in both domestic and international constitutionalism. The “states-plus-nations” approach is very much Canadian. At the time of Confederation both territorial states and nations were recognized as legitimate actors **institutionally**. Institutional recognition of diverse units at the international level would be in agreement with Canada’s “public enterprise” culture.

Regardless of the fate of the institution of “sovereignty” as a whole, what is certain is that maintaining the territorial integrity of the Canadian state necessitates, as Trudeau realized, divorcing cultural federalism from territorial federalism. It also, however, requires replacing a single pan-Canadian vision with a discourse than includes multiple visions. Canada’s continuity requires that Canadians relax their territorial assumptions and consider novel, perhaps non-territorial or ‘territorial/non-territorial hybrid’ forms of “unbundling”. Canadians must reject imposed monologues and commit to a dialogical process.

The above discussion also illustrates the need for new regulative rules at the international level. The Trudeau-Lévesque *cul-de-sac* is not unique to Canada, and escaping it may require radical “unbundling” of the territorial assumptions underlying the concept of sovereignty at both the domestic and the international levels. The “state-plus-nations” approach provides an innovative example of how this could be accomplished.

The issue of which groups would constitute a “people” or a “nation” and, thus, be entitled to separate international representation appears, at least theoretically, problematic. This same issue, of course, exists at the domestic level when considering which minorities are entitled to institutional representation. According to Gotleib’s model, domestic and international autonomy arrangements would correspond

institutionally and, at times, overlap.<sup>428</sup> These issues would, therefore, require negotiation at and between both the international and domestic levels.

Domestically, the argument as to who is legitimately entitled to separate governmental representation takes many forms, nevertheless, the practical implications are generally the same. Elkins, for example, has proposed as criteria, Hirschman's concepts of "exit, voice, and loyalty."<sup>429</sup> The "exit" option refers to whether groups have chosen (or not) to come to Canada, the "loyalty" element refers to whether groups have expressed the desire to exist within Canada, and "voice" refers to the way in which groups desire to declare themselves or be institutionally accommodated. After applying these criteria, Elkins concludes that francophone minorities in the ROC and Aboriginals have legitimate claim to governmental institutions. Neither group chose Canada but, rather, Canada came to them. Both groups, furthermore, have expressed their loyalty to Canada by virtue of, for example, entering into treaty negotiations or supporting pan-Canadian bilingualism. Therefore, these groups are, in Elkins view, legitimately entitled to an institutional "voice".

Charles Taylor, has concluded the same, although for somewhat different reasons. Taylor, to remind the reader, distinguishes between "first level" and "deep diversity". The former refers to groups that wish to belong to Canada directly, and the latter to those groups that wish to belong to Canada through a distinct cultural community. The practical implications of both approaches, nevertheless, are the same. Both Taylor and Elkins conclude that Aboriginals and the Quebecois are legitimately entitled to

<sup>428</sup>Representation would overlap in the sense that a "nation", the francophone one in Canada" would be represented both separately and within "state" representation. The same double- representation issues that are raised with regard to asymmetrical federalism would thus be at issue or "mirrored" internationally. Asymmetry, of course, already exists at the international level. Veto and the "double-majority" principle, for example, are employed at the UN. Furthermore, in terms of population, all international institutions vote on a asymmetrical basis. Iceland, for example, as a member of NATO with a population of 270,000 is considered "equal" to the United States.

<sup>429</sup>Hirschman, Albert O. Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States. Cambridge: Harvard University Press, 1970 discussed in Elkins, David J. Beyond Sovereignty. p. 222.

institutional recognition. Taylor, nevertheless, does not address the issue of francophone minorities outside Quebec.

Taylor's approach is consistent with the dialogical one. Legitimacy is achieved by "putting oneself in the shoes of the other" and recognizing the "other" in terms of how they see themselves. While looking at the issue of legitimacy historically may be useful, as Elkins did in terms of "exit", "loyalty" and "voice", this approach freezes these criteria historically. It is, in a sense, useful in assessing what is conservative in Canada but lacks a theory of change. The dialogical approach enriches these criteria. Since dialogue permits the "other" to introduce themselves, as well as is open to new partners, it possesses a theory of organic change. Old actors may introduce themselves differently across time and new actors may cumulatively be added. The distinction between "first level" and "deep diversity" is therefore apt. It does not, despite what some would suggest, place differing value on either, but rather only highlights that "first level" overlays and grew out of an already "deep" or institutionalized diversity. Dialogue is an on going process and, dualism, which is, by definition, dialogical, has indeed produced, as Cartier predicted it would, "a healthy spirit of emulation."

"Deep diversity" as understood through dialogue, must be recognized both domestically and internationally. Regulative territorial "unbundling" is needed and must occur through dialogical partnerships at and between both the domestic and international levels. This involves, in a sense, turning domestic partnerships as well as the international regulative process on their heads and creating hybrids in both realms. It may, although not necessarily, involve, transcending the concept of "sovereignty". The distinction between the international and domestic realms would become increasingly blurred if inter- domestic/international co-operation at this level were to occur. While "friendships" may currently be the "stuff" of domestic partnerships, the more utilitarian nature of international partnerships may, with time, be transformed. Nevertheless, the

above discussion with regard to domestic Canada indicates that territoriality remains a significant social-international norm.

As was seen recently in Kosovo, international interference in domestic affairs is already, to a certain extent, considered legitimate practice. Recognizing both "states" and "nations" at the international level may, for this reason, simply require institutional "catch-up" with regulative norms inherent in practice. "Sovereignty" may or may not be surpassed as the ideational impact of regulative change cannot be predicted. What is certain, however, is the need, both domestic and international, for creative public entrepreneurship.

### Concluding Thoughts:

In human life there must always be place for love of the good and love of one's own. Love of the good is man's highest end, but it is of the nature of things that we come to know and to love what is good by first meeting it in that which is our own - this particular body, this family, these friends, this woman, this part of the world, this set of traditions, this country, this civilization.

*George Grant, Technology and Empire.*

*Tendebantque manus ripae ulterioris amore.* 430

The political science literature is, in contemporary times, full of obituaries, and the theses that the world is witnessing both the demise of the “sovereign” state and the passing of the Canadian experiment are characteristic of our era’s obsession with “death”. Some view these testimonials of death with “lament”, others deny it and still others welcome death as an opportunity for re-birth. Few political theorists, however, have directly confronted the death of either the sovereign state system or of Canada. They cannot explain why the moribund patients appear, in many ways, alive and well.

The theoretical debate concerning the fate of the sovereign state system, as was seen in chapter one, is polarized between those who argue that “sovereignty” has suffered a series of “mini-deaths” and is on its way out and those that maintain that “sovereignty” is an absolute, qualitative condition that remains unaffected by what they would deem “micro” change. The former body of theory implicitly suggests that death happens in stages but does not tell us anything about the nature of “final exit”. The latter body of theory implies that “sovereignty” has a constitutive or qualitative basis but cannot adequately address change; it lacks transformative logic. Taken together, as was discussed in chapter one, the two theses are theoretically incompatible; they constitute a contradiction.

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430 Final sentence of George Grant's *Lament for A Nation*. “They were holding their arms outstretched in love toward further shore” (line taken from Virgil, Aeneid (book 6), Grant's translation).

This contradiction is very much a Canadian one. Canada is often described as “conservative”; a label that is unable to elucidate change. It begs the question of what it is that “Canada” conserves and, as such, lacks both reproductive and transformative logic. Canadian unity has always hinged on achieving balance between “conservatism” and “liberalism”, between continuity and change. Understanding Canada requires a, seemingly contradictory, theory of “conservative change.”

Theorizing both “sovereignty” and “Canada” as dynamic, historical institutions responds to this paradox by embracing it. “Sovereignty” is a historically-specific, social, dialogue. Its conservative basis, the idea that there should exist an internationally recognized single legitimate authority on an exclusive, continuous and contiguous territory, structures conversation between states that are, nevertheless, actively involved in changing the tone of the conversation across time and through practice. Change at the international level is guided by the inherently social principles of equality, unanimity and independence of states, as well as their reciprocal obligation to respect these qualities in other sovereign actors. States renegotiate the boundaries of “sovereignty” in accordance with these principles. Similarly, as was demonstrated in chapter two, Canada’s constitutive basis, its federal diversity, is regulated by dialogue between societal actors. Conservative change in the Canadian context occurs when the principles of continuity, multilateral negotiation, and consent, the essence of a “just” federal relation, are observed.

The central proposition of this thesis is that a re-evaluation of the concept of sovereignty would lead to a better understanding of “Canada”. Several important conclusions arise from the discussion: Upon comparative examination of the first and second chapters, it becomes apparent that Canada’s constitutive basis is in disagreement with the essence of “sovereignty”. Canada’s inherent federalism, both territorial and cultural, was, from the outset, difficult to reconcile with the idea of sovereignty. The “Canadian experiment” was made possible, as was seen in chapter two, by regulative

renegotiation of the boundaries of sovereignty. Canada's time, space and particular political circumstances permitted an ideational distinction between "autonomy" and "sovereignty" that legitimized a unique federal theory.

In addition, as was seen in chapter three, the idea of "sovereignty" has, in more contemporary times, obstructed Canadian constitutionalism. Sovereignty's perceived ideational constraints have polarized constitutional options. The idea that inter-national equality is the "stuff" of international politics has forced, for example, the Quebecois to choose between "Quebec" and "Canada". The ideational legacy of the Trudeau and Lévesque visions is, moreover, still with us. Their echo was heard, for example, during the 1995 referendum campaign on Quebec sovereignty.

Questioning sovereign assumptions opens new constitutional avenues. It reveals, as was demonstrated in chapter four, both a process more appropriate to states characterized by "deep" diversity and uncovers novel institutional models. "Sovereignty" and "Canada" are, in many ways, a poor fit. A new political metaphor must animate Canadian constitutionalism.

Moving "towards a just society" in Canada, this thesis has demonstrated, requires conducting constitutionalism in a spirit of friendship. It requires true dialogue that recognizes that equality and difference are not mutually exclusive. The idea of friendship is inherent to man. It represents man's desire for community, recognition, expression and independence. Friendship, in essence, represents non-assimilative interdependence; it is a "strange combination... of freedom and necessity."<sup>431</sup> It is, to use a concept popular in Canadian political discourse, a form of "sovereignty-association."

The idea of friendship is both inherent to man and is native to Canadian political culture. It is, of course, idealistic to suggest that Canadian politics are and have been

<sup>431</sup>Bloom, Allan. Love & Friendship. New York, NY: Simon & Schuster, 1993, p. 550.

consistently characterized by mutual regard. Canadian history can be interpreted in many ways. Nevertheless, as Wittgenstein would suggest, there is a way of grasping a rule that is not through interpretation, but rather, that is exhibited by assembling examples where actors are viewed as following, or going against rules in actual cases. When one speaks of friendship, as Bloom has observed, “we have in mind more perfect relations that act as the standard for recognizing the less perfect ones.”<sup>432</sup> The rules of friendship are revealed by examining cases of “going against” and “following” them in actual cases; “[t]he low is known to be what it is only in light of the awareness of the high.”<sup>433</sup>

Friendship, first and foremost, requires trust. Without trust “there is no real love or friendship” but only “imitations of them.”<sup>434</sup> Political trust breaks down with instances of “going against” rules. Friendship has broken down when authentic constitutional authority is divorced from its formal expression in a state’s constitution. “Once trust is shaken,” furthermore, “love and friendship degenerate into tyrannical jealousy or lose all their intensity and reality.”<sup>435</sup> When trust is shaken dialogue breaks down.

It is, however, questionable whether the necessary level of trust for just federal dialogue currently exists in Canada. Faith has fallen victim to the legacy of our leaders polarized monologues guided by sovereign assumptions. The Trudeau-Lévesque debate and its legacy is but one, nevertheless important, example of how conducting constitutionalism guided by “sovereign” assumptions breaks down political trust.

Canadians hear continually about how faith in Canada has been shaken in Quebec. Nevertheless, it must be emphasized that the mistrust is mutual. Many Quebecois feel slighted by the ROC and seek general recognition and the

<sup>432</sup>Ibid., p. 549.

<sup>433</sup>Ibid.

<sup>434</sup>Ibid.

<sup>435</sup>Ibid.

acknowledgement of historical wrongs. The ROC, both Aboriginal and non-Aboriginal, on their parts, doubt Quebec's commitment to the federal partnership and resent the constitutional focus on Quebec. Furthermore, while most First Nations are committed to "Canada", past injustices have significantly eroded trust between Aboriginals and non-Aboriginals. If trust is to be re-established, historical wrongs must be acknowledged. This could begin, for example, with a mutual acknowledgement on the part of federalists and sovereigntists of the unjust procedural nature of both the 1982 patriation and sovereignty by Unilateral Declaration of Independence. Moreover, both Quebec and the ROC Canada must acknowledge the extent of the injustices that First Nations have suffered, as well as express a joint commitment to fair dialogue with them. Federalists, furthermore, must acknowledge the theoretical and practical potential of asymmetrical federalism, both as it relates to Quebec and First Nations, based on mutually recognized equality and a commitment to negotiation. Quebec sovereigntists, on their part, must admit that "sovereignty" is not the only constitutional avenue available. They must also acknowledge the legitimacy of the middle-ground. Dialogue can only begin when apologies are made and forgiveness is offered. Apologies and forgiveness would both open the constitutional process and represent a future commitment to mutual respect. Only when both wrongs are acknowledged and victim mentalities are shed can dialogue between equals begin.

Constitutional packages cannot, furthermore, be presented to the Canadian public as concessions to either Quebec or Aboriginal people. Canada's leaders must present constitutional reform in a way that highlights how it makes sense in terms of the whole. Friendship is inherently reciprocal. Dividing autonomy within states is not a zero-sum game. Autonomy must be divided in a way that permits expression of all identities including the non-Aboriginal ROC's identity; its division must be decided through multilateral negotiation between consenting equals. Autonomy must be formally divided in a way that reflects authentic authority. Constitutions are a framework through which

dialogue occurs; they should recognize all partners and legitimate a dialogical amending process.

Opening a genuine dialogue, however, may require extra-federal means. Canada's current institutional structure constrains the nature of the Canadian conversation; it encourages a split personality both in the ROC and Quebec. Although it is the view of this thesis that Canadian identities are interdependent and therefore, to a certain extent inherently split, constructive dialogue requires that the actors involved are viewed as authentic representatives of the particular identity.

This thesis, therefore, may also have important implications for leadership. It raises important, difficult, and potentially very controversial questions about the nature of legitimate representation. For example, the thesis raises the issue of the desirability of "mirror representation". "Mega-constitutionalism" in Canada has been driven primarily by francophone leadership. When one recalls constitutional debate since 1982 one thinks of the Trudeau-Lévesque debate, the Mulroney-Bourassa package and, the Chrétien-Bouchard-Parizeau confrontation during the 1995 referendum. It is intelligible that leadership, and not only our institutional structure, has perpetuated the notion that the Quebecois must choose between "Canada" and "Quebec" and that it has encouraged the presentation of constitutional packages to the ROC as concessions to "Quebec". Leadership may have contributed to taking focus away from the whole as an important identity, the English-speaking one, is sometimes missing from the debate. Constructive constitutional dialogue may require mirror representation where the ROC, Quebec, Aboriginal peoples and perhaps some "non-territorial" identities are represented.

This thesis is not suggesting, however, that "mirror representation" necessarily entails physical or ethnic mirroring. A dialogical approach requires that as many Canadians as possible see themselves or recognize their identity in their leadership. Canada's "mega-constitutional" impasse may, in short, require a "mega-process" of leadership selection that is "extra-federal". Voters do not elect their leaders based solely

on their constitutional positions; they are not necessarily included in the process of leadership selection; they do not necessarily even vote based on leadership but, rather, may vote based on party affiliations. Perhaps most importantly, dialogue between leaders is constrained by power and roles associated with institutionalized positions. The constitutional position of the Prime Minister, for example, may be viewed asymmetrically by virtue of his/her role. One potential way that the role or power issue could be overstepped is by having the Canadian public at large elect negotiators to act on their behalf. Negotiators could, furthermore, be elected based on systems that allow more nuanced expression of identity than the “first-past-the post” system. Instead of presenting constitutional packages to the public as a *fait accomplis* that simply requires marking a clear “yes” or “no” answer as the Charlottetown package was presented, negotiators representing various identities could be elected with an understanding that if the outcome of their negotiation were based on the **unanimous consent among equals** then it would be accepted as legitimate by all. Transcending the current constitutional *impasse* also requires a spirit of friendship at the grassroots level.

This thesis, however, also has more general implications about the future of political organization. Viewing “sovereignty” as a social institution highlights both the infrequency of constitutive change as well as how such change could occur. “Sovereignty”, as this thesis has demonstrated, is a formidable institution that continues to structure conversation both between and within states. The continued power of the idea of “sovereignty” is, furthermore, apparent in the sheer number of intra-state groups that desire sovereign recognition. Secessionist challenges to existing sovereign states are cast in sovereign discourse.

Nevertheless, viewing “sovereignty” as an historical and socially-constructed institution also highlights its expendable nature. The rise of the sovereign state system, as the first chapter has established, was neither inevitable nor was it unilinear. All institutions are subject to challenge and as Spruyt suggests “existing institutions are not

necessarily the most efficient responses to such challenges.”<sup>436</sup> Furthermore, as sovereign states multiply, Spruyt’s observation that the “fullest articulation of the feudal organization and the church, in both a theoretical and practical sense, occurred shortly before their demise” is especially ponderous.<sup>437</sup> The ubiquity of separatist movements presented in sovereign language could either reinforce sovereign organization or represent the last gasp of an institution in decline. What is certain, however, is that in order for sovereignty to be, as Trudeau put it, “surmounted”, there would have to be a general change in both social and spatial “epistemes”. New ideas about spatial organization and authority would have to become dominant. Change, in short, would have to be constitutive rather than regulative in nature.

The discussion, however, also has fundamental implications with regard to the Canadian case. Basically, examining both “sovereignty” and “Canada” as social and historical institutions reveals that the “death” of “sovereignty” does not necessarily imply the “death” of “Canada”. Future constitutive principles of international organization may, in fact, better compliment Canada’s constitutive basis. Indeed, the new international center of gravity may be one that institutionally recognizes different spatial principles and “deep” interdependent diversity. The “sovereign imperfections” of the Canadian model may become federal virtues in an era of intense intra-state ethnic conflict. George Grant may have been right when, in 1965, he suggested that “sovereign” states are on their way out. What is not certain, however, is that the death of “sovereign” ideas will necessarily lead to its replacement with a “universal and homogeneous state”. Canada’s “death” as a sovereign state may, despite what Grant suggested, have very different implications. Burying the idea of “sovereignty” may result from deepening diversity.

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<sup>436</sup>Spruyt, Hendrik. The Sovereign State and Its Competitors. p. 193.

<sup>437</sup>Ibid.

In conclusion, there is some evidence to suggest that Grant was not entirely pessimistic about Canada's fate. George Grant believed that the "human condition is anguish" and that "as despair becomes an open possibility to the sensitive and intelligent in our society, the opportunity for a profound adult education will become unlimited."<sup>438</sup> In his view, "when men encounter nothingness they are at least driven to seek reality."<sup>439</sup> Grant, by providing Canadians with images of "nothingness" in his *Lament*, may have been hoping that they would "seek reality".

Grant was, first and foremost, a philosopher who believed that the journey toward uncovering the "Truth" is travelled by "loving one's own." Grant was a "public philosopher" that used issues such as "national sovereignty", relevant to all Canadians, as a way of conveying his deeper philosophical messages. "All clear thought" in his view "arises in and through concrete situation[s]" both "public" and "private."<sup>440</sup> According to Grant, furthermore, "...those who are taken up with doing necessary and practical things just don't have time to think through the central issues of their society."<sup>441</sup> *Lament* may have been a call to Canadians to become philosophers, to challenge modern assumptions and, to achieve a true "adult education" in the ancient sense. Transcending the Canadian *cul-de-sac*, this thesis agrees, must begin by "loving our own." Hidden constitutional paths open with a realization that *federalism is friendship*.

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<sup>438</sup>Grant, George. "Philosophy and Adult Education," Food For Thought. Vol. 14, No. 1, 1953, p. 4, quoted in Cooper, Barry. "A imperio usque ad imperium: The Political Thought of George Grant," in Schmidt, Larry (Ed.). George Grant in Process: Essays and Conversations. Toronto: House of Anansi Press Ltd., 1978, p. 27.

<sup>439</sup>Ibid.

<sup>440</sup>Grant, George. "Adult Education in the Expanding Economy," Food For Thought. Vol. 15, No. 1, 1954, p. 4.

<sup>441</sup>Grant, George. "Conversation: Canadian Politics," in Schmidt, Larry (Ed.). George Grant in Process: Essays and Conversations. p. 17.

## Bibliography

- Abele, Frances. "Various Matters of Nationhood: Aboriginal Peoples and "Canada outside Quebec"," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 297-312.
- Acton, Lord. "Nationality," in his Essays On Freedom And Power. Boston, Mass.: The Beacon Press, 1948, pp. 166-195.
- Adelman, Howard. "Quebec: The Morality of Secession," in Carens, Joseph H. (Ed.). Is Quebec Nationalism Just? Perspectives from Anglophone Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 160-192.
- Agnew, John. "Postscript: Federalism in the Post-Cold War Era," in Smith, Graham (Ed.). Federalism: The Multiethnic Challenge. New York : Longman Group Ltd., 1995, pp. 294-302.
- Ajzenstat, Janet. "Decline of Procedural Liberalism: The Slippery Slope to Secession," in Carens, Joseph H. (Ed.). Is Quebec Nationalism Just? Perspectives from Anglophone Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 120-136.
- Akzin, Benjamin. "Where Do We Stand?," in Elazar, Daniel J. (Ed.). Constitutional Design And Power-Sharing In The Post-Modern Epoch. The Jerusalem Center for Public Affairs/Center for Jewish Community Studies, Lanham, Maryland: University Press of America Inc., 1991, pp. 239-249.
- Anand, Raj. "Quebec's minorities fear tyranny of the majority," in Canadian Speeches: Issues Of The Day. Vol. 11, Issue 10, March 1998, pp. 29-42.
- Anderson, James. "Arrested Federalisation? Europe, Britain, Ireland," in Smith, Graham (Ed.). Federalism: The Multiethnic Challenge. New York: Longman Group Ltd., 1995, pp. 279-293.
- Appel, Fredrick. "Instrumentalist and Interpretive Approaches to Quebec Political Culture: A Critical Analysis," in Gagnon, Alain-G. (Ed.). Quebec: State and Society (Second Edition). Scarborough, Ontario: Nelson Canada, 1993, pp. 130-145.
- A Quebec Free To Choose: Report of the Constitutional Committee of the Quebec Liberal Party. For Submission to the 25th Convention, January 28, 1991.
- Aristotle. Nicomachean Ethics. Mineola, New York: Dover Publications, Inc., 1998.

- Baillie, A. Charles. "Federalists urged to speak out with words and gesture," in Canadian Speeches: Issues Of The Day. Vol. 11, Issue 10, March 1998, pp. 55-60.
- Balthazar, Louis. "The Dynamics of Multi-Ethnicity in French-Speaking Quebec: Towards a New Citizenship," in Laponce, Jean and William Safran (Eds.). Ethnicity and Citizenship: The Canadian Case. Great Britain: Frank Cass & Co. Ltd., 1996, pp. 82-95.
- Barber, Benjamin. "Jihad versus McWorld," in Bateman, Thomas M. J., Manuel Mertin and David M. Thomas (Eds.). Braving the New World: Readings in Contemporary Politics. Scarborough, Ontario: Nelson Canada, 1995, pp. 17-24.
- Barkin, Samuel J. and Bruce Cronin. "The state and the nation: changing norms and the rules of sovereignty in international relations," International Organization. Vol. 48, No. 1, 1994, pp. 108-130.
- Bélanger, André-J. "Quebec: Not that Unique, nor that Alone," in Gagnon, Alain-G. (Ed.). Quebec: State and Society (Second Edition). Scarborough, Ontario: Nelson Canada, 1993, pp. 146-157.
- Bernhardt, Rudolf. "Federalism and Autonomy," in Dinstein, Yoram (Ed.). Models of Autonomy. New Brunswick, New Jersey: Transaction Books, 1981.
- Bernier, Ivan. International legal aspects of federalism. Hamden, Connecticut: Longman Group Ltd., 1973.
- Bertrand, Guy. "Democracy is not a licence to illegally trample on rights," in Canadian Speeches: Issues Of The Day. Vol. 11, Issue 10, March 1998, pp. 21-29.
- Biersteker, Thomas J. and Cynthia Weber. "Reconstructing the analysis of sovereignty: concluding reflections and directions for future research," in their (Ed.). State Sovereignty as Social Construct. Cambridge, Great Britain: Cambridge University Press, 1996, pp. 278-286.
- Biersteker, Thomas J. and Cynthia Weber. "The social construction of state sovereignty," in their State Sovereignty as Social Construct. Cambridge, Great Britain: Cambridge University Press, 1996, pp. 1-21.
- Bliss, Michael. "Privatizing the Mind: The Sundering of Canadian History, the Sundering of Canada," Journal of Canadian Studies. Winter 1991-92, pp. 5-16.
- Bloom, Allan. Love & Friendship. New York, NY: Simon & Schuster, 1993.

- Boismenu, Gerard. "Perspectives On Quebec-Canada Relations In The 1990s: Is The Reconciliation Of Ethnicity, Nationality And Citizenship Possible?" Canadian Review of Studies in Nationalism. Vol. 23, No. 1-2, 1996, pp. 99-109.
- Boismenu, Gerard. "The Federated State and the Heterogeneity of Space," in Stevenson, Garth (Ed.). Federalism in Canada. Toronto, Ontario: McClelland & Stewart Inc., 1989, pp. 99-109.
- Bonin, Pierre-Yves. "Libéralisme et nationalisme: où tracer la ligne?," Revue canadienne de science politique Vol. 30, No. 2, (juin 1997), pp. 235-256.
- Bothwell, Robert. Canada and Quebec: One Country, Two Histories (Revised Edition). Vancouver, B. C. : UBC Press, 1998.
- Bouchard, Lucien. "Only Quebecers can decide whether to go or to stay," in Canadian Speeches: Issues Of The Day. Vol. 11, Issue 10, March 1998, pp. 5-13.
- Brady, Alexander. "National and International (book reviews)," University of Toronto Quarterly. Vol. 35, 1966, pp. 459-461.
- Brewin, Christopher. "Sovereignty," in Mayall, James (Ed.). The Community of States: A Study In International Political Theory. London, U. K.: George Allen & Unwin Publishers Ltd., 1982, pp. 34-48.
- Brodie, Janine. "The Women's Movement outside Quebec: Shifting Relations with the Canadian State," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 333-357.
- Brown-John, Lloyd (Ed.). Centralizing and Decentralizing Trends in Federal States. Center for the Study of Federalism, Lanham, MD: University Press Of America, 1988.
- Buchheit, Lee C. Secession: The Legitimacy of Self-Determination. New Haven and London: Yale University Press, 1978.
- Burgess, Michael and Alain-G. Gagnon "Introduction: Building on Traditions and Transitions," *Ibid* (Eds.). Comparative Federalism and Federation: Competing traditions and future directions. Toronto: University of Toronto Press, 1993, pp. xiii-xix.
- Cairns, Alan. "The Charlottetown Accord: Multinational Canada v. Federalism," in Cook, Curtis (Ed.). Constitutional Predicament: Canada after the Referendum of 1992. Montreal & Kingston: McGill-Queen's University Press, 1994, pp. 25-63.

- Cairns, Alan. "The Embedded State: State-Society Relations in Canada," in Banting, Keith (Research Coordinator). State and Society: Canada in Comparative Perspective. Toronto: University of Toronto Press, 1986, pp. 53-86.
- Cameron, David R. "Dualism and National Unity," Redekop, John (Ed.). Approaches to Canadian Politics (Second Edition). Scarborough, Ontario: Prentice-Hall Canada Inc., 1978, pp. 233-250.
- Camilleri, Joseph A. "Rethinking Sovereignty in a Shrinking, Fragmented World," in Walker, R. B. J. and Saul H. Mendlovitz (Eds.). Contending Sovereignties: Redefining Political Community. Boulder, Colorado: Lynne Rienner Publishers, 1990, pp. 13-44.
- Carens, Joseph H. "Liberalism, Justice, and Political Community: Theoretical Perspectives on Quebec's Liberal Nationalism," in Carens, Joseph H. (Ed.). Is Quebec Nationalism Just? Perspectives from Anglophone Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 3-19.
- Cassesse, Antonio. Self-determination of peoples: A legal reappraisal. Cambridge: Cambridge: University Press, 1995.
- Charest, Jean. "Canada's founding partnership needs reaffirmation, not court references," Canadian Speeches: Issues Of The Day. Vol. 11, Issue 10, March 1998, pp. 51-54.
- Chodos, Robert, Rae Murphy and Eric Hamovitch. The Unmaking of Canada: The Hidden Theme in Canadian History since 1945. Toronto, Ontario: James Lorimer and Company, 1991.
- Chodos, Robert (Translator). Quebec In A New World: The PQ's Plan for Sovereignty (The National Executive Council of the Parti Quebecois). Toronto, Ontario: James Lorimer & Company Ltd., 1994.
- Clarkson, Stephen. "Poor Prospects: "The Rest of Canada" under Continental Integration," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 251-274.
- Cohen, Majorie Griffin. "The Meristonic Society: Restructuring and the Future of "Canada outside Quebec"," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 378-387.
- Connolly, William E. The Terms of Political Discourse (Third Edition). Princeton, New Jersey: Princeton University Press, 1993 (first published 1974).

- Cook, Ramsay. Canada, Quebec and the uses of Nationalism (Second Edition). Toronto, Ontario: McClelland & Stewart Inc., 1995.
- Cook, Ramsay. "The Canadian Dilemma: Locke, Rousseau, or Acton?," in his Canada and the French-Canada Question. Toronto: Macmillan of Canada, 1966, pp. 143-167.
- Cook, Ramsay. The Maple Leaf Forever. Toronto: Macmillan of Canada, 1971.
- Cooper, Andrew F. "Questions of Sovereignty: Canada and the Widening International Agenda," Behind The Headlines. Vol. 50, (Spring 1993), pp. 1-16.
- Cooper, Barry. "A imperio usque ad imperium: The Political Thought of George Grant," in Schmidt, Larry (Ed.). George Grant in Process: Essays and Conversations. Toronto: House of Anansi Press Ltd., 1978, pp. 22-39.
- Cooper, Barry. Deconfederation: Canada without Quebec. Toronto: Key Porter Books, 1991.
- Cooper, Barry. "Looking Eastward, Looking Backward: A Western Reading of the Never-Ending Story," in Cook, Curtis (Ed.). Constitutional Predicament: Canada after the Referendum of 1992. Montreal & Kingston: McGill-Queen's University Press, 1994, pp. 89-111.
- Courchene, Thomas J. "Staatsnation vs Kulturnation: The Future of ROC," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 387-399.
- Cox, Richard H. (Ed.). The State in International Relations. San Francisco, California: Chandler Publishing Company, 1965.
- "Dans l'intérêt de tout le monde," Document de travail du Chantier de réflexion sur le partenariat présenté au Bloc Québécois à l'occasion de son Conseil général des 17 et 18 avril 1999 à Rivière-du-Loup.
- de Benoist, Alain. "Confronting Globalization," Telos. Vol. 108 (Summer 1996), pp. 117-137.
- Dinstein, Yoram. "Autonomy" in his (Ed.). Models Of Autonomy. New Brunswick, New Jersey: Transaction Books, 1981.
- Dion, Stephane. "Why secession rules must be established," in Canadian Speeches: Issues Of The Day. Vol. 11, Issue 10, March 1998, pp. 13-19.

- Doran, Charles F. "Will Canada Unravel?", Foreign Affairs. Vol. 75, No. 5, (September/October 1996), pp. 97-109.
- Drucker, Peter F. "The Global Economy and the Nation-State," Foreign Affairs. Vol. 76, No. 5, September/October 1997, pp. 159-171.
- Duceppe, Gilles. "Separatists appeal Ottawa's alleged gag of democracy," in Canadian Speeches: Issues Of The Day. Vol. 11, Issue 10, March 1998, pp. 19-21.
- Duchacek, Ivo D. "Comparative Federalism: An Agenda For Additional Research," in Elazar, Daniel J. (Ed.). Constitutional Design And Power-Sharing In The Post-Modern Epoch. The Jerusalem Center for Public Affairs/Center for Jewish Community Studies, Lanham, Maryland: University Press America, Inc., 1991, pp. 23-40.
- Duchacek, Ivo D. Comparative Federalism: The territorial dimension of politics. U.S.A.: Holt, Rinehart And Winston Inc., 1970.
- Duchacek, Ivo D. Conflict And Cooperation Among Nations. U.S.A.: Holt, Rinehart And Winston, 1960.
- Duchacek, Ivo D., Daniel Latouche, and Garth Stevenson (Eds.). Perforated Sovereignties And International Relations: Trans-Sovereign Contacts of Subnational Governments. Westport, Connecticut: Greenwood Press Inc., 1988.
- Duchacek, Ivo D. Nations And Men: An Introduction to International Politics (Second Edition). U.S.A.: Holt, Rinehart and Winston Inc., 1971.
- Elazar, Daniel J. (Ed.). Federalism As Grand Design: Political Philosophers and the Federal Principle. Center for the Study of Federalism, Lanham, MD: University Press Of America, 1987.
- Elazar, Daniel J. "The Federal Dimensions Of State-Diaspora Relations," in Elazar, Daniel J. (Ed.). Constitutional Design And Power-Sharing In The Post-Modern Epoch. The Jerusalem Center for Public Affairs/Center for Jewish Community Studies, Lanham, Maryland, U.S.A.: University Press America, Inc., 1991, pp. 143-158.
- Elkins, David J. Beyond Sovereignty: Territory and Political Economy in the Twenty-First Century. Toronto, Ontario: University of Toronto Press, 1995.
- Emberley, Peter C. (Ed.). By Loving Our Own: George Grant and the Legacy of Lament for a Nation. Ottawa, Ontario: Carleton University Press Inc., 1990.

- Emberley, Peter C. "Globalism and Localism: Constitutionalism in a New World Order," in Cook, Curtis (Ed.). Constitutional Predicament: Canada after the Referendum of 1992. Montreal & Kingston: McGill-Queen's University Press, 1992, pp. 197-217.
- Falk, Richard. "Evasions of Sovereignty," in Walker, R. B. J. and Saul H. Mendlovitz (Eds). Contending Sovereignties: Redefining Political Community. Boulder, Colorado: Lynne Rienner Publishers, 1990, pp. 61-78.
- Finnemore, Martha. "Norms, culture, and world politics: insights from sociology's institutionalism," International Organization. Vol. 50, No. 2, (Spring 1996), pp. 325-347.
- Fowler, Michael Ross and Julie Marie Bunck. Law, Power, And The Sovereign State: The Evolution and Application of the Concept of Sovereignty. University Park, Pennsylvania: The Pennsylvania State University Press, 1995.
- French, Stanley G. (Ed.). Confederation: Philosophers look at Canadian Confederation. Montreal, Quebec: The Canadian Philosophical Association, 1979.
- Fry, Earl H. "Regional Economic Development Strategies in Canada and the United States: Linkages Between the Subnational, National and Global Settings," International Journal of Canadian Studies. Vol. 16, (Fall 1997), pp. 69-91.
- Fukuyama, F. The End of History and the Last Man. London: Penguin Books, 1992.
- Gagnon, Alain-G. and Daniel Latouche. Allaire, Bélanger, Campeau et les autres: Les Québécois s'interrogent sur leur avenir. Montreal, Quebec: Editions Quebec/Amerique, 1991.
- Gagnon, Alain-G. and Dimitrios Karmis. "Fédéralisme et identités collectives au Canada et en Belgique: des itinéraires différents, une fragmentation similaire," Canadian Journal of Political Science. Vol. 29, No. 3, (September 1996), pp. 435-468.
- Gagnon, Alain-G. and Francois Rocher. "Nationalisme libéral et construction multinationale: la représentation de la "nation" dans la dynamique Québec-Canada," International Journal of Canadian Studies. Vol. 16 (Fall 1997), pp. 51-68.
- Gagnon, Alain-G. and Guy Laforest. "The future of federalism: lessons from Canada and Quebec," International Journal, Vol. 48, No. 3, (Summer 1993), pp. 470-491.
- Gagnon, Alain-G. "The Political Uses of Federalism," in Rocher, Francois and Miriam Smith (Eds.). New Trends in Canadian Federalism. Peterborough, Ontario: Broadview Press, 1995, pp. 23-44.

- Gelber, Harry G. Sovereignty Through Interdependence. Cambridge, MA: Kluwer Law International, 1997.
- Gibbins, Roger. "Constitutional Turmoil And Frustration: From Trudeau To Mulroney," in Whittington, Michael S. and Glen Williams (Eds.). Canadian Politics In The 1990s (Fourth Edition). Scarborough, Ontario: Nelson Canada, 1995, pp. 323-334.
- Gibbins, Roger and Loleen Youngman. "The Institutional Expression of Multiple Identities: The Electoral Reform Debate," in Bateman, Thomas M. J., Manuel Mertin and David M. Thomas (Eds.). Braving the New World: Readings in Contemporary Politics. Scarborough, Ontario: Nelson Canada, 1995, pp. 210-222.
- Gibbins, Roger. "Getting There from Here," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, pp. 397-411.
- Gibbins, Roger. "The Institutional Parameters of a Canada-Quebec Partnership," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, pp. 275-300.
- Goldstein, Judith and Robert O. Keohane. Ideas & Foreign Policy: Beliefs, Institutions, And Political Change. Ithaca, New York: Cornell University Press, 1993.
- Gotlieb, Allan (Ed.). human rights, federalism, and minorities. Ontario: Canadian Institute of International Affairs, John Deyell Limited/Lindsay, 1970.
- Gotlieb, Gidon. Nation Against State: A New Approach To Ethnic Conflicts And The Decline Of Sovereignty. New York, NY: Council on Foreign Relations Inc., 1993.
- Gourdeau, Eric. "Quebec and the Aboriginal Question," in Gagnon, Alain-G. (Ed.). Quebec: State and Society (Second Edition). Scarborough, Ontario: Nelson Canada, 1993, pp. 349-371.
- Grant, George. "Adult Education in the Expanding Economy," Food For Thought. Vol. 15, No. 1, 1954, pp. 4-10.
- Grant, George. "Conversation: Canadian Politics," in Schmidt, Larry (Ed.). George Grant in Process: Essays and Conversations. Toronto: House of Anansi Press, Ltd., 1978, pp. 13-21.
- Grant, George. "Have We a Canadian Nation?," Public Affairs. Vol. 8, 1945, pp. 161-66.
- Grant, George. "Inconsistency ruled in Canada's 70s," Globe & Mail. Dec. 31, 1979.

- Grant, George. Lament For A Nation: The Defeat Of Canadian Nationalism. Ottawa, Ontario: Carleton University Press, 1965 (reprinted 1997).
- Grant, George. Technology & Empire. Concord, Ontario: House of Anansi Press Ltd., 1969.
- Gwyn, Richard. Nationalism Without Walls: The Unbearable Lightness Of Being Canadian. Toronto, Ontario: McClelland & Stewart, 1995.
- Hannum, Hurst and Richard B. Lillich. "The Concept Of Autonomy In International Law," The American Journal Of International Law. Vol. 74, 1980, pp. 858-889.
- Hannum, Hurst. Autonomy, sovereignty, and self-determination: the accommodation of conflicting rights. U.S.A.: University of Pennsylvania Press, 1990.
- Hanrieder, Wolfram F. "Dissolving International Politics: Reflections on the Nation-State," The American Political Science Review. Vol. 72, No. 4, 1978, pp. 1276-1287.
- Hardin, Herchel. A Nation Unaware: The Canadian Economic Culture. North Vancouver, B.C.: J.J. Douglas Ltd., 1974.
- Herz, John H. "Rise And Demise Of The Territorial State," World Politics. Vol. 9, No. 4, 1957, pp. 473-93.
- Herz, John H. "The Territorial State Revisted - Reflections on the Future of the Nation-State," in Rosenau, James N. (Ed.). International Politics And Foreign Policy: a reader in research and theory. New York, NY: The Free Press (A Division of MacMillan Publishing Co., Inc.), 1969, pp. 76-89.
- Hinsley, F. H. Sovereignty. London: C. A. Watts & Co. Ltd., 1966.
- Hocking, Brian (Ed.). Foreign Relations And Federal States. Leicester, England: Leicester University Press, 1993.
- Hollis, Martin and Steve Smith. Explaining And Understanding International Relations. New York: Oxford University Press, 1991.
- Holsti, K. J. "The Necrologists of International Relations," Canadian Journal of Political Science. Vol. 18, No. 4, (December 1985), pp. 675-694.
- Hoppe, Hans-Hermann. "Small is Beautiful and Efficient: The Case For Secession," Telos. Vol. 107, (Spring 1996), pp. 95-101.

- Huntington, Samuel. "The Clash of Civilizations?", Foreign Affairs. Vol. 72, No. 3, Summer 1993, pp. 22-49.
- Hunt, Wayne A. "The First Peoples and the Quebec Question," Telos. Vol. 108, (Summer 1996), pp. 139-148.
- Hurtig, Mel. "One Last Chance: The Legacy Of Lament For A Nation," in Emberley, Peter C. (Ed.). By Loving Our Own: George Grant and the Legacy of Lament for a Nation. Ottawa: Carleton University Press, 1990.
- Ignatieff, Michael. Blood and Belonging: Journeys into the New Nationalism. New York: Farrar, Straus and Girous, 1993.
- Jacobs, Jane. Quebec and the struggle over Sovereignty: The Question Of Separatism. New York: Random House, 1980.
- James, Alan. Sovereign Statehood: The Basis of International Society. London, U.K.: Allen & Unwin Publishers Ltd., 1986.
- Jenson, Jane. "Recognising Difference: Distinct Societies, Citizenship Regimes and Partnership," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy, 1998, 215-239.
- Johnson, Daniel. "The Case for a United Canada," Foreign Policy. (Summer 1995), pp. 78-88.
- Johnson, Daniel. "The separatist quest: inflamed passions, divided society, enormous costs," in Canadian Speeches: Issues Of The Day. Vol. 11, Issue 10, March 1998.
- Johnstone, Frederick. "Canadian Federalism: The Decline and Fall of Quebec Separatism," Telos. Vol. 109, (Fall 1996), pp. 141-157.
- Johnstone, Frederick. "Quebec, Apartheid, Lithuania and Tibet: The Politics of Group Rights," Telos. Vol. 85, (Fall 1990), pp. 56-62.
- Johnstone, Frederick. "Quebeckers, Mohawks, and Zulus: Liberal Federalism and Fair Trade," in Bateman, Thomas M. J., Manuel Mertin and David M. Thomas (Eds.). Braving the New World: Readings in Contemporary Politics. Scarborough, Ontario: Nelson Canada, 1995, pp. 173-185.
- Kedourie, Elie. Nationalism. New York: Frederick A. Praeger, 1960.
- Keohane, Robert O. "International Institutions: Can Interdependence Work?," Foreign Policy. (Spring 1998), pp. 595-607.

- Keohane, Robert O. and Joseph S. Nye Jr. "Introduction: The Complex Politics Of Canadian-American Interdependence," International Organization. Vol. 28, 1974.
- Keohane, Robert O. and Joseph S. Nye Jr. Power and Interdependence: World Politics in Transition. U.S.A.: Little, Brown and Company Inc., 1977.
- King, Preston. Federalism and Federation. Baltimore, Maryland: The John Hopkins University Press, 1982.
- Knop, Karen, Sylvia Ostry, Richard Simeon and Katherine Swinton. Rethinking Federalism: Citizens, Markets, and Governments in a Changing World. Vancouver, B.C.: UBC Press, 1995.
- Kratochwil, Friedrich and John Gerard Ruggie. "International organization: a state of the art on an art of the state," International Organization. Vol. 40, No. 4, (Autumn), 1986, pp. 755-777.
- Kratochwil, Friedrich. "Of Systems, Boundaries, and Territoriality: An Inquiry into the Formation of the State System," World Politics. Vol. 39, (Oct. 1986), pp. 27-52.
- Kymlicka, Will. Finding Our Way: Rethinking Ethnocultural Relations in Canada. Toronto, Ontario: Oxford University Press, 1998.
- Kymlicka, Will. Liberalism, Community and Culture. Oxford: Clarendon Press, 1989 (paperback 1991).
- Kymlicka, Will. "Multinational Federalism in Canada: Rethinking the Partnership," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: The Institute fo Research on Public Policy (IRPP), 1998, pp. 15-50.
- Laforest, Guy. "Standing in the Shoes of the Other Partners in the Canadian Union," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: The Institute for Research on Public Policy (IRPP), 1998, pp. 51-79.
- Laforest, Guy. "The Need for Dialogue and How to Achieve It," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, pp. 413-428.
- Laforest, Guy. Trudeau And The End Of A Canadian Dream. Montreal & Kingston: McGill-Queen's University Press, 1995.

- Lallier, Adalbert. Sovereignty Association: Economic Realism or Utopia? Oakville, Ontario: Mosaic Press, 1991.
- Lanphier, C. Michael and Anthony H. Richmond. "Multiculturalism and Identity in "Canada outside Quebec"," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. , Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 311-332.
- Lapidoth, Ruth. Autonomy: Flexible Solutions To Ethnic Conflicts. Washington, D. C.: United States Institute Of Peace Press, 1997.
- Lapidoth, Ruth. "Sovereignty in Transition," Journal of International Affairs. Vol. 45, No. 2, (Winter 1992), pp. 325-345.
- Laponce, Jean A. "L'Heure du fédéralisme personnel est-elle arrivée?," in Lafontant, Jean (Ed.). L'État et les minorités. Winnipeg, Manitoba: Les Éditions du Blé, Presses Universitaires de Saint-Boniface, 1993, pp. 55-65.
- LaSelva, Samuel. The Moral Foundations Of Canadian Federalism: Paradoxes, Achievements, And Tragedies Of Nationhood. Montreal & Kingston: McGill-Queen's University Press, 1996.
- Latouche, Daniel. "Quebec And The North American Subsystem: One Possible Scenario," International Organization. Vol. 28, 1974, pp. 931-960.
- Latouche, Daniel. "Quebec, see under Canada: Quebec Nationalism in the New Global Age," in Gagnon, Alain-G. (Ed.). Quebec: State and Society (Second Edition). Scarborough, Ontario: Nelson Canada, 1993, pp. 40-63.
- Latouche, Daniel. "Projecting a Canada-Quebec Partnership on the International Stage: Some Logical Speculations," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, pp. 333-357.
- Lauterpacht, Eli. "Sovereignty - myth or reality," International Affairs. Vol. 73, No. 1, 1997, pp. 137-150.
- Leblanc, Phyllis E. "Francophone Minorities: The Fragmentation of the French-Canadian Identity," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 358-368.
- Lefebvre, Jean-Paul. Qui profiterait de l'indépendance du Québec? Montreal, Québec: Les Éditions Varia, 1998.

- Lévesque, René. My Quebec. Agincourt, Ontario: Methuen Publications, 1979.
- Lewis, C. S. The Four Loves. Great Britain: Fount Paperbacks, 1998.
- Mabee, Bryan. "A Post-Sovereign Epoch?: Globalisation And The Social Construction Of Sovereign Space," A thesis submitted to the Faculty of Graduate Studies in partial fulfilment of the requirements for the degree of Masters Of Arts, Department of Political Studies, Winnipeg, Manitoba: University of Manitoba, 1997.
- Macdonald, Sir John A. "Speech on the Quebec Resolutions," in Forbes, H.D. (Ed.). Canadian Political Thought. Toronto: Oxford University Press, 1987, pp. 66-92.
- McMillan, Melville L. "Economic Threats to National Unity: From within and without," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 275-294.
- McRoberts, Kenneth. "After the Referendum: Canada with or without Quebec," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 403-432.
- McRoberts, Kenneth. "English-Canadian Perceptions of Quebec," in Gagnon, Alain-G. (Ed.). Quebec: State and Society (Second Edition). Scarborough, Ontario: Nelson Canada, 1993, pp. 116-129.
- McRoberts, Kenneth. "In Search of Canada "Beyond Quebec"," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 5-28.
- McRoberts, Kenneth. "Linguistic Minorities in a Canada-Quebec Partnership," in Gibbons, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, pp. 187-214.
- McRoberts, Kenneth. "Living with Dualism and Multiculturalism," in Rocher, Francois and Miriam Smith (Eds.). New Trends in Canadian Federalism. Peterborough, Ontario: Broadview Press, 1995, pp. 109-132.
- McRoberts, Kenneth. Misconceiving Canada: The Struggle for National Unity. Toronto, Ontario: Oxford University Press, 1997.
- McRoberts, Kenneth. "Quebec: Province, Nation, Or, "Distinct Society"," in Whittington, Michael S. and Glen Williams (Eds.). Canadian Politics In The 1990s (Fourth Edition). Scarborough, Ontario: Nelson Canada, 1995, pp. 80-101.

- McRoberts, Kenneth. "The Roots of Defeat: Sovereignty-Association and the Referendum," in his Quebec: social change and political crisis. Toronto, Ontario: McClelland and Stewart, 1988, pp. 300-340.
- Meadwell, Hudson. "Breaking the Mould? Quebec Independence and Secession in the Developed West," in Periwal, Sukumar (Ed.). Notions Of Nationalism. Budapest: Central European University Press, 1995, pp. 127-161.
- Montcalm, Mary Beth. "Quebec Separatism in a Comparative Perspective," in Gagnon, Alain -G. (Ed.). Quebec: State and Society. Agincourt, Ontario: Methuen Publications, 1984.
- Morgenthau, Hans J. Politics Among Nations: The Struggle for Power and Peace (Fourth Edition). New York: Alfred A Knopf Inc., 1967.
- Morrison, Alex. Divided We Fall: The National Security Implications of Canadian Constitutional Issues. Toronto, Ontario: Canadian Institute of Strategic Studies 1991, 1992.
- Morton, F. L. "The Charter and Canada outside Quebec," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 91-114.
- Morton, W. L. "The Conservative Principle in Confederation," Queen's Quarterly. Vol. 71, 1964-65, pp. 528-546.
- Motyl, Alexander J. "The Modernity of Nationalism: Nations, States and Nation-States in the Contemporary World," Journal of International Affairs. Vol. 45, 1991-2, pp. 307-323.
- Muggeridge, John. "George Grant's Anguished Conservatism," in Schmidt, Larry (Ed.). George Grant in Process: Essays and Conversations. Toronto: House of Anansi Press Ltd., 1978, pp. 40-48.
- Murphy, Alexander B. "The sovereign state system as political-territorial ideal: historical and contemporary considerations," in Biersteker, Thomas J. and Cynthia Weber (Eds.). State Sovereignty as Social Construct. Cambridge, Great Britain: Cambridge University Press, 1996, pp. 81-120.
- Naidu, M.V. Quebec Separatism. Canadian Unity: Issues, Opinions. Oakville, Ontario: M.I.T.A. Press, 1995.
- Nemni, Max. "Legitimacy According to the Supreme Court," Cité Libre, October-November 1998, pp. 22-28.

- Noël, Alain. "The Federal Principle, Solidarity and Partnership," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, pp. 241-272.
- Norman, Wayne. "The Ideology of Shared Values: A Myopic Vision of Unity in the Multi-nation state," in Carens, Joseph H. (Ed.). Is Quebec Nationalism Just? Perspectives from Anglophone Canada. Kingston & Montreal: McGill-Queen's University Press, 1995, pp. 137-159.
- Parizeau, Jacques. Pour un Québec soverain. Montreal, Québec: VLB éditeur, 1997.
- Parizeau, Jacques. "The Case for an Independent Quebec," Foreign Policy. (Summer 1995), pp. 69-76.
- Pelletier, Réjean. "Institutional Arrangements of a New Canadian Partnership," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, pp. 301-330.
- Penrose, Jan. "Construction, De(con)struction and Reconstruction. The Impact of Globalization and Fragmentation on the Canadian Nation-State," International Journal of Canadian Studies. Vol. 16, (Fall 1997), pp. 15-147.
- Pettigrew, Pierre S. Pour Une Politique De La Confiance. Quebec: Les Éditions du Boréal, 1999.
- Philpott, Daniel. "Ideas and the Evolution of Sovereignty," in Hashmi, Sohail H (Ed.) State Sovereignty: Change and Persistence in International Relations. University Park, PA: The Pennsylvania State University Press, 1997, pp. 15-47.
- Piccone, Paul. "Secession or Reform? The Case of Canada," Telos. Vol. 106, (Winter 1996), pp. 15-63.
- Pinard, Maurice. "The Dramatic Reemergence of the Quebec Independence Movement," Journal of International Affairs. Vol. 45, No. 2, Winter 1992, pp. 471-497.
- Resnick, Philip. "English Canada: The Nation that Dares Not Speak Its Name," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 81-92.
- Resnick, Philip. The Masks Of Proteus: Canadian Reflections On The State. Montreal & Kingston: McGill University Press, 1990

- Resnick, Philip. Thinking English Canada. Toronto, Ontario: Stoddart Publishing Co. Limited, 1994.
- Resnick, Philip. Toward A Canada-Quebec Union. Montreal & Kingston: McGill-Queen's University Press, 1991.
- Riley, Patrick. "Three 17th Century German Theorists of Federalism: Althusius, Hugo and Leibniz," in Elazar, Daniel J. (Ed.). Federalism As Grand Design: Political Philosophers and the Federal Principle. Center for the Study of Federalism, Lanham, MD: University Press of America, 1987, p. 49-83.
- Robinson, Ian. "Trade Policy, Globalization, and the Future of Canadian Federalism," in Rocher, Francois (Ed.). New Trends in Canadian Federalism. Ontario: Broadview Press, 1995, pp. 234-269.
- Rocher, Francois and Miriam Smith. "Four dimensions of the Canadian Constitutional Debate," in Rocher, Francois and Miriam Smith (Eds.). New Trends in Canadian Federalism. Peterborough, Ontario: Broadview Press, 1995, pp. 45-66.
- Rotstein, Abraham. "A Difficult Transition: English-Canadian Populism vs Quebec Nationalism," in McRoberts, Kenneth (Ed.). Beyond Quebec: Taking Stock of Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 371-377.
- Rudin, Ronald. "English-Speaking Quebec: The Emergence of a Disillusioned Minority," in Gagnon, Alain-G. (Ed.). Quebec: State and Society (Second Edition). Scarborough, Ontario: Nelson Canada, 1993, pp. 338-348.
- Ruggie, John Gerald. "Territoriality and Beyond: Problematizing Modernity in International Relations," International Organization. Vol. 47, (Winter 1993), pp. 139-174.
- Russell, Peter H. "Can Canadians Be a Sovereign People?," Canadian Journal of Political Science. Vol. 24, No. 4, December, 1991, pp. 691-709.
- Russell, Peter H. Constitutional Odyssey: Can Canadians Become a Sovereign People? Toronto, Ontario: University of Toronto Press Inc., 1993.
- Russell, Peter H. "The Constitution, Citizenship and Ethnicity," in Laponce, Jean and William Safran (Eds.). Ethnicity and Citizenship: The Canadian Case. Great Britain: Frank Cass & Co. Ltd, 1996, pp. 96-106.
- Russell, Peter. "The Supreme Court Ruling, What Democracy Is All About," Cité Libre, October-November 1998, pp. 29-34.

- Saul, John Ralston. Reflections Of A Siamese Twin: Canada At The End Of The Twentieth Century. Toronto, Ontario: Penguin Books, 1997.
- Savoie, Donald J. "Globalization and Governance," in Bateman, Thomas M. J., Manuel Mertin and David M. Thomas (Eds.). Braving the New World: Readings in Contemporary Politics. Scarborough, Ontario: Nelson Canada, 1995, pp. 277-289.
- Schneiderman, David. "Human Rights, Fundamental Differences? Multiple Charters in a Partnership Frame," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, pp. 147-185.
- Scholte, Jan Aart. "Global capitalism and the state," International Affairs. Vol. 73, No. 3, 1997, pp. 427-452.
- Schwartz, Bryan. Last Best Hope: Quebec Secession- Lincoln's Lessons for Canada. Calgary, Alberta: Detselig Enterprises Ltd., 1998.
- Seidle, F. Leslie (Ed). Seeking a New Partnership: Asymmetrical and Confederal Options. The Institute for Research on Public Policy, Ottawa, Ontario: Renouf Publishing Co. Ltd., 1994.
- Self, Peter. "George Grant, Unique Canadian Philosopher," Queen's Quarterly. Vol. 98, No. 1, (Spring 1991), pp. 25-39.
- Sheppard, Claude-Armand. "Crees warn: Quebec can't take us out of Canada," in Canadian Speeches: Issues Of The Day. Vol. 11, Issue 10, March 1998, pp. 47-48.
- Shugarman, David P. and Reg Whitaker. Federalism and political community: Essays in Honour of Donald Smiley. Peterborough, Ontario: Broadview Press Ltd., 1989.
- Simeon, Richard and Mary Janigan (Eds). Toolkits and Building Blocks: Constructing a New Canada. Ottawa, Ontario: Renouf Publishing Company Ltd., 1991.
- Smith, Anthony D. Nations And Nationalism In A Global Era. Cambridge, MA.: Polity Press, 1995.
- Smith, Anthony D. "The Nation: Invented, Imagined, Reconstructed?," Millennium. Vol. 20, No. 3, pp. 353-368.
- Smith, Gordon. "A Future for the Nation-State?," in Tivey, Leonard (Ed.). The Nation-State: the formation of modern politics. New York, NY: St. Martin's Press Inc., 1981, pp. 197-208.

- Smith, Graham. "Mapping the Federal Condition: Ideology, Political Practice and Social Justice," in Smith, Graham (Ed.). Federalism: The Multiethnic Challenge. New York, U.S.A.: Longman Group Ltd., 1995, pp. 1-28.
- Smith, Jenifer. "The Unsolvable Constitutional Crisis," in Rocher, Francois and Miriam Smith (Eds.). New Trends in Canadian Federalism. Peterborough, Ontario: Broadview Press, 1995, pp. 67-90.
- Sovereignty-association - the contradictions: a report in the series Understanding Canada. Minister of Supply and Services Canada, Government of Canada, 1978.
- Spuryt, Hendrik. "Institutional selection in international relations: state anarchy as order," International Organization. Vol. 48, 1994, pp. 527-556.
- Spruyt, Hendrik. The Sovereign State and Its Competitors. Princeton, New Jersey: Princeton University Press, 1994.
- Stankiewicz, W. J. (Ed.). In Defense of Sovereignty. Toronto: Oxford University Press, 1969.
- Stasiulis, Daiva. " "Deep Diversity": Race And Ethnicity In Canadian Politics," in Whittington, Michael S. and Glen Williams (Eds.). Canadian Politics In The 1990s (Fourth Edition). Scarborough, Ontario: Nelson Canada, 1995, pp. 191-217.
- Stewart, William H. Concepts Of Federalism. Lanham, MD: University Press of America Inc., 1984.
- Stevenson, Garth. "Federalism And Intergovernmental Relations," in Whittington, Michael S. and Glen Williams (Eds.). Canadian Politics In The 1990s (Fourth Edition). Scarborough, Ontario: Nelson Canada, 1995, pp. 402-423.
- Taylor, Charles. "Deep Diversity And The Future Of Canada," Canadian Forum (September 1997), pp. 15-17.
- Taylor, Charles. Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism. Montreal & Kingston: McGill-Queen's University Press, 1993.
- Taylor, Charles. "The Deep Challenge of Dualism," in Gagnon, Alain-G. (Ed.). Quebec: State and Society (Second Edition). Scarborough, Ontario: Nelson Canada, 1993, pp. 82-95.
- Tarlot, Charles D. "Symmetry and Asymmetry as Elements Of Federalism: A Theoretical Speculation," Journal of Politics. Vol. 27, 1965, pp. 861-865.

- Therien, Jean-Philippe, Louis Bélanger, and Guy Gosselin. "Quebec: An Expanding Foreign Policy," in Gagnon, Alain-G. (Ed.). Quebec: State and Society (Second Edition). Scarborough, Ontario: Nelson Canada, 1993, pp. 259-278.
- Thorburn, Hugh. "Needed: A New Look at the Two-Nations Theory," Queen's Quarterly, Vol. 80, 1973.
- Trudeau, Pierre Elliott. Federalism and the French Canadians. Toronto: Macmillan of Canada, 1968.
- Trudeau, Pierre Elliott. "Patriation and the Supreme Court," Cité Libre, October-November 1998, pp. 59-68.
- Trudeau, Pierre Elliott. "The Poverty of Nationalist Thinking in Quebec," in Trudeau, Pierre Elliott and Thomas S. Axworthy (Eds.). Towards A Just Society: The Trudeau Years. Toronto, Ontario: Penguin Books, 1992, pp. 430-441.
- Trudeau, Pierre Elliott. "The Values of a Just Society," in Trudeau, Pierre Elliot and Thomas S. Axworthy (Eds.). Towards A Just Society: The Trudeau Years. Toronto, Ontario: Penguin Books, 1992, pp. 401-429.
- Tully, James. "Diversity's Gambit Declined," in Cook, Curtis (Ed.). Constitutional Predicament: Canada after the Referendum of 1992. Montreal & Kingston: McGill University Press, 1994, pp. 149-198.
- Tully, James. Strange Multiplicity: Constitutionalism in an age of diversity. Cambridge: Cambridge University Press, 1995.
- Turpel, Mary Ellen. "The Charlottetown Discord and Aboriginal Peoples' Struggle for Fundamental Change," in McRoberts and Patrick Monahan (Eds.). The Charlottetown Accord, The Referendum, and the Future of Canada. Toronto: University of Toronto Press, 1993, pp. 117-151.
- Vandycke, Robert. "The 1982 Constitution and the Charter of Rights: A View from Quebec," in Rocher, Francois and Miriam Smith (Eds.). New Trends in Canadian Federalism. Peterborough, Ontario: Broadview Press, 1995, pp. 133-154.
- Verney, Douglas V. and Diana M. Verney. "A Canadian Political Community? The Case for Tripartite Confederatism," Journal of Commonwealth and Comparative Politics, Vol. 12, No. 1, (March 1974), pp. 1-19.
- Verney, Douglas V. Three Civilizations, Two Cultures, One State: Canada's Political Traditions. Durham, NC: Duke University Press, 1986.

- Vipond, Robert C. "From Provincial Autonomy to Provincial Equality (Or, Clyde Wells and the Distinct Society)," in Carens, Joseph H. (Ed.). Is Quebec Nationalism Just? Perspectives from Anglophone Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 97-119.
- Vipond, Robert C. Liberty & Community: Canadian Federalism and the Failure of the Constitution. Albany, New York: State University of New York Press, 1991.
- Walker, Brian. "Plural Cultures, Contested Territories: A Critique of Kymlicka," Canadian Journal of Political Science. Vol. 30, No. 2, (June, 1997), pp. 211-234.
- Walker, R. B. J. and Saul H. Mendlovitz. "Interrogating State Sovereignty," in Walker, R. B. J. and Saul H. Mendlovitz (Eds.). Contending Sovereignties: Redefining Political Community. Boulder, Colorado: Lynne Rienner Publishers, 1990, pp. 1-12.
- Walker, R.B.J. "State Sovereignty and the Articulation of Political Space/Time," Millennium. Vol. 20, No. 3, 1991, pp. 445-461.
- Watson, William. Globalization And The Meaning Of Canadian Life. Toronto: University of Toronto Press, 1998.
- Watts, Ronald L. "Examples of Partnership," in Gibbins, Roger and Guy Laforest (Eds.). Beyond the Impasse: toward reconciliation. Montreal, Quebec: Institute for Research on Public Policy (IRPP), 1998, pp. 359-393.
- Watts, Ronald. Comparing Federal Systems In The 1990s. Institute of Intergovernmental Relations, Kingston, Ontario: Queen's University, 1996.
- Webber, Jeremy. Reimagining Canada: Language, Culture, Community, and the Canadian Constitution. Kingston & Montreal: McGill-Queen's University Press, 1994.
- Whitaker, Reg. "Quebec's Self-determination and Aboriginal Self-government: Conflict and Reconciliation?," in Carens, Joseph H. (Ed.). Is Quebec Nationalism Just? Perspectives from Anglophone Canada. Montreal & Kingston: McGill-Queen's University Press, 1995, pp. 193-220.
- Whittington, Michael S. "Aboriginal Self-Government In Canada," in Whittington, Michael S. and Glen Williams (Eds.). Canadian Politics In The 1990s (Fourth Edition). Scarborough, Ontario: Nelson Canada, 1995, pp. 3-18.

- Wight, Martin. "Why is there no International Theory?," in Butterfield H. and Martin Wight. Diplomatic Investigations: Essays in The Theory of International Politics. Cambridge, Massachusetts: Harvard University Press, 1966, pp. 17-34.
- Williams, Colin H. "A Requiem for Canada?," in Smith, Graham (Ed.). Federalism: The Multiethnic Challenge. New York: Longman Group Ltd, 1995, pp. 31-72.
- Williams, Colin H. (Ed.). National Separatism. B.C.: University of British Columbia Press, 1982.
- Young, Robert A. "How Do Peaceful Secessions Happen?," in Bateman, Thomas M. J., Manuel Mertin and David M. Thomas (Eds.). Braving the New World: Readings in Contemporary Politics. Scarborough, Ontario: Nelson Canada, 1995, pp. 290-303.
- Young, Robert A. The Secession of Quebec and the Future of Canada. Montreal & Kingston: McGill-Queen's University Press, 1998.
- Zacher, Mark W. "The Global Economy and the International Political Order: Some Diverse and Paradoxical Relationships," in Courchene, Thomas J. (Ed.). The Nation-State in a Global/Information Era: Policy Challenges. Proceedings of a conference held at Queen's University 14-15 November 1996, John Deutsch Institute for the Study of Economic Policy, Kingston, Ontario: Queen's University Press, 1997, pp. 67-82.