Canadian Content

The McGill Undergraduate Journal *of* Canadian Studies

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The McGill Undergraduate Journal of Canadian Studies

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All undergraduate students at McGill University are welcome to submit essays, book reviews and photos related to the study of Canada. Submissions are accepted in English and French.

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Foreword

Interdisciplinarity and the Study of Canada

Professor Antonia Maioni

Interdisciplinarity is the new buzz word of university administrators, inter-faculty research centers, and collaborative researchers here at McGill University and elsewhere. But this new thing has a very long history in the university setting. When the template for what we would recognize as universities emerged in the Middle Ages, they were seen as a crossroads for the emergence of knowledge and, more to the point, enlightenment. In these settings, scholars were trained to be "masters" of a tradition or discipline, but within a "universal" framework of exchange and dialogue. Hence, the university as a concept and as a moniker for an institution of higher learning. In the European context, from which we derive our Canadian university traditions, there were four original disciplines: philosophy (based on the art of logical deduction); laws (the study of legal texts and jurisprudence); medicine (which involved learning through empirical observation); and theology (for the transmission of doctrines of faith).

Even in today's modern and much more varied academic settings, disciplines are seen to represent principles from which to pursue "pure" knowledge. So, for each discipline, we can idenitify specific research questions, methods, or "paradigms" shared by its practitioners. The problem, for some critics, is that the emphasis on a discipline's specificity may sometimes hinder the creation and transmission of knowledge, and the ability to make contributions that can be generalizable for society. Two other problems can also be raised : namely, that we may be missing the big picture in narrowly focusing disciplinary learning; and, just as worrisome, that we may be losing the sense of meaning of the university as a crossroads of knowledge.

The move toward interdisciplinarity in higher learning is thus an organic way of moving toward a renewed interaction between disciplines in a way that emphasizes complexity, flexibility, practicality, and problem solving. In a sense, it responds to both the necessity of grounding in a discipline or tradition, with the need for engaging in broader conversation about complex issues. One way of visualizing it is through a medicine analogy: an interdisciplinary medical "team" is one that involves the coordination and integration of different disciplinary toolkits for the care and cure of patients.

It is all too easy sometimes to think of Canada as a "patient" in many respects, but why should interdisciplinarity matter to students at McGill, and more specifically to students of Canadian Studies? Canadian Studies has a long history at McGill, and part of its longevity has to do with the commitment to an interdisciplinary approach that engages in a wider conversation between disciplines and encourages students to consider different angles and approaches. For example, this would mean thinking about Canadian politics in a way that grounds it in a better understanding of Canadian economics and sociology, and considers the historical antecedents and context in which political change happens. The other important contribution of Canadian Studies has been to consider Canada itself as an object of study rather than only as a subject of study. In other words, taking Canada as a case from which to learn something more about a generalizable phenomenon. This can be done by studying an aspect of Canada (e.g., literature) or by comparing a Canadian condition (e.g., health care system) across other cases.

Through Canadian Studies, dozens of McGill graduate students, and hundreds of undergraduate students, have been able to approach the study of Canada though interdisciplinary and comparative lenses, and appreciate how things Canadian – multiculturalism, bilingualism, parliamentary democracy, federalism, literature, culture, environment – can offer insights into a wider examination of issues and contexts.

Perusing this volume of Canadian Content, one can't help but be amazed at the variety and scope of student contributions to the study of Canada. They are not all self-consciously "interdisciplinary" in their identification, but they are all contributions to the dialogue between different traditions and toolkits that make up interdisciplinary research. They are also fine examples of the type of scholarship that we encourage in Canadian Studies as a contribution to undergraduate learning at McGill University more broadly.

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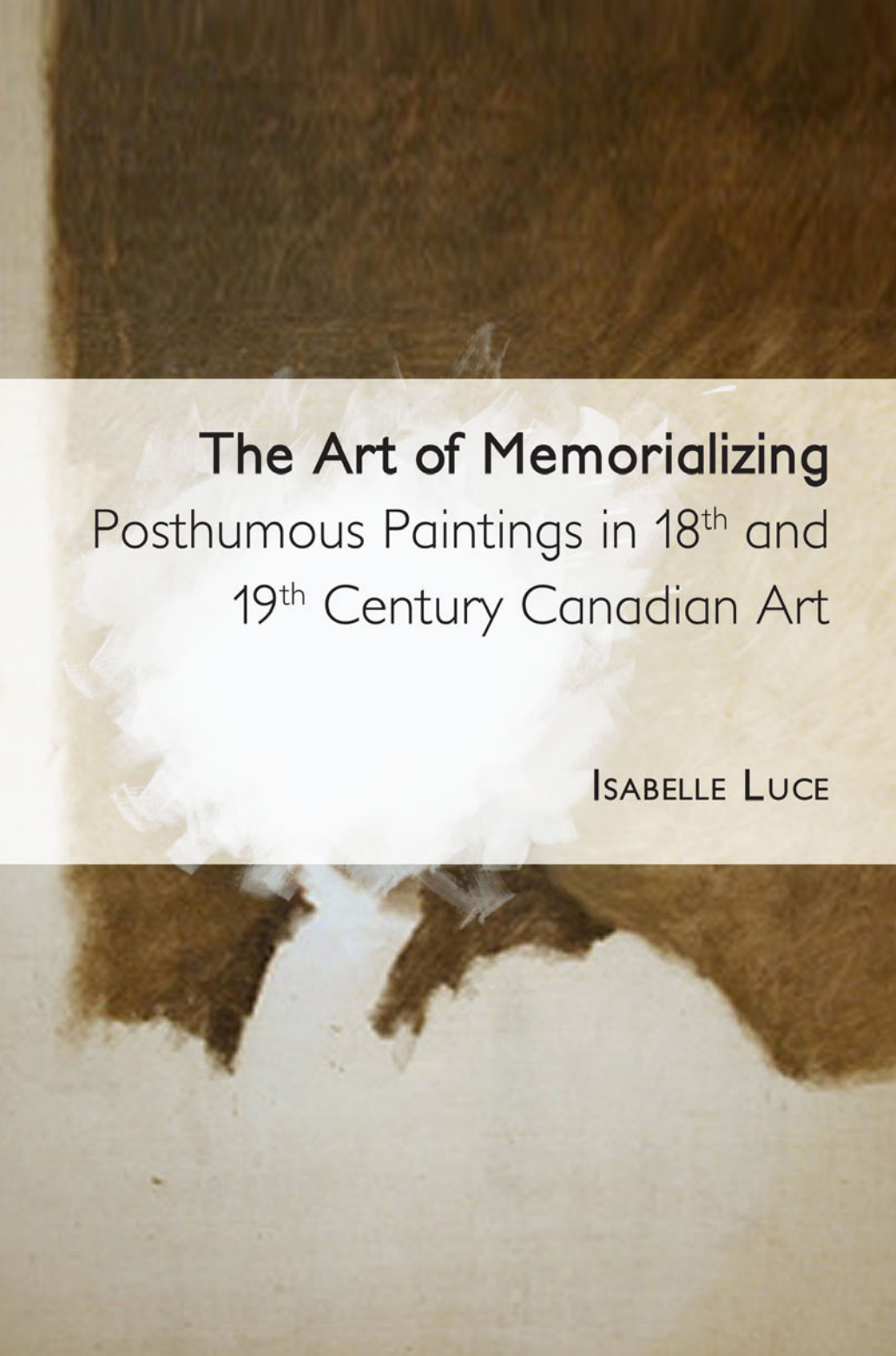

The Art of Memorializing

Posthumous Paintings in 18th and 19th Century Canadian Art

Isabelle Luce

Death is inevitable and insurmountable, something that causes fear and dread to the living. This is particularly true for the 21st century, as death has become the new taboo, replacing 19th century fears surrounding sex. When looking back on Victorian customs of the representation of the dead, our prejudices may disqualify the quality of these works, as we tend to interpret them as grotesque in subject matter or lacking in artistic merit. They have become startling for us to observe, as we do not understand the inherent meanings behind these works. We are unaware of the intricate customs that are wound up in this art of representing loved ones. "From the domestic deathbed drama to the stately funeral, decked out with all the pomp and circumstance of mourning, our forebears celebrated death as the great climax of the mortal lifespan of each Christian soul" wrote Roy Porter from the Wellcome Institute for the History of Medicine, a view which explained Victorian views on death[1]. These paintings of the dead were used in a process of remembrance, mourning and moving on with one's life.

During the 19th century, life was fleeting, disease was present, and deaths happened suddenly and often without explanation. Parents, wanting to hold on to their loved ones as long as they could, resorted to the custom of preserving their memories through posthumous portraiture and later on though photography. Posthumous portraiture was a valued process of grieving during the 19th century, with a prominent place in Canadian historical art that should no longer be overlooked.

In Canada, art history remains a young study. There are many subjects and artists that have yet to be broached in a Canadian context. One of these little-researched subjects is the genre of posthumous portraiture, a sub-genre of portraiture painting. It was a tradition prominent throughout the Victorian world, and much of the relevant research comes from studies done on American art. Phoebe Lloyd, an associate professor at the School of Art at Texas Tech University, wrote her dissertation on "Death and American Painting: Charles Peale to Albert Pinkham Ryder[2]." Through her research, Lloyd came to the opinion that there are two different forms of posthumous paintings: posthumous commemorative or mortuary portraits, and posthumous mourning portraits[3]. Commemorative or mortuary portraits

are paintings that depict the dead body of the subject, often posed so the individual appears to be asleep. Posthumous mourning portraits, on the other hand, are often confused with life portraits as the subject appears to be alive; however, it is the use of symbols that makes the viewer aware that the subject has passed on. Jay Ruby, a professor of Anthropology at Temple University in Philadelphia, explains in his book Secure the Shadow that posthumous mourning portraits are seen more often in the United States than mortuary portraits[4]. I will argue that these traditions were just as present in Canadian portraiture as in the United States, by examining specific examples by the artists Horace Bundy, William Berczy and Pierre Le Ber.

Posthumous paintings come from an old tradition, and stem from Europe during the 15th century. It was a period of growing individuality, secularism and an expanding merchant class. Posthumous portraits were made as a way to keep one's legacy alive[5]. It was seen as a genre reserved for the highest classes, including royalty, and it also became a common way to depict revered nuns. The tradition continued through the 1800s, reaching its peak between the 1830s and the 1860s, though the invention of daguerreotypes and photography eventually began to dominate this field. Death was commonplace in Victorian families, and contact with the dead body was inevitable and less feared than it is now. Wakes would be held inside the house, in the parlour, and it would be common practice to assure oneself that the person was no longer alive by touching the corpse[6]. This familiarity with the dead body made the mortuary portraits a natural part of mourning. The purpose of these paintings became either to emphasize the vanity and fleetingness of human existence by representing an individual at the end of his or her life, or to supply a realistic representation of the appearance of the individual[7]. Having the face of a loved one displayed on a wall meant that their image would not be forgotten, and that they would always remain part of the family, even for future generations. Flora A. Windeyer, a Victorian woman, wrote in a letter to her Reverend John Blomfield in 1870 that it is a "comfort... to possess the image of those who are removed from our sight, [so] we may raise an image of them in our minds but that has not the tangibility of one we can see with our bodily eyes[8]." Therefore, the painting evokes not only

the physical representation of a person, but also the memories of who that person was.

The portraits were even incorporated into the mourning and funerary rituals: "sitting in front of a posthumous portrait during the mourning period and viewing it annually on the occasion of the death was a regular ceremony in the nineteenth century[9]." It was a way of always keeping the lost one alive, and part of one's life. In a world where image was valued, being without an image of one's departed family member made it almost seem as if that person had never existed.

A Canadian example of a posthumous mourning portrait is the painting of Isobel Richardson, on display in the McCord Museum, Montreal (see figure 1). The portrait was painted around 1843 by a little known Vermont artist named Horace Bundy (1814-1883)[10]. Bundy originally worked as a carriage maker in Massachusetts, which is where he learned to use oil paint by decorating the carriages[11]. He then spent twenty years traveling around the United States and Canada, working as a portrait painter. During the 1840s, when this painting of Isobel Richardson was completed, Bundy was interested in patterns and often used them in the tablecloths, clothing and drapery of his works. We see this in Isobel's dress, which is blue with golden diagonal stripes and darker blue squiggles. As Bundy's technique began to improve in the 1850s, his reputation as a respected painter grew and he was soon able to acquire better quality paints for his works[12]. The fact that Bundy was a virtually unknown traveling artist when he painted the portrait of Isobel Henderson is understandable, as mortuary portraiture was seen as a very minor branch of portraiture, and often left to the less known painters[13]. This was because funeral portraits were seen as requiring less creativity and individuality on the part of the artist, therefore making the work less expensive to produce. It was also a genre that an artist would choose to avoid, if he was well off enough to decline the work. An American painter, William Sidney Mount, wrote in his catalogue of 1846 about his portrait of Reverend Charles Seabury, painted after his death, and Mount explains that it is "the last [painting] I hope I shall paint after death. Death is a patron to some painters, I had rather paint the living[14]." This view was shared among most of the artists of the time; however,

when it came to painting their own family members, artists readily used their skills to immortalize them.

The portrait of the young Isobel Richardson was made in 1843, not long after she died of consumption. As Bundy was in the area at the time of her death, he was commissioned to paint a portrait to memorialize her. The Richardsons were most likely a prominent merchant family; portraiture was most popular among the growing merchant class in Montreal, as it served to advertise their newly acquired status[15]. A mourning portrait would be displayed in a public space like the parlour of the house, where it could be viewed and acknowledged by visitors, as well as used as the subject of private contemplation. We can see that this is a mourning portrait and not a mortuary portrait as Isobel is depicted as alive. She is sitting up, her hands clasped together and resting on her lap, while her eyes are open, looking sadly out at the viewer. She is well dressed in a blue gown, and her hair is perfectly groomed in two braids, emphasizing her social status. The urn on Isobel's left is the only indicator that tells the viewer that this is a post-mortem portrait of the girl. Other symbols used to indicate the death of a sitter in a mourning painting include willow trees, wilting flowers and clouds[17]. From this portrait we can also see the lack of expression and personality on the girl's face. If anything, she appears melancholy, gazing at the viewer with her large wet eyes and frowning mouth. As I have mentioned above, mourning portraits were often less expressive and artists did not feel tempted to penetrate the subject for a deeper identity.

Another example of a Canadian mourning portrait is William Berczy's painting of William McGillivray and his Family made c.1806 (see figure 2). Berczy lived in New York for most of his life, but spent some time during his youth in Italy studying art, and then later worked in England. When he returned, he led a group of colonizers from New York to Markham, in what was then Upper Canada, and later on he traveled to Montreal17. The border between the United States and Canada was very fluid for artists during this period as they would travel between the countries for work; this is why Berczy is seen as both a Canadian and American artist. William McGillivray was a well known fur trader during this period, as well as nephew to the

pre-eminent entrepreneur Simon McTavish. The portrait shows William and his second wife Magdalen with their daughter Anne Marie, who was born the year before on May 19, 1805[18]. They are shown seated in their garden, underneath a large tree, with their two dogs resting next to them. There is an umbrella to Magdalen's left side and the clouds in the sky show an overcast day, and may be threatening to rain. This portrait is not a posthumous portrait in the traditional sense, as all the family members seem to have been alive when it was originally painted by Berczy. However, in 1820 there is a record of William McGillivray hiring artist William Dunlap to modify the portrait[19]. Dunlap's journal records that "the widowed lord of the Northwest wanted to change only his own image on the painting, leaving his deceased young wife, Magdalen... as originally portrayed[20]." Magdalen and William had six children together, although sadly four of them died as infants[21]. Therefore, this portrait has become a mourning portrait in order to memorialize the lost ones.

Back even further in Canadian art history is another example of a posthumous portrait, this one painted in January of 1700. It is Pierre Le Ber's famous portrait of Marguerite Bourgeoys (see Figure 3). In 1669, Le Ber was born into a wealthy Montreal family. His father Jacques Le Ber was a successful merchant and influential seigneur[22]. Pierre is most well known for this painting of Marguerite Bourgeoys for historical purposes, yet during his time he was seen as an amateur and untalented artist. Despite his lack of talent, Le Ber managed to capture Marguerite's personality and this image was one that the Montrealers who had known her recognized[23].

Marguerite Bourgeoys was born in 1620 in Champagne, France, and at age 20 she decided to move to New France to become a nun at the Congrégation de Notre-Dame[24]. She is known as an important historical figure in the history of the colonization of New France as she acted as a 'big sister' to all the incoming settlers and oversaw the incoming filles du roi[25]. The painting itself was commissioned shortly after her death by the sisters of the Congregation[26]. She has a stern face, with her eyebrows creased in a frown. Le Ber did not shy away from depicting her wrinkles and strays away from idealizing the woman's image – denying vanity for realism. Her hands are folded in prayer, and she is wearing a crucifix around her neck to signify

her religious identity as a nun. Though this work was not commissioned by a family, the process of using the portrait as a tool in mourning continues to be an applicable model, as the sisters of the Congregation missed her dearly. It also kept her memory alive to subsequent generations, her image ensuring that her works were not forgotten.

Photography began to take over the field of posthumous representation of family members in the mid-19th century. Its popularity was most likely due to its affordable price. Daguerreotypes, an early type of photograph, costing as little as 25 cents, opened up the posthumous tradition to all classes[27]. However, these representations were lacking in comparison to painted posthumous portraits as photographs could not reproduce the semblance of life in the subject in the same way that an artist was able to create life through a painting. Photographers had to resort to illusions in order to make the subject appear to be sleeping, perhaps by placing a book in their hand to make it look as if the individual had just nodded off to sleep.

Looking back on the paintings of Isobel Richardson, the McGillivary Family and Marguerite Bourgeoys, one can see that posthumous paintings were just as revered in Canada as they were in the United States. It was an important custom of Victorian society to celebrate and acknowledge the dead, and these paintings worked to ease the grief during a period of high death rates. Though we may not realize it, these practices have continued to be present in our age and culture, as when celebrities pass away, and we refer to the iconic images that evoke memories of who they once were. When Princess Diana, John F. Kennedy and Michael Jackson each suddenly passed away, many relied upon their images to reassure them and to remember the life that was lost. In a more private example, there are organizations like Now I Lay Me Down to Sleep, whose purpose is to offer private portrait sessions at the hospital to document deceased newborns during times of grief and pain[28]. This organization has now grown to 25 other countries with 7000 volunteer photographers working for them[29]. Therefore, one can see that these traditions are still powerful in modern culture, just as they were in the 19th century, as a way to mourn a loss.

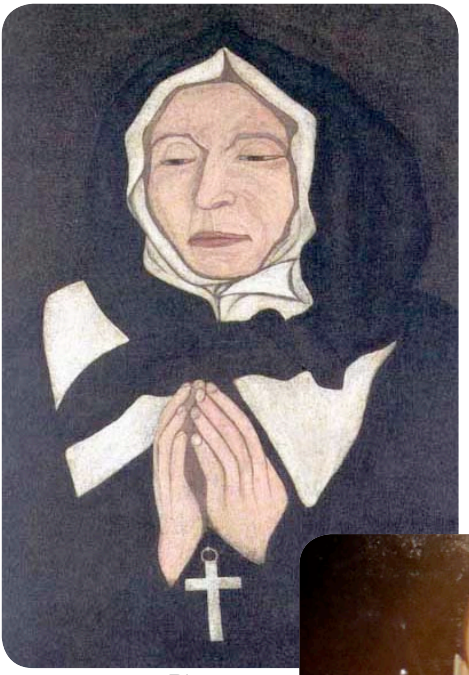

Plate 3

Plate 1

Plate 2

Plate List

1 Horace Bundy, Portrait of Isobel Richardson, 1843, Oil on canvas, Simply Montreal: Glimpses of a Unique City exhibit, McCord Museum, Montreal.

2 William Berczy, McGillivary Family Portrait, 1805-1806, Oil on canvas, 122.4 x 92.4 cm, Simply Montreal: Glimpses of a Unique City exhibit, McCord Museum, Montreal.

3 Pierre Le Ber, Portrait of Marguerite Bourgeoys, 1700, Oil on canvas, Marguerite Bourgeoys Museum, Montreal.

Endnotes

1 Sylvia M. Barnard. *To prove I'm not forgot: Living and Dying in a Victorian City.* London: Manchester University Press, 1990.

2 *In Memoriam: Phoebe Lloyd.* Accessed November 28th 2009. http://www.depts.ttu.edu/art/Faculty/Phoebe%20Lloyd.pdf

3 Jay Ruby. *Secure the Shadow: Death and Photography in America.* London: The MIT Press, 1995, 29.

4 Ibid.

5 Ibid.

6 "Death: the last taboo" (2009). Available from: Death Online <http://www.deathonline.net/remembering/mourning/victorian.cfm> (accessed on Nov 25 2009).

7 Jay Ruby. *Secure the Shadow: Death and Photography in America.* London: The MIT Press, 1995, 30.

8 "Death: the last taboo" (2009). Available from: Death Online <http://www.deathonline.net/remembering/mourning/victorian.cfm> (accessed on Nov 25 2009).

9 Jay Ruby. *Secure the Shadow: Death and Photography in America.* London: The MIT Press, 1995, 41.

10 McCord Museum label.

11 Lauren B. Hewes. "Horace Bundy: itinerant portraitist". *Magazine Antiques*. FindArticles.com. 02 Nov, 28 2009. http://findarticles.com/p/articles/mi_m1026/is_n4_v146/ai_16348368/

12 Ibid.

13 Jay Ruby. *Secure the Shadow: Death and Photography in America.* London: The MIT Press, 1995, 29.

14 Ibid., 36.

15 Ibid., 29.

16 Ibid., 41.

17 *The Canadian Encyclopedia,* s.v "William Berczy," www.thecanadianencyclopedia.com (accessed Nov. 25, 2009).

18 John Andre. *William Berczy: Co-founder of Toronto.* Toronto: Ortoprint, 1967, 91.

19 Ibid, 90.

20 Ibid.

21 *Dictionary of Canadian Biography Online* s.v "William McGillivray." www.biographi.ca (accessed Nov 28th 2009).

22 *The Canadian Encyclopedia,* s.v "Pierre Le Ber,"<http://www.thecanadianencyclopedia.com> (accessed Nov 25 2009).

23 Ibid.

24 *The Canadian Encyclopedia,* s.v "Marguerite Bourgeoys," <http://www.thecanadianencyclopedia.com> (accessed Nov 25 2009).

25 Ibid.

26 Harper, Russell J. *Painting in Canada: A History.* Toronto: University of Toronto Press, 1966.

27 Jay Ruby. *Secure the Shadow: Death and Photography in America.* London: The MIT Press, 1995, 43.

28 "Now I Lay Me Down to Sleep" (2009). <http://www.nowilaymedowntosleep.org> (accessed Nov 26 2009).

29 Ibid.

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The Politics of Federalism and Canada's Deadlock Climate Change Policy

Emma Ailin Hautecoeur

Since November 2009, Canadians have expressed growing concern about Canada's climate policy. Simultaneously, the country's international credibility is plummeting. Recent surveys and polls have indicated a growing embarrassment across the country - even in oil-rich Alberta. The current government's inaction and lack of leadership have brought shame home and abroad. Receiving a "Fossil Award" (a satirical but dishonorable award) on the concluding day of the UN climate talks in Barcelona has only further contributed to the perception that Canada has failed miserably in its commitment to the Kyoto Protocol. The need for substantive and concrete progress on key issues makes an ambitious deal a particular imperative in the run-up to the UN Climate Conference in Copenhagen this December.

Concern, knowledge of best practices, and institutional frameworks add up to action. In Canada, one could argue that concern and knowledge of best practices are two conditions that have already been fulfilled. Canada has a fair share of the world's technology and information capital to meet the second condition. In trying to explain the dependent variable of action/inaction in climate change politics, one should look at the institutional framework of Canadian federalism as the independent variable.

In this essay, it will be demonstrated that competing federal and provincial roles and responsibilities decrease the likelihood of implementation of international environmental treaties, and will use the Kyoto Protocol as a case study. The first section of this analysis will examine the constitutional, legal, and ideological precedents in environmental policy-making that existed prior to the Kyoto Protocol. In this section I will also show that the constitutional division of power fails to assign responsibility for climate change regulations. In turn the legal system has greatly contributed to shifting the balance towards greater centralization, while the ideological currents of the politics of federalism in the 1990s have fostered a considerable devolution of powers. Secondly it will be argued that the resulting structure of climate change policy-making has led to policies that reflect the lowest common denominator. The federal government mediator stuck between the provinces and the international sphere has not been able to reconcile the commitment made at Kyoto with the interests of the provinces. Since implementation relies

on intergovernmental relations, vertically and horizontally heterogeneous in Canada, both levels of government have deferred from efficient regulatory mechanisms. The last section evaluates the weight of other factors implied by the Kyoto arrangement that impede its implementation. Those factors are external but paramount to Canadian federalism, and their effect would be mitigated if greater centralization were achieved. Lastly, the claim for provincial leadership in climate change action and the claim for a carbon tax will be assessed. The expected result is that a successful implementation of an effective environmental assessment, a regulatory scheme and a compliance mechanism is correlated to a concentration of these roles and responsibilities in the hands of the federal government of Canada.

As environmental policy-making was not an issue at the time the former three provinces of Canada formed one Dominion, the British and North America Act (BNA Act) of 1867 does not explicitly confer constitutional responsibility of environmental policy field to either level of government. As has often been the case in constitutional federalism in Canada, the Courts have inherited the role of assigning such responsibility to the federal government, with the incentive to articulate a unified Canadian foreign policy. The judiciary aimed at two major objectives: the assignment of a responsibility that was non-existent in the constitution and the creation of a balance between the ability of the federal government to create a unified foreign policy and its implication in provincial jurisdiction.[1] In the 1930s the Judicial Committee of the Privy Council (JCPC) asserted the federal role in treaty-making, on the interpretation of section 132 of the BNA Act, stating that such agreements were done on behalf of the British Empire. As the country grew increasingly independent from Westminster, the provinces used the legal system to limit power and ensure the protection of their exclusive jurisdiction. The *Constitution Act* of 1982 realigned responsibilities as follow: "Provinces legislate in the area of the environment based on their constitutional responsibilities for such things as local works and undertakings, property and civil rights, and the management of natural resources […] federal environmental legislation is based on varying combinations of the federal trade and commerce power, federal responsibility for the fishery and the conduct of

international relations."[2] So defined, the federal mandate remained considerably limited. Environmental policy is one of the areas where the provinces have exercised their jurisdictional authority the most. The involvement of the provinces in climate change policy and the reassertion of the federal government on the international scene were motivated by the same reason: the protection and projection of their respective political, jurisdictional and economic interests.[3] The constitutional assignment of roles and responsibilities in environmental policy-making has traditionally limited the federal mandate, but the particular issue of climate change allows the federal government to consult the Courts in realigning these roles and responsibilities.

The late 1980s set the stage for the second wave of environmental policy-making in Canada. There was a worldwide-shared belief that climate change is a global problem that requires global engagement. Climate change officially entered the Canadian diplomatic agenda when the Toronto Conference was held in 1988, the first meaningful meeting that brought scientists and politicians around the same table to negotiate a reduction in CO2 emissions. The discussion resulted in a mutually agreed upon solution with differentiated responsibility: action was to be undertaken by the developed countries only. Although multilateralism was already an inherent part of Canadian foreign policy, it was mandatory for the nation to reaffirm its position as an energy-efficient leader and international champion of climate change regulation, in response to both international and domestic pressures. The government in place, as well the ones to come, recognized the opportunity to capitalize on public concern for environmental issues.[4] These incentives resulted in the commitment from the Mulroney government at the Earth Summit in Rio in 1992. The government hoped to use the international agreement to bring provincial interests on side with its own, because it could not integrate them without risking its leadership position.[5] "The federal government has constantly protected its prerogative to speak for Canada."[6] More recently, the consultation of the provinces has acquired the status of convention. Yet the international framework did not challenge the right of provinces to develop their own resources. As global warming reminded western Canada of the considerable droughts that had happened in the 1930s, the battle to

implement environmental policies competed with the expensive energy development projects that were taking place in the West. With the emergence of a global climate change crisis, the federal role became more intricate; it was called on to mitigate conflicting international and domestic interests.

As these events were shaping the political regime of environmental policy-making in Canada, the courts were tailoring the respective roles of the two levels of government and establishing their respective jurisdiction more accurately. The legal system permanently altered the balance of power in the implementation of international environmental agreements. As seen earlier, the treaty-making power of the federal government could not be used to preempt provincial jurisdiction: "if the legislation necessary to implement a treaty obligation would normally fall under provincial legislation, then Ottawa must request such legislation from all ten provinces."[7] Meanwhile, federal government crafted a new strategy using the residual power under the peace, order and good government (POGG) to legislate prior to treaty commitments. In fact, the POGG power has formed the constitutional framework for a number of federal environmental statutes. In the 1988 *Crown Zellerbach* case, the federal government used international studies to show that toxic substance emissions were an issue of national concern because it fulfilled the "singleness, distinctiveness and indivisibility" test. The majority won the federal regulatory scheme to control the pollution of coastal waters under the Ocean Dumping Control Act.[8]

Considering this precedent, it would be possible for the federal government today to resort to the courts to designate the greenhouse gas emissions as a matter of national concern and thus possibly render provincial legislation on this matter unconstitutional. Yet even upon a favorable ruling from the Court, it would not impede the provinces' power to indirectly regulate on the GHG emissions by legislating in their areas like land use, transportation, or forestry, amongst others. Assignment of the power to legislate on GHG emissions would not significantly offset the fundamental division of power. Moreover, the unwillingness of some provinces to limit their GHG emissions has adverse consequences beyond their boundaries. It would thus fulfill the "inability" (of the provinces) test and confirm the authority of the federal

government. Another landmark court case for environmental policy-making in Canada is the *Oldman River Dam* case. Here, the Court upheld the federal authority to conduct an environmental assessment (EA) of a major irrigation dam constructed by the Government of Alberta. This decision affirmed the centrality of EA in the debate about environmental protection and sustainable development in Canada.

In his study of the federal jurisdiction after *Oldman*, Steven A. Kennett concludes that EA must be closely linked to the heads of federal jurisdiction. "Limited investigation is however, incompatible with the holistic assessment which is a major objective of EA as part of a decision-making process." Therefore, because federal jurisdiction is restricted as opposed to comprehensive, it might require negotiation with the provinces to achieve joint EA. Kennett suggests that "the appropriate response to this constitutional constraint in intergovernmental cooperation to establish joint and impartial EA, […] requires an innovative approach to institutional arrangements at the political level."[9] Case law calls for a rearrangement of the political structure that could counteract the current fragmentation, license a federal regulatory scheme and establish joint environmental assessment.

By shifting Ottawa's traditional role, Crown Zellerbach allowed for the passing of the *Canadian Environmental Protection Act* (CEPA). CEPA Part II arguably provides a basis for the federal government to regulate GHG emissions because they are treated as a distinct topic, "distinct from local air pollution, toxic pollution or regional pollution."[10] Under the *Toxic Substances Management Policy*, it specifies the policy objective of "virtual elimination of releases to the environment of toxic substances that are persistent and bioaccumulative and are present in the environment primarily due to human activity."[11] The case *Regina v. Hydro Quebec* questioned the constitutionality of federal regulation of toxic substances under CEPA Part II. The policy directions sustained by the majority under criminal law appeal in effect gives latitude to the federal government in order to implement GHG emissions reductions, but does not specify how it ought to prevent provincial unilateral moves. Chris Rolfe explains that one of the most problematic ambiguities of the CEPA is that "if some provinces take sufficient action to reduce

greenhouse gases emissions but others do not, it is not clear whether or not the federal government can regulate provincial sources (which account for the vast majority of emissions) in the provinces that have taken sufficient action. Thus it is not clear whether the federal government could intervene to establish a national program." [12] Attributing the power to regulate to one level of government does not hamper the other level's power to implement higher standards.

Meanwhile this overlap was challenged by the Canadian Council of Ministers of the Environment (CCME), which launched its New Harmonization Initiative in 1995. This initiative was anchored in the larger trend of cooperative federalism. Its main objectives were to homogenize environmental policy in Canada with a cooperative approach to implementation, elimination of overlap, and delineation of respective roles. The *Standing Committee on Environment and Sustainable Development* reported that there was, in effect, insufficient overlap and duplication of policies and that a "significant devolution of federal environmental protection powers to the provinces and territories might engender weaker environmental protection in Canada."[13] They were wary of the fact that the system of funding and transfers proposed hinged on the very abstract terms of devolution mentioned in the accord.[14] The divisiveness of bureaucracies on the harmonization issue shows that a devolutionary scheme was not a self-evident solution. On the one hand the federal government could remain dependent on provincial interests and follow collaborative management guidelines for establishing energy efficiency and emission standards while letting the provinces be free agents of implementation. On the other hand, it could dig deeper in its various POGG, trade & commerce and criminal powers to unilaterally implement a national program.

As the next part of this essay will highlight, Ottawa followed the first path. The focus on overlap fundamentally held back environmental policy-making in the 1990s. However overlap can actually be a way of eliminating loopholes in climate change regulation but only if it's effects can be effectively and explicitly overseen by one entity of governance, most likely the central one. Ensuring the transparency of provincial and federal programs and the

efficiency of equivalency agreements could effectively shift the focus to more pertinent policy challenges.

In the fall of 1997, federal/provincial discussions began to heat up in advance of the Kyoto summit, although they had begun well before that in Rio. The politicians believed they needed to go further in their commitment to stabilization than they had in 1992. The Canadian pre-negotiation took place in Calgary and the conclusion was to commit to a 3% cut compared to 1990 emissions. At Kyoto, Al Gore and others pressed Canada to go further and to commit to reduce its GHG emissions by 6% by 2012, doubling the target the national consensus had determined. The Western industry lobbies slowed down Jean Chrétien s enthusiasm; they pressed him to follow the American example and to not ratify the Protocol. However, around 2002, international pressures had thwarted the domestic effort and Chrétien finally ratified the Kyoto Protocol in 2004. Yet Chrétien s most trusted advisor, Eddie Goldenberg, warned the Prime Minister that the Kyoto targets could not be met; and it is official today that they will not be.[15] In signing and ratifying, Ottawa not only bypassed the "national consensus" condition that was in place at the time of Kyoto, but also bound itself to a commitment it knew it would not honor - although it arguably could have. The domestic political reality did not match the perceptions of international spectators. Moreover the Canadian public was concerned but not deeply committed to the issue. The electorate still does not hold either provincial or federal governments accountable for their inaction. There has not been one single response as to how this commitment would be implemented. The elite accommodation pattern has offered the appearance of motion without the hard decisions and tough enforcement that would be necessary for successful action.[16]

The Canadian political regime functions by tripartite bargaining. Federalism presupposes provincial-federal negotiations. Industry and environmental interests groups lobby the provincial government. Finally, by signing international agreements, the nation engages in a cooperative diplomatic relations with other nations. In the United States–the most notable non-member of the Kyoto Protocol–a significant number of states have been very productive in meeting the Kyoto targets. Although the structure of Canadian

federalism is arguably more decentralized than its American counterpart, fewer provinces have shown similar leadership in climate-change policy development.

The previous section has shown that Canada has a particular history of constitutional deference to the provinces in natural resource management, and has recently had to cope with trends that support far-reaching devolution.[17] Between signature and ratification of the protocol, the provinces have been relatively stagnant in policy development. It is only recently, because of the frustration with ratification and subsequent inaction, that some sense of leadership has infused the provinces. The most virulent leadership arose from Alberta, the fiercest opponent of the federal unilateral move in Kyoto. The Albertan government has crafted a made-in-Alberta response to the Kyoto regulatory demands, one that reflects western grievances on the federal management of natural resources, the latter an issue dating back to the birth of Confederation. Institutionalization of collective action is the only solution when it comes to moving forward as a nation. However, the federal government has not been willing to consider the differentiated commitment from the provinces and this has slowed implementation. Denise Scheberle identifies two characteristics that qualify intergovernmental relationship in federal systems. The first one is trust: "high levels of trust are evident within relationships where actors share goals, respect the actions of one another, allow flexibility, and support individuals within the program." The second characteristic is the extent of the involvement of oversight personnel, "involvement may include formal or informal communication between federal and state staffs, the frequency and the nature of oversight activities, provision of funding, sharing of resources, giving of advice and personal and other contacts among actors."[18] Canadian federalism suffers from the "Cooperative but autonomous: High trust with low involvement" syndrome: programs operate in quasi-isolation; both levels of government have significant respect for each other's role; and the oversight is achieved without full consultation.[19] This best describes Ottawa's relationship with the western provinces from the ratification of Kyoto to this day. Another model illustrates the heterogeneous interprovincial relationships: coming apart and contentious: low trust and high involvement.

Some provinces are highly involved in independently developing policies to approximate the Kyoto targets; this is the case of Manitoba, Quebec, BC–the last two having implemented carbon taxes in 2007-2008–and more recently Ontario. However, these participants are "highly frustrated with what they view as the unnecessary attention on the part of the other participants to administrative detail, program review, or organizational outputs"–as in the case of Alberta's refusal to participate in an interprovincial trading program. What is problematic for Canada is that the success of implementation of international treaties hinges on intergovernmental relationships:

> Working relationships do not exist in a vacuum. Rather, they are an integral part of the context of policy implementation. In turn, the rate and nature of policy implementation creates the environment in which the federal-state working relationships are established. (Scheberle 2004: 38)

Furthermore the consultation process and national round tables are a melting pot of multi-stakeholder opinion. They represent the federal government's modest attempt to be responsive to multiple interests. However, because the government response is fragmented, enforcement is weak.

In the context of federalism, players are more likely to come apart than pull together; and this challenges the doctrines of collaborative federalism that have been dominant since the issue of climate change became salient. Because of the resulting non-coordinated policies resulting from executive federalism, the federal government sold the *Canada Wide Harmonization Accord* in 1998 to all of the provinces except Quebec. A careful reading of *Turning the Corner,* the regulatory framework of 2007, shows that the federal government's position has not really changed since 1998. Instead it has notably made itself more comfortable in the backseat and has passively watched the provinces pursue what each of them sees as the Canadian environmental vision. After signature, "Canada continued its pre-Kyoto pattern of national consultation processes, round tables, and stakeholder consultations in which provinces continued to be prominent participants, alongside industry, environmental groups, and other advocates for various positions."[20] *Turning the Corner* shows that the Ottawa has not learned from the failure of the past institutionalized federal/provincial collaboration. It still views cooperative

and non-coercive measures as the only solution to conflicting interests and horizontal imbalance between the provinces. The regulatory framework emulates the *Comprehensive Air Quality Management Framework* signed by the same committee of ministers in 1993:

> The federal, provincial and territorial governments have initiated a co-operative process to work through the regulatory issues, through the Environmental Protection and Planning Committee of the CCME. Some provinces have indicated an interest in negotiating equivalency agreements with the federal government. (Environment Canada 2008: 5)

Notice that the framework says that only "some of the provinces"–rather than "all of the provinces"–have indicated an interest in negotiating equivalency agreements. No clear-minded individual can affirm that the central government is not aware of the disparities in the provinces' commitment. Yet the success of a functional, national program hinging on the devolution to the provinces presupposes homogeneity in the resources available to them. Such a project might improve accountability, but it does not reflect the reality of Canadian federalism. Some provinces' strategies have been to prepare defection from a National Plan on Climate change rather than developing their own GHG reduction strategies.[21] There has been no change in the political structure of environmental policy-making since the beginning of the 1980s. This in part explains the inability of the federal government to undertake its role defined by its international engagement.

The nature of the agreement itself has also made it easier for Canada to avoid a drastic change in behavior and to abstain making the sacrifices necessary to meet its targets. International agreements such as Kyoto are legally binding by international law; meanwhile international law does not possess an executive body to make it enforceable. Therefore such agreements are diplomatic efforts that try to design compliance mechanisms that would somehow replace the fictitious global government. Consistently with international relations–which have mutated to include economic sanctions and trade incentives as fundamental tools in security politics–Kyoto is based on market-based mechanisms. Emission trading – the ability for low-emitters to sell their reductions– permits high emitters like Canada to minimize

the domestic cost of controlling their own emissions. Without trading, the nations would have to meet their obligations within their borders. Joint Implementation (JI) and the Clean Development Mechanism (CDM), which are also in place, facilitate the chore of the most well off. "Enforcement is a perennial problem of international law, but emission trading offers an elegant solution."[22]. These mechanisms are extremely vague and flexible–the rules of the game have yet to be negotiated. As David G. Victor pointed out in 2004, the Kyoto Protocol can be described as a diplomatic effort gone wrong:

> The Kyoto framework is based on a fundamentally wrong assumption that is best to slow global warming by setting strict targets and timetables for regulating the quantity of greenhouse gases emitted. Regulating emission quantities is problematic because emissions are determined by factors such as technological change and economic growth that policy makers are unable to control and anticipate perfectly. If governments had control over all the factors that affect emissions then they could calibrate national behavior perfectly and comply within sensible targets, but in democratic market-based countries public administrators are neither omniscient nor omnipotent. The same logic obliges countries to adopt national trading systems that link with the international system. (Victor 2004: 11)

The way the Canadian government has proposed to implement its commitment locally is based on voluntary regulation from the provincial governments and on voluntary GHG emission trading targeting only the largest emitters in certain sectors of industry. Another significant aspect of the federal strategy is its emphasis on carbon capture and storage (CSS) technology, a means of mitigating the effect of carbon dioxide on global warming rather than preventing emissions (also at the core of the Alberta action plan). In turn, the provinces have been compelled to concentrate their resources on intergovernmental lobbying rather than on sustainable development of their industries. The economic strength of the resource owners, coupled with their very efficient organizational development has permitted them to exercise considerable leverage on the provincial governments. Obviously the central government has not shifted from its energy enthusiasm and has not realigned its preference for non-coercive regulations, which it declares to promote as

nation-wide economic development. The Canadian federalist system exacerbates the client list aspect of environmental policies.[23]

The Sierra Club reports that after the release of the regulatory framework in April 2007, both environmentalists and industry requested consultation on some of the regulations, and a meeting was arranged. Whether the claim (for a price on carbon) that was put forward was valid or not, it was never really considered. The federal government did not shift or revise its framework.[24] This event seems to reflect a major problem of communication, another by-product of federalism and multi-stakeholder consultation devices. The Kyoto Protocol Implementation Act of 2007 is not really innovative and reiterates the old incentives for voluntary initiative, the market-based approach, and the cooperation doctrine. Once the Act comes into force, every year thereafter until 2013, the Minister shall prepare and submit a Climate Change Plan

> "including measures respecting the regulated emission limits and performance standards; market-based mechanisms such as emissions trading or offsets; spending or fiscal measures or incentives; a just transition for workers affected by greenhouse gas emission reductions; and cooperative measures or agreements with provinces, territories or other governments."[25]

Without making a judgment about the efficiency of the bureaucrats' work, they have made apparent that although a centralized regulation in climate change plays a key role, the federal government has no sense of urgency about the imminent deadline and the inherent danger of the issue.

The year 2012 is looming. Canada would soon have been faced with the allegation of outlaw state if it had not already decided to work with the US on a long-term cooperation agreement, renegotiate targets, and extend their timeframe in Copenhagen in December 2009. It has already changed its baseline year to 2006 in *Turning the Corner*, setting the goal of reductions of 20% by 2020; thus expanding its 'right to emit'. The great leadership that few Canadian Prime Ministers wished to show in previous international agreements on climate change has dissipated. The fact that Canada has made very little effort in meeting its targets has had a significant impact on its

reputation abroad. The rest of the world no longer sees Canada as the leader of environmental internationalism. Recently, an article in *The Guardian* reported that "prominent campaigners, politicians and scientist have called for Canada to be suspended from the Commonwealth over its climate change policy."[26] "More important, the failure to implement the measures set out in protocols reflects the political dilemma posed by the concept of sovereignty."[27] Sovereignty is understood as the "formal recognition of sources of international authority in joint decision-making."[28] Since one could argue that it has no significant internal authority, it is not liable to exercise its authority, and thus its sovereignty in international joint decision-making. Neo-realists argue that until problems associated with the divisions of power are solved through institutional change, and that traditional treaty-making will not lead to collective environmental protection.[29]

The media in Canada says that Ottawa will wait for its neighbor's first move in the next Conference of the Parties (COP-15) on climate change in Copenhagen. This statement highlights another reality of climate change negotiations; GHG management is tied to international trade agreements. Or so Ottawa is happy to believe. "While trade, particularly free trade, implies a withdrawal from markets by government, environmental measures often call for increased state intervention." Free trade is widely thought to undermine environmental efforts.[30] Because free trade is based on reciprocity and non-discrimination it is hard for Canada not to consider the fact that its main trade partner–the United States–is not subject to the same legally binding targets. It fears that regulating production and consumption by putting a price on carbon will undermine their competitiveness on the market. The regional specification of the economy in Canada results in "lowest common denominator" economic policies and reflective environmental policies. If the bar is raised higher, provinces will opt out. The presence of foreign (in particular American) multinationals in local industries ties the two neighbors' economies together. The Alberta tar sands are the United States' number one foreign oil resource. The integration of the Canadian and American economies weakens the internal integration of the Canadian economy, which in turn puts strain on the homogenization of environmental policy.[31] Furthermore,

there have been instances where the *North American Free Trade Agreement* (NAFTA) has served as a tool in the hands of foreign investors to challenge government environmental regulatory action. NAFTA's environmental side-agreement is the *North American Agreement on Environmental Cooperation*. The supremacy of NAAEC's provisional regulatory system–least restrictive unless conventional empirical evidence of environmental danger has been found–is antagonistic to Kyoto's imperative for action being based on a certain amount of precautionary evidence.[32] Thus free trade adds another layer of complexity for the implementation of environmental policy.

In its 2008 Report Card, Sierra Club Canada advocates for provincial leadership in GHG regulations. They argue that while provinces like Manitoba, Quebec, and British Columbia, and states like California, are promoting ambitious regulations (like California's vehicle emission standards), and comprehensive programs for sustainable development and setting high standards, Ottawa is lagging with its lowest common denominator national standard. Quebec has unilaterally initiated its own action plan with actions that target Quebec's jurisdictional domains–energy production, transportation, agriculture, health, etc.[33] Notwithstanding the success of the enterprise, it suggests the need for coordination and communication between all actors of society so as to facilitate behavioral change and perhaps a more radical policy shift. Furthermore, sub-national units have developed paradiplomatic international agreements, parallel to that of nations, at the Federated States and Regions Summit on Climate Change.[34] However, another environmental think tank, the Pembina Institute takes the opposite stance: it prescribes centralization of the policies. The organization argues that implementation of the proposed policies should be the condition for transfers of carbon pricing revenue to the provinces. Although both of these arguments seem equally plausible, the first one is flawed due to one Canadian characteristic: its concentrated oil resource located in the Alberta tar sands. Alberta has extraordinary stakes in climate change policy-making and is the province that is the most likely to exert any influence on Ottawa. It has triggered the energy security doctrine. Since the conventional oil resources of the world will soon reach their peak, Alberta is currently sitting on a black gold mine that is expected

to power up the Canadian economy for years to come. "Alberta's efforts were focused not only on its citizens and elected members of Parliament but also a national audience."[35] And in "elected members of parliament" Paehlke is most likely referring to Stephen Harper who is the champion of the 'Canada as the global energy powerhouse' discourse. At present, the United States is the most privileged client on the oil market; the project is not intended to redistribute energy to the rest of Canada, itself highly dependent on foreign oil.[36] Since sustainable development has proven itself to be more economically viable than going along with the status quo, and since the predictable volatility of petrodollars will discourage consumers and businesses from relying on this resource in the near future, Canada will most likely be stuck with its oil and a major ecological crisis. Yet the federal government is aiming at nothing less than the rapid expansion of the industry and has prepared no plan B. Meanwhile, Alberta produces 30% of Canada's GHG emissions, although it only has half of that percentage in population. *Dirty oil* is in fact an ecological nightmare. Tar sands oil is the fastest growing greenhouse gas emitter (three times that of conventional oil), requiring between an average of four units of water to produce one unit of oil (thus highly contributing to the depletion of water in Canada), not to mention the degradation of the environment itself, reminiscent of the open-pit process.[37] The facts speak for themselves. The trade-off is unacceptable. With a player that has such strong leverage, Canada cannot afford to let the provinces run the climate change game by themselves:

> Negotiating separate provincial emission caps or negotiating a formula that determines provincial emission caps may place strains on national unity as each province has different perceived challenges posed by population growth, current levels of carbon intensity or reliance on renewable energy. Moreover, even if a national program of interlocked provincial emission trading programs can be initially negotiated, changes to the program necessary to meet national commitments may prove impossible to negotiate. (Rolfe 1998: 382)

Most of the think-thanks, media, scientists, scholars, the concerned public and some industry associations believe that change is conditioned by a price on carbon. A federal carbon tax would offer a comprehensive

framework where both production and consumption would be implemented to induce to behavioral change. It would fall within the areas' jurisdiction of the federal government, and it could reinvest its revenue in transfers to the provinces that offer sustainable development propositions according to equivalency agreement. This last point entails that the federal government would have a conditional, explicit and detailed criteria on how the carbon control revenues ought to be spent. Quebec and British Columbia have already implemented provincial carbon taxes. But the interlocking of federal provincial taxing programs would add layer of complexity and permit a revenue neutral strategy, thus exacerbating the current horizontal imbalance. A federal carbon tax would also avoid the sort of free-rider problem that is symptomatic of both the poorest and most affluent provinces.[38] The only problem that remains is the issue of competitiveness. Indeed, the federal Minister of Environment, Jim Prentice, has stated that he will stand for the integration of carbon price with the US: "It makes no sense to have a price on carbon, which is one of the fundamental drivers of our economy, and try to price it differently in Canada than the United States. It will not work."[39] Unilateral carbon tax moves from the provinces might be better than cap and trade initiatives, yet a comprehensive federal carbon tax is an imperative when considering the depth of the structural problem.

This analysis has shown a correlation between the centralization of the institutional framework in climate change policy and effective action in this policy area. The findings reveal that indeed, the federal government's role is to enforce an environmental assessment, an explicit and detailed regulatory scheme, and a compliance mechanism that will induce behavioral change in both production and consumption. It should also set up a transfer system conditional on equivalency and a Canadian fund for sustainable development. Furthermore, its ideological role is to rally all the provinces to a national consensus that will facilitate the country's negotiations abroad. The model also prescribes that the legal regime should be compelled to set a precedent by affirming the federal jurisdictional responsibility in the area. Although structural change is essential in fulfilling those predictions, centralization of

power amplifies the outcomes of personality and party politics. Therefore the role of the electorate in holding governments to account according to their respective roles and responsibilities is also an imperative in climate change policymaking. Since Canada's Greenhouse emission growth remains on a rapid growth trajectory-and this will not change until the tar sands development is curbed-the federal government is actively violating its own statute. There is an evident urgency for a "change of course" in Canadian leadership in climate change policy-making.

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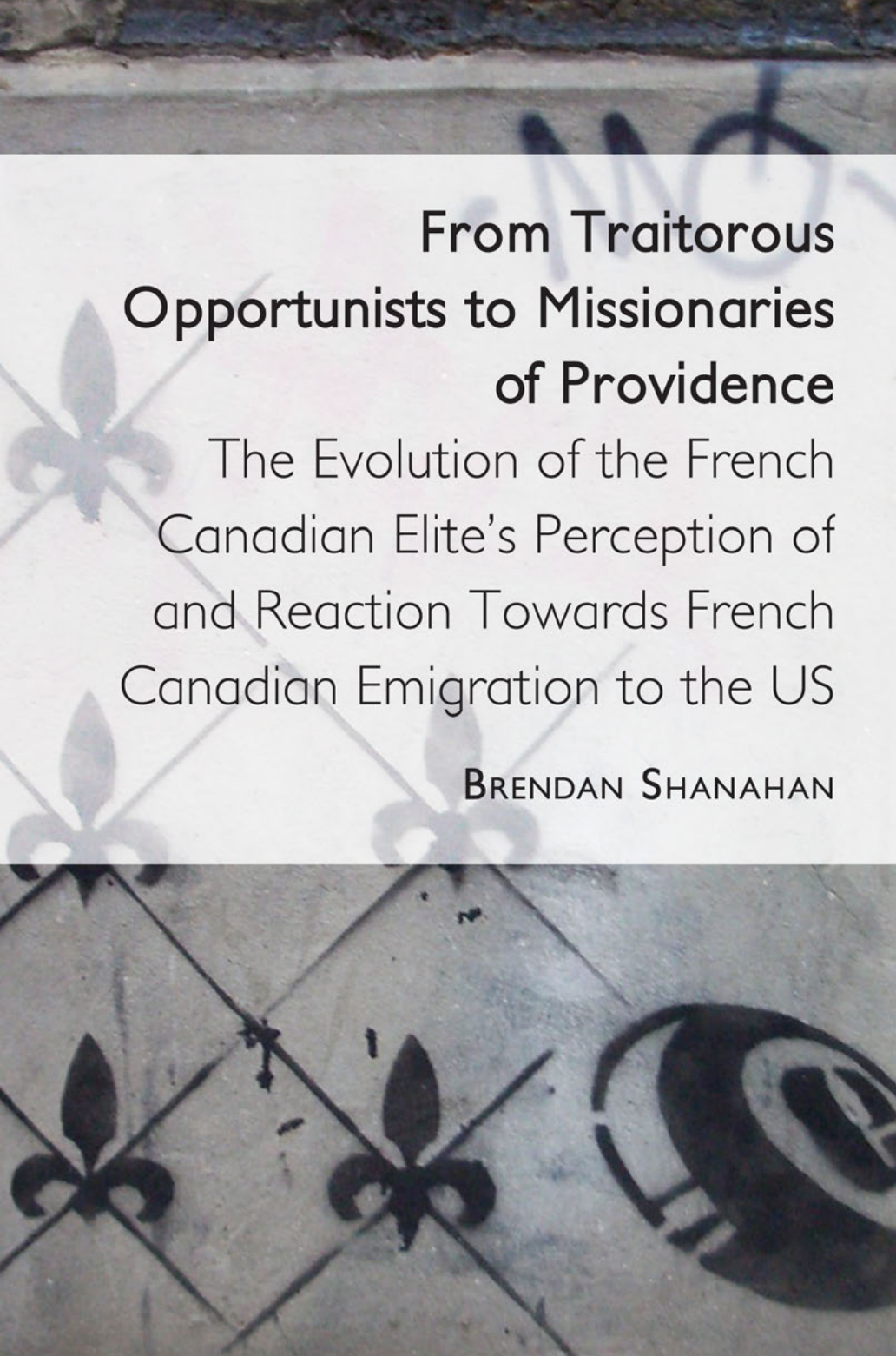

From Traitorous Opportunists to Missionaries of Providence

The Evolution of the French Canadian Elite's Perception of and Reaction Towards French Canadian Emigration to the US

Brendan Shanahan

Tout veritable Canadien, qui a dans son âme une étincelle de patriotisme, devrait repousser avec horreur la pensée d'abandonner sa patrie, pour aller se donner ou se vendre pour quelques piastres à des orgueilleux étrangers.[1]

Monsignor Louis-François Laflèche, 1864.

Mgr Laflèche, évêque des Trois Rivières … nous conseillait, en 1881, d'apprendre l'anglais, mais de ne pas l'apprendre trop bien.[2]

Alexandre Belisle recounting the commands of Mgr. Laflèche to French Canadian emigrants departing for New England in 1881, (Worcester, Massachusetts, 1920).

Between 1840 and 1930 roughly nine hundred thousand French Canadians, searching for employment, migrated either permanently or temporarily to the United States. In this protracted period of emigration the majority of departing habitants settled in the factory towns and cities of the rapidly industrialising New England states.[3] Since this emigration encompassed as much as one-third of French Canada's population and was accompanied by a greater migration within Canada, it represented part of a veritable diaspora that served as a central and defining event in pre-First World War Canadian history. For a comprehensive understanding of late-nineteenth century Canadian intellectual, political and religious history, the responses of leading French Canadian clerics, journalists, and politicians towards this emigration must be studied.

I will demonstrate that in the period roughly between the outbreak of the American Civil War and the onset of the Depression of 1873, the vast majority of French Canadian clerics and politicians opposed emigration and stressed the insurmountable dangers that migration to "Protestant" America posed for habitant farmers. Priests decried emigration as the abandonment of the Catholic faith and politicians stymied emigration and encouraged the return of migrants. In turn, this negative and often hostile attitude towards emigration greatly affected the establishment of francophone communities in New England, as middle class journalists and community leaders stressed

the affinity that their emigrant compatriots held for the mère-patrie and highlighted their desire to return to Canada. Nonetheless, events in Canada such as school language crises and the execution of Louis Riel highlighted the fragile status of the French language in Canada. Such instances contrasted with the retention of the Catholic faith and French language among thousands of emigrants, forcing elites to re-examine opposition towards emigration. Harsh rhetoric towards American-bound emigrants was tempered and Catholic clerics adopted differing attitudes towards the migration ranging from discouragement, ambivalence, and even admiration for the emigrant's mission providentielle as it became apparent that French Canadians were not doomed to lose their faith in New England. Despite a greater respect shown by leading French Canadian politicians towards the emigrant population and a larger recognition of New England francophone communities as components of "French Canada," the opposition of politicians towards emigration was based largely upon the demographic and political effects of a diminishing Québec population. As such, politicians continued repatriation efforts and sought to prevent emigration. Opposition towards French Canadian emigration to the United States remained cohesive among leading French Canadian clergymen and politicians while both parties believed it to be a direct threat to their interests. This united opposition soon splintered as clerics realised that French Canadians could remain francophone Catholics in New England, whereas politicians remained unified in resistance to the loss of their constituency and power base, which were the consequences of mass emigration.

In the 1860s, the overwhelming majority of French Canadian clergymen opposed emigration to the United States. Instead, clerics promoted an ideology of la survivance, because they believed emigrants were doomed to lose their Catholic faith to Protestant assimilation. Historians of Québec and Franco-America argue that in the nineteenth and early twentieth centuries, the French Canadian ideology of la survivance (defined as the retention of the Catholic faith, the French language, and habitant cultural traditions) gained predominance in clerical circles and spread throughout the population by means of Catholic churches and schools across Québec.[4] While this ideology taught that the defence of the French language was central in resisting

Protestant Canadian efforts to assimilate the French Canadian population within Canada, most clerical leaders and their journalistic supporters treated anglophone Protestant America and its Anglo-Saxon population with equal suspicion. For instance, the American-born ultramontane journalist Jules-Paul Tardival attacked the United States as "une vaste Sodome" not only for its 'heretical' Protestant population and its ruthless capitalism, but also as a destination where French Canadian emigrants were doomed to lose their language and Catholic faith.[5] Recognising the increasing French Canadian immigration to the United States during the American Civil War, Archbishop Ignace Bourget of Montréal actively discouraged French Canadian enlistment in the American armies since he believed soldiers would be needlessly killed in "la boucherie;" other clergymen feared enlistees would waver in their faith in a Protestant environment without francophone Catholic chaplains.[6] Similarly, as emigration peaked during and immediately after the war, the conservative Catholic journal le Nouveau Monde warned in 1869 that Canadian migrants "perdent leur foi" in the United States and maintained that as a consequence, emigrants "deviennent...les êtres les plus méprisables de la société dans laquelle ils vivent."[7] While clerico-nationalist historian Robert Rumilly noted that a handful of French Canadian priests volunteered as missionaries and pastors for the migrant population and defended the character of emigrants, he also concluded that the vast majority of French Canadian clerics initially considered the establishment of New England francophone communities untenable and opposed migration owing to the ideology of la survivance.[8]

Beyond vocal opposition towards emigration, members of the clergy took active steps to prevent it. Such actions included clerical condemnation of emigrants, cooperation with government efforts to stop emigration and an initial hesitancy to send missionaries to New England. Leading clergymen attempted to prevent migration from their parishes, condemning emigrants as traitors to the nation and threats to the survival of the race française. One popular priest, Antoine Labelle of Saint-Jérôme, referred to the migration as "le cimetière de la race."[9] Moreover, clerics highlighted the supposedly awful conditions in which French Canadian emigrants toiled in New England

factories as means of dissuasion. Many clergymen maintained that despite the low wages available to day labourers in rural Québec, conditions in New England factory towns were far worse.[10] Furthermore, as the Québec government began repatriation programmes in the 1870s to recapture much of their lost population, they turned to willing French Canadian clergymen who preached to wayward countrymen in American parishes about the possibilities of joining new agricultural settlements in Québec.[11] Similarly, as a means of keeping the rural French Canadian population of the Saint Lawrence valley within Québec, clergymen such as Archbishop Bourget promoted the colonisation of the Maurice and Ottawa valleys among farmers within their ecclesiastical jurisdiction and encouraged a greater study of agricultural sciences and farm cooperation at Catholic collèges classiques in efforts to forestall continued agricultural unemployment.[12] Moreover, in the 1860s, members of the church hierarchy expressed their disapproval of emigration by failing to send French Canadian priests to New England to serve as pastors in new national parishes for, "since the opinion was widely held in Canada that the emigrant chose to abandon his faith as well as his country, the Quebec clergy long remained deaf to the reiterated calls for French-speaking priests to care for the religious needs of the New England immigrants."[13] While a trickle of French Canadian priests visited New England to perform baptismal, communal, and marriage services during this period, Bréton-born Bishop Louis de Goësbriand of Burlington, Vermont was obliged to appeal to French missionaries to serve French Canadian migrants across northern New England.[14] Only with Goësbriand's public appeal to Archbishop Bourget and the inability of the ecclesiastical hierarchy to ignore the massive emigrant population did Bourget agree in 1869 to send nine priests to New England, thereby inaugurating the policy of sending French Canadian curés to New England parishes that would continue until the end of the century.[15]

While most French Canadian politicians opposed emigration due to the ideology of la survivance, they also feared it would threaten the Canadian state and diminish French Canadian representation in politics. Like their clerical counterparts, the vast majority of French Canadian politicians reacted with firm resistance towards emigration and based their language of

opposition upon the danger it posed to French Canadian survivance. The government of Canada East labelled emigration in 1857 "'an evil, a public calamity to be deplored,'" and blamed the migration upon a "'radical social defect.'"[16] Similarly, to discourage emigration, politicians claimed emigrant living conditions were far worse than those found in Québec, as journalist-politician Honoré Beaugrand felt compelled in 1878 to respond to the "rapports ridicules" regarding emigrant standards of living in Massachusetts furnished by "les législateurs de Québec."[17] Moreover however, many French Canadian (and English Canadian) politicians reacted with apprehension towards the enlistment of their compatriots in the American army during the Civil War when there was intense friction between the British Empire and the United States. As a result, American army recruitment officers were frequently arrested across Québec for seeking enlistees while newspapers reminded prospective recruits that service in a foreign army constituted treason, as French Canadian enlistment in the American army was seen as a threat to Canadian security.[18] Additionally, provincial inquiries regarding emigration highlight that during the Confederation period, French Canadian politicians feared that continued migration would result in the "diminution de leur representation à Ottawa."[19] For instance, in 1868, influential Liberal provincial deputy Félix-Gabriel Marchand announced that "'[l]e mal est devenu si grand, qu'il faut que des mesures immédiates soient adoptées pour en arrêter le progrès autrement il sera bientôt sans remède.'" Clearly he, like other politicians, saw emigration as a menace to French Canadian proportional representation within the Canadian state.[20]

From 1857 until the late 1870s, French Canadian politicians initiated numerous studies, attempted limited government economic intervention, and above all sought the repatriation and resettlement of emigrants to colonies within Québec, in attempts to stop the migratory flow to the United States. To study the causes of emigration, French Canadian politicians launched numerous public "enquêtes," which found in 1857 and 1868 that a lack of arable soil for habitants, a shortage in industrial employment, and the absence of work for thousands of labourers in the winter months were leading causes of emigration.[21] In response, the Québec government undertook very limited

intervention in the Québec economy as the legislature adopted in 1869 "une politique d'aide financière aux chemins de fer" in order to provide employment and to expand access to new territories while efforts were enacted to study ways to "moderniser l'agriculture" in Québec.[22] However, government intervention was highly limited by laissez-faire economic principles held by most contemporary Québec politicians and by "la faiblesse financière de l'État québécois."[23] Thus, while the government initiated limited economic intervention by building railways, Hamelin and Roby underscore that the political elite had only one immediate solution: "la conquête des terres neuves." Little was done to promote industrialisation within Québec.[24] Thus, politicians passed the 1875 Repatriation Act, which charged newly-created repatriation agents, often clergymen and journalists, to travel across New England to encourage fellow countrymen to settle in new agricultural colonies across uninhabited or sparsely populated areas of Québec. In this project, the Québec government allocated $60,000 to defray train fare costs and to publish pamphlets encouraging re-colonisation, as Québec politicians sought an agricultural solution to stem the flow of emigration.[25]

This elite reaction against emigration significantly impacted the formation of French Canadian Petits Canadas in New England, as it encouraged migrants to maintain an Canadian allegiance, to announce publically their support for repatriation to Québec, and to preserve French Canadian cultural traditions across class lines. The anti-emigrant discourse that emerged in the 1860s and 1870s had a profound effect upon members of the French Canadian middle class that migrated to New England, as journalists of all political affiliations refuted accusations that emigrants were traitors to their homeland, emphasising the loyalty emigrants held towards their patrie. For instance, anti-clerical writer Beaugrand explained that immigrants "n'ont jamais cessé de chérir et regretter" Québec, while the ultramontane journalist Ferdinand Gagnon of Worcester, Massachusetts implored his "confrères" in Canada to cease their foolish claim that they "rendre service au pays en insultant les émigrés canadiens."[26] To rebut claims that emigrants callously abandoned their native land, francophone journalists and professionals in New England publically supported repatriation efforts. Gagnon served as an agent

de rapatriement while others such as J. D. Montmarquet, of Lewiston, Maine's Le Messager, repeatedly encouraged colonisation efforts and emphasised that the majority of emigrants would return to Québec if sufficient employment was made available.[27] Similarly, this pro-repatriation effort in the 1860s and 1870s led community leaders to discourage, either implicitly or explicitly, American naturalisation (in contrast with neighbouring Irish-American community leaders of the period), as journalists such as Gagnon argued emigrants should be "[l]oyaux" to their adopted country but "Français toujours," and Worcester's French Canadian priest Jean-Baptiste Primeau argued emigrants should be "[a]vant tout...Canadiens."[28] Similarly, emigrant community leaders refuted the anti-emigrant discourse in Québec by promoting French Canadian mutual societies, journals, and national parishes in a transplantation of the language of la survivance into the new Petits Canadas of New England.[29] While it is impossible to know precisely how these notions affected the larger French Canadian working class population in New England, these concepts certainly shaped many aspects of working class immigrant experiences. For instance, many labourers responded with enthusiasm to the appeal of emigrant journalists and priests to attend the 1874 Montréal St-Jean-Baptiste celebration, as more than ten thousand emigrants attended la fête nationale in a public affirmation of loyalty to their homeland.[30] Likewise, since the vast majority of French Canadian workers remained Catholics, built national parishes from their own savings, and attended mass where "qui perd sa langue perd sa foi" was the established ideology, it is evident that the ideas of la survivance affected the experiences of thousands of emigrants across class lines.[31]

Moreover, while events in Canada in the 1870s and 1880s often highlighted the fragility of the French language outside of Québec and the failures of repatriation efforts, French Canadian emigrant experiences often underscored the successful establishment of francophone communities in New England and forced a re-evaluation of elite opposition towards emigration to the United States. While clergymen and politicians had maintained that emigration to New England would undoubtedly lead to the emigrant's loss of the French language, these arguments were undermined by threats to

French Canadian communities and francophone Canadian schools. The 1871 New Brunswick Schools Crisis, the rise of the Equal Rights Association in Ontario and Québec, and above all the execution of Louis Riel in 1885 highlighted the fragile status of the French language across Canada. These events proved to many French Canadians (and emigrants) that "Americans posed no greater danger...than did English Canadian groups like the Loyal Orange Lodge or the Young Britons in Canada."[32] Furthermore, French Canadian elites were forced to recognise the failures evinced by most repatriation efforts, for despite a spike in repatriation following the Crash of 1873 in the United States, Ferdinand Gagnon noted that just five years later, more than half of the emigrants he had helped to repatriate had once again returned to New England factory towns in a pattern reproduced across the region.[33] Additionally, the repeated movement to and from New England by members of the French Canadian middle class including priests, journalists, musicians, and composers (including "O Canada" composer Calixa Lavallée) proved to many among French Canada's elite that French Canadian Catholics were not destined to assimilation simply by living in the "materialistic" Protestant bastion of New England.[34] Above all however, since hundreds of thousands of French Canadian emigrants maintained their native tongue, founded ninety francophone "national" Catholic parishes, and established seventy-five bilingual schools between 1870 and 1890 (which often maintained a greater degree of independence from the state than Catholic schools in Canadian provinces outside of Québec), the argument that French Canadian emigrants were doomed to assimilation and to the loss of their Catholic faith in the United States was proven utterly false.[35]

Thus, since French Canadian clergymen above all sought the retention of Catholicism in a francophone milieu for the French Canadian population and the conditions of emigrants in New England proved many of their prior fears unfounded, new respectful attitudes towards emigration emerged among leading clerics beginning in the 1880s that ranged between continued opposition, ambivalence, and admiration for the "providential mission" of French Canadian emigrants. In this period, many clergymen expressed greater courtesy towards emigrants and often changed their approach

towards the migration, as the harsh language depicting emigrants as "traitres" or "paresseux" opportunists was generally dropped and the number of French Canadian priests assuming pastorates in New England increased significantly.[36] Nevertheless, numerous clergymen continued to express their disapproval of emigration by encouraging settlement in northern Québec and Manitoba, serving as leaders of colonisation enterprises in areas such as the Maurice valley, and by continuing to act as repatriation agents for the Québec government.[37] However, many leading clerics who had been staunch opponents of the migration softened their tone and expressed greater ambivalence towards emigration, as the former anti-emigrant Bishop Laflèche of Trois-Rivières no longer condemned emigrants as avaricious opportunists in the 1880s. In fact, while other bishops and curés opened colonisation societies to prevent emigration, historian William Ryan astutely emphasises that under Laflèche's tenure, "we do not find a diocesan colonization society organized in Trois-Rivières in spite of constant heavy emigration from this region to the United States." [38] Furthermore, several clergymen and lay ultramontanists saw the establishment of francophone communities in New England as the manifestation of French Canada's "mission providentielle,." Curé Louis-Adolphe Paquet saw this migration as a sign of the French race's civilising role in North America and called the migration "l'extension du royaume de Jésus-Christ."[39] This view gradually gained credence, as François Weil explains that ultramontanists, including anti-American Jules-Paul Tardival, radically altered prior views towards emigration. In effect, Tardival promoted a new vision of the migration, articulating that emigration represented the continuation "sur cette terre d'Amérique" of "l'oeuvre de civilisation chrétienne que la vieille France a poursuivie avec tant de gloire." He and others expressed a greater admiration towards the consequences of emigration without ever actively promoting it.[40] Thus, while the response of the French Canadian clergy and their journalist allies towards the migration of their countrymen to the United States had never been entirely monolithic, the retention of the Catholic faith and the French language among emigrants prompted the emergence of different clerical attitudes towards emigration beginning in the 1880s.[41]

However, while French Canadian politicians did initiate a new, deferential dialogue with emigrants and their descendants, politicians were predominantly concerned with the maintenance of the French Canadian population in Canada, as the provincial and federal governments continued repatriation efforts and above all sought preventive economic measures to discourage further emigration before the outbreak of the First World War. Largely as a result of the limited successes of repatriation programmes and their inability to ignore emerging francophone communities in New England, French Canadian politicians pronounced a more respectful discourse regarding emigrants. Honoré Mercier implored a Québec City audience of French Canadians from both sides of the border in 1889 to cease "nos lutes fratricides; unissons-nous."[42] Moreover, in 1881 and 1883, French Canadian politicians responded quickly to anti-immigrant rhetoric by members of the Massachusetts Department of Labor that labelled French Canadians "the Chinese of the East" and did not use the occasion to highlight why French Canadians should avoid New England at all costs. Rather, most defended the role that French Canadians played in creating the industrial "prospérité de la Nouvelle-Angleterre," and viewed such language as insulting to fellow members of their nationality and "race."[43] Yet, unlike the wide range of views towards emigration that emerged among the clergy, French Canadian politicians united in opposition to the migration, and maintained repatriation efforts until the onset of the Great Depression despite the fact that "ces appels restent sans echo dans la majorité des cas," as politicians were greatly concerned by the decreasing percentage of the French Canadian population in Canada.[44]

While repatriation efforts reflected few new ideas, other efforts by French Canadian politicians represented more preventative measures to keep French Canadians in Canada. For instance, the federally-funded Société de repatriement du Lac-Saint-Jean first sought the recruitment of emigrants and their children to populate the new colony north of the Saguenay River. Upon finding that most colonists who had lived in the United States actually "repirent le chemin des États-Unis," the organisation shifted its efforts towards promoting colonisation among French Canadian farmers from

the St. Lawrence valley, who were found more likely to remain in northern Québec than their Franco-American counterparts.[45] Finally, while turn-of-the-century Québec Liberal and Conservative politicians maintained support for laissez-faire economics, several younger Liberal politicians, including premiers Lomer Gouin and Louis-Alexandre Taschereau, believed that "industrialisation would put an end to emigration," and supported increased American capital investment in Québec to stimulate job creation. While these politicians still opposed most measures of state intervention in the Québec economy, their efforts in the 1900s and 1910s did aid in opening avenues of industrial employment for French Canadians, as they looked beyond agricultural colonisation in efforts to prevent emigration. As Taschereau liked to say, he "preferred to import capital than export French Canadians."[46]

The greater recognition of emigrant communities in New England by members of the French Canadian elite greatly influenced New England francophone centres, as many emigrants and their children sought increased voter participation in American politics while emphasising their population's inclusion within an abstract concept of French Canada as Franco-Américains. Francophone journalists in New England embraced the novel elite expression of respect for emigrant populations and clerical support for their "mission providentielle." In 1884, Gagnon reflected a common emigrant view in writing :"'[n]ous ne sommes plus de Canadiens errants...mais soldats d'avant-garde.'"[47] Likewise, Rumilly's work explains that elites increasingly used the term "Franco-Américain" as a term of self-description, as opposed to French Canadian, or Canadien in the fin-de-siècle, period as their communities gained greater acceptance among the elite of French Canada.[48] While a small minority among the Franco-American elite interpreted the promotion of their "mission civilisatrice" as a harbinger of the eventual political union between Québec and francophone New England, a far greater number embraced the acceptance of their communities by the French Canadian elite as an occasion to encourage naturalisation and voter participation in American politics. For instance, journalist Charles-Roger Daoust encouraged the Franco-American community in Manchester, New Hampshire to become politically active in 1890, as emigrants could now be considered Canadiens at heart and remain

français by blood, but also become naturalised "Américains."[49] However, encouragement of naturalisation did not diminish the commitment of the Franco-American elite to maintain and to propagate the ideology of la survivance among its youth, as increasing numbers of young Franco-American men studied in Québec's collèges classiques. Furthermore, many entered into French Canadian seminaries, while a large fundraising effort enabled Franco-Americans to open their own bilingual collège classique, le Collège de l'Assomption of Worcester, in 1903.[50] Thus, when Henri Bourassa announced in 1912 at the Premier Congrès de la langue française that Franco-Americans represented a central component of the French Canadian population because their Catholic faith and language retention made them a part of an abstract conception of French Canada, his statement reflected fifty years worth of evolving views towards emigrants and their descendants found among the French Canadian elite.[51] While members of this elite maintained various opinions regarding emigration and its consequences until the outbreak of the First World War, the vast majority had come to view Franco-Americans as components of "French Canada."[52]

This work argues that most members of the French Canadian elite initially opposed emigration, as clergymen and politicians alike feared the loss of members of the French Canadian population and its consequences. Yet as clerics learned that emigrants could and often did remain francophone Catholics in New England, differing attitudes towards emigration emerged among their numbers. While historians must be hesitant to attribute motives to historical actors, it is evident that the vast majority of French Canadian politicians continued to oppose emigration as their representation in Canadian politics slowly decreased in proportion to other Canadian populations. Additionally, this work explains that the avenues that clerics and government officials took in their attempts to stop emigration and recruit emigrant returnees reflected the evolving economic theories of French Canada's leaders, as the original prevailing solution, agricultural colonisation, was slowly yet consistently complimented by attempts to open industrial employment in French Canada to prevent increased emigration. Alas, this work does not present a universal assessment of how French Canadians

regarded and reacted to the emigration of their countrymen to the United States. Notably, the reactions of loggers, industrial workers and male and female farmers are absent. This essay does, however, explore the dimensions of how those in power in Québec reacted to one of the greatest challenges of post-Confederation Canadian history, and what the repercussions of their evolving responses meant to thousands of French Canadians across les deux côtés de la frontière.

Endnotes

1 This quote is cited in François Weil, Les Franco-Américains: 1860-1980, (Paris: Belin, 1989), 29.

2 Alexandre Belisle, Livre d'or des Franco-Américains de Worcester, Massachusetts, (Worcester, MA: La Compagnie de publication Belisle, 1920), 287, cited in Textes de l'exode : Recueil de texte sur l'émigration des Québécois aux États-Unis (XIX^{e} et XX^{e} siècles), edited by Maurice Poteet, Régis Normandeau, Manon Richer, Pierre Sabourin and Pierre Anctil, (Montréal: Guérin littérature, 1987), 254.

3 Yves Roby, Les Franco-Américains de la Nouvelle-Angleterre : Rêves et réalités, (Sillery, Québec: Septentrion, 2000), 11. It is very important to mention the largely understudied emigration of French Canadian habitant farmers to American Midwest farms and mining towns in the same period that accounted for slightly less than twenty-five percent of the total emigrant population (see the research of Jean Lamarre for the most up-to-date analysis of this population's history). It should also be noted that my account does not evaluate the Acadian migration from the Maritimes to the New England seaboard during this period, although a rich literature on the subject has emerged.

4 Evelyn Savidge Sterne, Ballots & Bibles: Ethnic Politics and the Catholic Church in Providence, (Ithaca, NY: Cornell University Press, 2004), 44.

5 Roby, Les Franco-Américains de la Nouvelle-Angleterre, 42. Bourget was one of many clerics who denounced the emigration in the ideological language of la survivance. Like Bourget, Mgr. Laflèche of Trois Rivières demanded in 1866, "'[c]ombien de compatriots aux États-Unis...auront perdu leur langue, peut-être leur foi, et n'auront plus de canadien que le nom, même s'ils le conservent?'" (Roby, 42).

6 Damien-Claude Bélanger, Franco-Americans in the Civil War Era (1861-1865), (Montreal: Study in the History of Canadian-American Relations, 2001), 6, 22.

7 Weil, Les Franco-Américains, 28, Barry Rodrigue, "Francophones, pas toujours, mais toujours Franco-Américains," in Franco-Amérique edited by Dean Louder and Éric Waddell, (Sillery, QC: Septentrion, 2008), 120, 123. This anti-emigration perspective did not represent a limited viewpoint, as historian François Weil concludes that clerical leaders, "[p]our la plupart...exprimèrent sans detours leurs inquiétudes et leur colère" towards the migrants, as many village priests expressed their deep aversion towards the growing "tourbe de mendiants."

8 Robert Rumilly, Histoire des Franco-Américains, (Montreal: l'Union Saint-Jean Baptiste d'Amérique, 1958), 40-46, Richard Gagnon, A Parish Grows Around the Common: Notre-Dame-des-Canadiens 1869-1995, (Worcester, MA: Domus Mariae Inc., 1995) 5-7. One of the first enthusiastic missionary-priests was Fr. Jean-Baptiste Primeau who came to be pastor of Notre-Dame-des-Canadiens parish in Worcester, Massachusetts in 1870.

9 Paul-André Linteau, René Durocher and Jean-Claude Robert, Histoire du Québec contemporain: de la Confédération à la crise, (Montréal: Boréal Express, 1979), 41, Roby, Les Franco-Américains de la Nouvelle-Angleterre, 49-50. Curé Labelle of Saint-Jérôme continually publicised the need for the colonisation of northern Québec as a means to forestall emigration to New England and served for a time as Québec's Deputy Minister of Colonisation.

10 Weil, Les Franco-Américains, 29, Rumilly, Histoire des Franco-Américains, 63-65. While the conditions de travail facing many French Canadian textile workers was often very harsh, it is undeniable that wages were much higher for textile workers in New England than those available for day labourers on Québec farms in the late nineteenth century.

11 Roby, Les Franco-Américains de la Nouvelle-Angleterre, 54-55, Weil, Les Franco-Américains, 29. At the insistence of Bishop Laflèche, such agents sometimes discussed opportunities available in Manitoba as well.

12 See Gérard Parizeau, La société canadienne-française au XIXe siècle: Essais sue le milieu, (Montréal: Fides, 1975), 206, and William F. Ryan, The Clergy and Economic Growth in Quebec (1896-1914), (Québec: Les Presses de l'Université Laval, 1966), 56-57 for an analysis of the clergy's role in dealing with failures of small farms and early attempts at colonisation.

13 Mason Wade, "The French Parish and Survivance in Nineteenth-Century New England," The Catholic Historical Review, Vol. 36, No. 2 (July 1950), 169.

14 Mark Paul Richard, Loyal but French: The Negotiation of Identity by French-Canadian Descendents in the United States, (East Lansing, MI: Michigan University Press, 2008), 28, 30-33. Rumilly, Histoire des Franco-Américains, 51, 95, Weil, Les Franco-Américains, 90-92. Richard's excellent study explains how French Dominicans largely asserted the role of administering to the spiritual needs of the large French Canadian/Franco-American community in Lewiston, Maine beginning in 1881. Richard's research highlights that French priests encouraged French Canadian naturalisation and voter participation sooner than French Canadian clergymen (probably because they had fewer connections to Québec and sought a French Canadian electorate to defend their local interests). Weil's research shows that Goësbriand's public appeal to the Archdiocese of Montréal for priests caused a minor controversy and served as a wakeup call, as French Canadian elites were forced to recognise the huge numbers of Catholics that demanded French Canadian pastors.

15 Wade, "The French Parish and Survivance in Nineteenth-Century New England," 173-176, Roby, Les Franco-Américains de la Nouvelle-Angleterre, 40, 47, 49. Roby divides his chapter, "Regards de l'autre: 1865-1900," which deals precisely with

French Canadian elite views concerning emigration, into three distinct periods: 1. L'ère du mépris (1865-1873), 2. La crise économique et les projets de rapatriement (1873-1879) and 3. Les Canadiens français des États-Unis et la mission providentielle (1879-1901). While these dates usually correspond to the evolving attitudes of French Canadian elites towards emigration, Roby does not note that his dates must be seen flexibly, as attitudes taken by elites did not always perfectly correspond to American economic trends of industrial growth (1865-1873) or depression (1873-1879). This is an essential point because he maintains that with the onset of the Crash of 1873 and the return of many French Canadians to Québec, new views regarding emigrants began to percolate. Yet, prior research by Mason Wade and François Weil had demonstrated that priests started to serve French Canadian migrants in significant numbers four years before the onset of economic depression!

16 Bruno Ramirez, Crossing the 49th Parallel: Migration from Canada to the United States: 1900-1930, (Ithaca, NY: Cornell University Press, 2001), 1. I must note that every monograph regarding French Canadian migration to the United States references the following quote that has been attributed to George-Étienne Cartier: "Laissez-les partir, c'est la canaille qui s'en va," (Roby, 41). However, this quote has never been proven to have been spoken by Cartier and while it may have reflected the opinion held by some French Canadian elites in the 1860s and 1870s toward the migration, this quote also reflects a prominent Franco-American manner of remembering the early period of their ancestors' migration as 'l'ère du mépris" to use Roby's words.

17 Honoré Beaugrand, Jean la fileuse, (Fall River, MA: L'Echo du Canada, 1878), reprinted, (Bedford, NH: National Materials Development Center for French, 1980) 1-2.

18 Jean Lamarre, Les Canadiens français et la guerre de Sécession: 1861-1865, (Montreal: VLB Éditeur, 2005), 79-80, 90.

19 Yolande Lavoie, L'émigration des Québécois aux États-Unis de 1840 à 1930, (Québec: Éditeur officiel du Québec, 1979), 4, 13-16, Roby, Les Franco-Américains de la Nouvelle-Angleterre, 40.

20 Roby, Les Franco-Américains de la Nouvelle-Angleterre, 40.

21 Lavoie, L'émigration des Québécois, 13-14, Linteau, Durocher and Robert, Histoire du Québec contemporain, 41-42.

22 Linteau, Durocher and Robert, Histoire du Québec contemporain, 41-42.

23 Ibid., 282.

24 Hamelin and Roby, Histoire Économique du Québec, 72.

25 Roby, Les Franco-Américains de la Nouvelle-Angleterre, 47-48, Jean Hamelin and Yves Roby, Histoire Économique du Québec 1851-1896, (Québec: Fides, 1971), 71.

26 Beaugrand, Jean la fileuse, 1, Ferdinand Gagnon, "Les Extrêmes," L'Éntendard national, (Worcester, MA: 7 August 1873), cited in Textes de l'exode, 317.

27 Rumilly, Histoire des Franco-Américains, 73, 77, Roby, Les Franco-Américains de la Nouvelle-Angleterre, 47, Richard, Loyal but French, 28. Richard importantly notes that Montmarquet complained that "the Canadian government spent large sums of money to encourage immigration, particularly of people of English and Scottish ancestry, but did little to help Canadiens who lived in poverty" as a means to defend the motivations of emigrants in emphasising that they had no other choice but to seek employment in the United States (28). This was a common argument as emigrant elites at the 1873 "Convention des Canadiens français aux États Unis" deplored that "les gouvernements dépensent tant d'argent pour attirer des étrangers au Canada et semblent se désintéresser des Canadiens français des États-Unis désireux de revenir au pays" as a means to express the Québec government's culpability in failing to attract large numbers of French Canadians (Roby 47).

28 Ronald A. Petrin, French Canadians in Massachusetts Politics, 1885-1915: Ethnicity and Political Pragmatism, (Salem, MA: Associated University Presses, 1990), 50, Sterne, Ballots & Bibles, 43-45, 51, Wade, "The French Parish and Survivance," 178-179.

29 Weil, "Religion et ethnicité," 192, Wade, "The French Parish and Survivance," 178-179. Unfortunately, we cannot know to what degree members of the emigrant middle class would have emphasised loyalty to French Canada in the absence of hostility to emigration. We cannot come to conclusions regarding how much this language represented a defensive assertion of their loyalty to French Canada or a transplantation of pre-existing survivance ideas.

30 Wade, "The French Parish and Survivance," 179.

31 Weil, "Religion et ethnicité," 190-192, Wade, "The French Parish and Survivance," 178-181.

32 Richard, Loyal but French, 28, Linteau, Durocher and Robert, Histoire du Québec contemporain, 282, 322. Linteau et al. affirm that the 1870s and 1880s were marked by a rise of two conflicting notions of Canadian nationalism made manifest by schools crises, the creation of Manitoba, the second Riel Crisis, ethnic politics, and competing visions of imperialism (322-323). Richard notes that the Riel Crisis and school battles were not the only conflicts that forced a change in perception towards migration as Québec newspapers also deplored that English was the language of "legislative bodies, businesses and passenger trains" throughout the country and even in many parts of the province of Québec.

33 Roby, Les Franco-Américains de la Nouvelle-Angleterre, 48, Hamelin and Roby, Histoire Économique du Québec, 67.

34 Rumilly, Histoire des Franco-Américains, 76, Robert Perrault, La Presse franco-américaine et la politique : l'œuvre de Charles-Roger Daoust, (Bedford, NH: National Materials Development Center for French, 1978), 1-5, Rodrigue, "Francophones," 134. In fact, many of the sons of Québec politicians and journalists sought early careers as writers and editors for New England francophone papers before returning to Québec.

35 Weil, "Religion et ethnicité," 192, Roby, Les Franco-Américains de la Nouvelle-Angleterre, 51, Rumilly, Histoire des Franco-Américains, 71-72, 82-84, Richard, Loyal but French, 28, 30-31. Rumilly illustrates in great detail the founding of parishes and mutual aid societies in New England from the period of 1870 until 1900, which culminated in the establishment of a national Franco-Américain association, l'Union Saint-Jean-Baptiste d'Amérique, which, at its height in the 1920s, counted around 55 000 members.

36 Roby, Les Franco-Américains de la Nouvelle-Angleterre, 49.

37 Hamelin and Roby, Histoire Économique du Québec, 68, 163, Ryan, The Clergy and Economic Growth, 57-68, Weil, Les Franco-Américains, 30-31.

38 Belisle, Livre d'or des Franco-Américains de Worcester, Massachusetts, in Textes de l'exode, 254, Ryan, The Clergy and Economic Growth, 95. Ryan specifically emphasises that Laflèche recognised the need to seek industrial employment in the 1880s, as he claims Laflèche's views evolved and recognised the futility of seeking solely agricultural solutions to the problem of emigration.

39 Roby, Les Franco-Américains de la Nouvelle-Angleterre, 52-53.

40 Weil, Les Franco-Américains, 30, Robert G. LeBlanc, "The Francophone 'Conquest' of New England: Geopolitical Conceptions and Imperial Ambitions of French Canadian Nationalists in the Nineteenth Century," American Review of Canadian Studies, Vol. 15, No. 3 (1985), 288, 294-296, Patrice Groulx, "Benjamin Sulte et François-Edme Rameau de Saint-Père : une correspondance sous le signe de la hauteur" (Lettres de la Francophonie Nord-Américaine : Colloque du Centre de recherche en civilisation canadienne-française, Université d'Ottawa, Ottawa, 6 November 2009) This "mission civlisilatrice" should be considered within the contexts of international imperialism, as both secular and Catholic French imperialists explained the expansion of the Second French Empire in the terms of expanding "French civilisation" and emphasised the supposed superiority of the "French race." A nationalist offshoot of this missionary, French Canadian civilising ideology emerged in the 1890s among several clerico-nationalists (including French-born Edouard Hamon), as they believed continued emigration to New England would result in the territorial extension of French Canada and held that the high birthrate among French Canadians on both sides of the border and the ability of emigrants and their children to resist American assimilation would create the conditions where large francophone communities in America could be joined in a French Canadian state.

41 Weil, "Religion et ethnicité," 192.

42 Rumilly, Histoire des Franco-Américains, 126, Richard, Loyal but French, 55-56. Richard documents Mercier's 1893 visit to Lewiston, Maine where Mercier went as far to suggest that "Franco-Americans" had gained more respect of New England Yankees than French Canadians had gained in Canada among their Anglo-Canadian co-citizens. Mercier was the first big-name politician to make grandiose speaking tours across New England francophone centres but similar tours would be continued by politicians such as Henri Bourassa.

43 Assemblée Législative de Québec, Les Canadiens français aux Etats-Unis : discours des honorables MM. Paquet, Joly, Marchand, (Quebec: séance du 28 mars 1883), 1, 14, Rumilly, Histoire des Franco-Américains, 95-97, 102.

44 Roby, Les Franco-Américains de la Nouvelle-Angleterre, 55, Hamelin and Roby, Histoire Économique du Québec, 69-71.

45 Robert LeBlanc, "Colonisation et repatriement au Lac-Saint-Jean (1895-1905)," Revue d'histoire de l'Amérique française, Vol. 38, No. 3, (1985), 379-380, 407. I should note that LeBlanc's article focuses on the failures of this corporation to promote a sufficient amount of colonists. Although officials did find French Canadian habitants more likely to remain in northern Québec, they still found great difficulty in convincing them to migrate in significant numbers.

46 Claude Bélanger and Damien-Claude Bélanger, "French Canadian Emigration to the United States, 1840-1930," http://faculty.marianopolis.edu/c.belanger/QuebecHistory/readings/leaving.htm, Linteau, Durocher and Robert, Histoire du Québec contemporain, 43. A growing number of French Canadian politicians favoured American investment in industry and an even smaller number favoured state intervention in the Québec economy to create jobs, stop emigration and increase industrial output at the turn of the century.

47 Roby, Les Franco-Américains de la Nouvelle-Angleterre, 59.

48 Rumilly, Histoire des Franco-Américains, 121.

49 Charles-Roger Daoust, "Soyons Américains," L'Étoile, (Lowell, MA: 1890), cited in Perrault, La Presse franco-américaine, 62-63, Richard, Loyal but French, 32-36, Roby, Les Franco-Américains de la Nouvelle-Angleterre, 69-70. This view was quite widespread among the emigrant elite as Richard's study of Lewiston notes the same tendencies in the late 1880s and Roby underscores that even the repatriation agent Ferdinand Gagnon encouraged naturalisation among those who were convinced they would spend the rest of their lives in America as the recognition of the ability to balance being an American citizen and a loyal member of the "race française" greatly encouraged a greater French Canadian participation in American politics.

50 Rumilly, Histoire des Franco-Américains, 198-200, Richard, Loyal but French, 56, Josaphat Benoit, "Catéchisme d'histoire Franco-américaine," (Société Historique Franco-Américaine, 1939), cited in Textes de l'Exode, 246. La survivance remained (and in smaller circles still remains) a central ideology for Franco-Americans. The depth of this ideology is best depicted by this 1939 catechism, written for elementary students at Franco-American parochial schools. In this instance, students were instructed to answer the following question: "Que sont devenus les Franco-Américains qui ont abandonné leur langue et change leurs noms?" with the telling response: "La plupart sont tombés dans l'insignificance."

51 Henri Bourassa, La Langue française et l'avenir de notre race : discours prononcé devant le premier congrès de la langue française au Canada à la sixième séance générale, vendredi soir, le 28 juin 1912, (Québec: l'Imprimerie de l'Action Sociale Limitée, 1913), 2, 6-10, 15. At this conference regarding French Canada and the

protection of the French language, Franco-American delegates were treated as if they represented another portion of the French Canadian population, regardless of territorial boundaries.

52 One must always question the relevance of issues regarding "identity," because for many emigrants and their children, factory employment dominated their time, while most did not leave behind written records explaining how they defined their personal identity. Nevertheless, for many Franco-Americans in professional positions such as journalism, the evolution of the French Canadian elite's perspective towards New England's francophone communities was of paramount importance.

'Just That Friendly Giant to the North'

Draft-Age Immigrants to Canada during the Vietnam War

Sierra Robart

Uncle Ernie's Rant Comes Back to Me Thirty Years Later.

Tell me why you deserted your country in time of war,
and I'll tell you why the grass is not greener.
You'll wish you'd taken the bull by the horns
at Fort Lewis and showed up back in 1969
when it was your turn, when your number was up.
I don't mean the draft lottery, Sir Galahad.
I mean when boot camp was over and you had orders.
You'll wish an elephant had sat on you
to make you think twice about driving to Canada.
Mark my words. Put them in a file cabinet.
Take them out in three decades. Your mother
may rally to your cause, and your father,
but one day you'll rue every frigging northward step.
Hell, you're running off in all directions.
True north is where duty hits you over the head
like a two-by-four swung by a rancher
who's tired of sweet talking that gift horse.
Are we speaking the same language, you and I?
You can earn your way back to honesty
But you'll have to get off that vagrant's dole
your misguided folks have set up, before it's too late,
before you wake up a white-haired resident
of a broom closet over a pool hall.

-Peter Richardson[1]

"Just that friendly giant to the north"[2]

Even though circumstance and not choice has made Canada your haven," reads the first page of the *Manual for Draft-Age Immigrants to Canada,* "we are happy to welcome you."[3] During the United States' participation in the Vietnam War, an unknown number of Americans chose

to leave their country of origin for Canada in order to avoid involvement in the military. Draft dodgers and war resistors who came to Canada were (and are) often stereotyped as radical hippies, yet this parochial view fails to take into account that they must be considered as distinct from those in the larger climate of protest in the US at the time. Thus this paper will first argue that the often misrepresented and misunderstood Americans who immigrated to Canada were in fact mostly well educated and desirable immigrants; second, that the treatment of these immigrants reflected a new wave of politics in Canada. This paper will explore how Vietnam War resistors and draft dodgers affected Canadian culture and conceptions of relations with the United States. Finally, it will be shown that Canada's policy on this issue reflected growing autonomy as a country and Canadians' new consciousness of their state's role as a refuge from the particular militarism of the Vietnam era.

The United States military drafted 1,759,000 men between 1964 and 1973, for a war in Vietnam that was facing increasingly vocal opposition among the American people.[4] As a result, a mandatory draft was instituted to ensure that military strength could be maintained (ironically, the threat of being drafted also proved a motivating force for many who voluntarily enlisted).[5] Of all the numbers relating to the Vietnam War era, it is most frustrating and difficult to determine how many Americans 'dodged' the draft and became war resistors who traveled north to Canada. Tellingly, when Prime Minister Pierre Trudeau was asked about the number of draft dodgers in Canada at the National Press Club on March 25, 1969, he replied that this was "an irrelevant question from the point of view of our policy, and because it is not a relevant question, we do not have statistics on it."[6] While arguably not irrelevant, his lack of statistical knowledge is telling of the difficulty such a question poses. The most quoted statistic is that some 50,000 men came to Canada during the 1960s and '70s as draft dodgers and deserters.[7]

Along with the controversy over the exact statistics, there is also disagreement over who the immigrants were and how they saw themselves. Unsurprisingly, there are significant differences between the draft dodgers and war resistors who remained in America, and those who became expatriates in Canada. Contrary to popular conceptions that draft dodgers were

"either anti-war radicals, or traitors and cowards – products of a decadent society,"[8] many of the draft dodgers who fled to Canada were not particularly radical in their political activities.[9] In fact, many draft dodgers felt a disconnect with the larger climate of protest in the United States and Canada – some even felt out of place in situations when they came in contact with these sections of society, as they saw themselves as more pacifist than radical.[10] Those who dodged the draft were not as politically "radical" as popular opinion would indicate; hence, it seems pertinent to wonder why they made such a seemingly radical decision – to abandon their home for a country they often knew little about.

There were opportunities for those drafted to get deferments or exemptions from service, including failing military administered IQ tests or feigning homosexuality, which lead one official to remark that "the number of homosexuals seems to be growing."[11] One popular method used as an attempt to be disqualified was to feign medical or psychological conditions. It has been estimated that over one million men were able to evade military service through theatrics such as eating the contents of a vacuum cleaner to induce asthma, taking (or pretending to take) drugs or staying awake for days before examination.[12] Educational deferments were the most common method to avoid the draft but were by no means a stable one, as was illustrated by the ending of graduate student exemptions in 1968. In addition, course load, grades, and student life were all considered in granting (and withdrawing) deferment. However, many historians have argued that those draft dodgers who went to Canada made little effort to take advantage of the loop holes available to them. [13]

Although often used synonymously, there are some important distinctions to be made between draft dodgers and deserters. Jack Todd wrote in his autobiography *The Taste of Metal* that:

> Deserters are different. We tend to make people nervous. Antiwar Canadians who open their homes to draft dodgers often draw the line at deserters, who tend to be less educated, more troubled, and infinitely more likely to make off with the silverware – and quite possibly the youngest daughter's virginity. Deserters turn up alone in their fatigue jackets and

> combat boots, gaunt and desperate, with no belongings except what they can stuff in a duffel bag . . . even within the antiwar movement, deserters are outlaws.[14]

Deserters were a different breed from draft dodgers. One deserter commented that his "inclination initially was to avoid the draft but not desert, not abandon the culture and the contacts that I had grown up with."[15] However, many who originally held this view discovered that they were unable to find ways to stay in the country unless they donned a uniform and thus left in "the consciousness that if the constituted authorities knew where I was and what I was up to that I would be in the slammer."[16]

The legal status – as well as the popular conception – of deserters was different from draft dodgers. Historian Frank Kusch argues that deserters were generally more politically motivated once they arrived in Canada, and were likewise more likely to return to the United States when amnesty was granted in the late 1970s. Even so, it is important to recognize that some deserters were originally draft resisters who were drafted in spite of their efforts to avoid being inducted by force into the army. Thus their motivations and attitudes towards the war remained the same, regardless of their new circumstances. To escape that new and unwanted condition required extreme action, even if they were not personally given to extremism.

As Peter Richardson notes in the opening poem, there was a negative conception that those who took the extreme action of fleeing to Canada thought of themselves as some kind of 'Sir Galahad.'[17] This characterization holds that draft dodgers did little to investigate the options available to them because they felt that they were doing what was just and right. In reality, evidence has shown that those who dodged the draft made little effort to take advantage of loop holes because they felt that "the decision to go to Canada was in a sense preordained."[18] There was a sense that avoiding the draft from within the United States was simply a way to postpone the inevitable, that the draft boards would find them eventually and the primary concern of the vast majority who fled to Canada was to move on with their careers, education and lives.[19] One draft dodger even stated that one of the reasons for making a quick decision to move north was because most of his university credits

were transferable to Canadian schools.[20] Canada was seen as a refuge from militarism, but apart from this limited view, information on Canada was difficult to glean. One draft dodger took a trip to Canada before making the final decision to stay there because he wanted to confirm that it "was actually a civilized country."[21] In spite of lack of information, for draft dodgers and deserters, Canada was first and foremost a place where one could continue life with a minimal level of discomfort.

The American press represented those who left for Canada as "boys without a country" who would soon realize that leaving America was more than an act of youthful rebellion, that it was a "loss of country and home."[22] Indeed, the media presented a common conception of men torn from their country by a moral dilemma.[23] However, testimony of draft dodgers often asserts that the choice was not complicated, particularly as adaption to the new country was relatively easy. One draft dodger indicated that the most difficult part was "try[ing] to find substitutes for some of my favourite brands of food."[24] Of course this glib remark does not represent all dodgers' and deserters' feelings about leaving home and country under such stressful circumstances, but it is a testimony to the ease of cultural inclusion that they felt when they arrived in Canada. When asked if he felt welcome in Canada, one deserter said "very much so... and I don't know how that worked, I just came; I had no contacts in Canada."[25] Indeed, many Americans who came to Canada found many similarities between the two countries. Similarly, many Canadians were starting to see this themselves as it became increasingly evident to them that the Canadian economy and culture was influenced heavily by the United States, and this recognition was a crucial development.

Canadian immigration policies were undeniably affected by a growing fear of Americanization, as well as the political and social repercussions that came from the mass immigration of draft-age Americans in the 1960s and '70s. Canadian immigration policies changed in 1967, when Canada began to assess each applicant's potential to be valuable to Canadian society. Each applicant was now to be evaluated on a scale of 100, with 50 points making one eligible for immigration.[26] This system left the border guards in a discretionary position when it came to those applying at the border for immigration.

The ambiguity created by this highly subjective system is illustrated by cases such as that of a young man who was denied entry at the Thousand Islands Bridge with a rating of 30 points on the scale, but who was later admitted with a much improved score of 70 points when he applied at Montreal Airport.[27]

Although a highly subjective process, American men crossing the border to Canada were generally welcomed by the discretionary border officials. It became clear as early as 1967 - that American war resistors were the highest calibre of immigrants coming into Canada at a time when skilled labour was in high demand.[28] Some have even argued that the popular conception of a "brain drain" from Canada into the United States[29] was reversed by this flow of educated and affluent draft dodgers in the 1960s and '70s.[30] The Vietnam Era Research Project found that draft dodgers were dramatically more educated than native born male Canadians, as well as other post-war immigrants. Even military deserters (who have been proven to be of lower economic and educational status) had a higher level of education than the two comparison groups.[31] However, the Canadian point-based immigration policy was still vague on acceptance of draft dodgers, and at best negative when it came to deserters.[32]

In examining Canada's Vietnam era immigration policies it is important to remember the legacy of discrimination that Canadian immigration policies carries. For instance, Canada's rejection of Jewish immigrants during the Second World War era created a lasting legacy of shame, a moment that must be considered when recognizing the pressure that the government was under to admit what some insisted on calling "political refugees."[33] The subjective nature of the point system, and the immense power left in the border guards' hands, created a situation in which moral pressure from within Canada to accept dodgers and deserters certainly had an effect on the government and the guards.

On May 22 1969, Allan MacEachen, Minister of Manpower and Immigration, finally and definitively clarified Canadian immigration policy when it came to draft dodgers and deserters. The minister asserted that "membership in the armed service of another country, or desertion, if you like, potential or actual, will not be a factor in determining the eligibility of

persons applying for landed immigrant status in Canada."[34] This declaration proved to divide parts of the government; there were certainly forces who believed that Canada should not "be a haven for those who seek to desert from the armed forces and the military obligations of their countries."[35] In addition to this obvious division, the way that the declaration was portrayed in the American and Canadian press illustrates the countries' differing views on Canada's position towards the draft dodgers and deserters. The headline of the Toronto-based *Globe and Mail* read "Deserters will be Eligible for Status as Immigrants" while the *New York Times* proclaimed "Canada to Admit any U.S. Deserter."[36] The Canadian newspaper's use of the word "eligible" and of the concept of "immigrant status" clearly shows a cautionary attitude, while the sarcastic *Times* headline reads as an open invitation. The *Times* article continues with its implied criticism of the Canadian policy, saying that Canadians "are unsympathetic to the Vietnam War, and find nothing repugnant about trying to escape combat in it."[37]

Along with the culture of sympathy towards the draft dodgers and deserters that was being aroused on Canada's college campuses,[38] it seemed that Prime Minister Trudeau himself was openly welcoming draft dodgers to Canada, and even indicated that Canada should be a "refuge from militarism."[39] Indeed, for many deserters and dodgers, "Trudeau was seen as basically being the author of opening the doors to draft dodgers and deserters to Canada."[40] However, even Trudeau's views were not completely clear cut. Some Canadians saw the draft dodgers and deserters as a positive force that would join the fight against U.S. power and influence in the world, and one that would aid in the fight against the war in Vietnam.[41] Some lionized them, while others believed that they should just be treated as any other immigrant.[42] It seemed like a win-win situation to some, in which Canada would gain skilled labourers, while the United States would lose radicals and dissidents.[43] Still other Canadians saw the draft dodgers and deserters as yet another unwanted import from the U.S. that was taking jobs and extending American influence in Canada.[44] Most extreme were the Canadians who believed they were criminals who must be deported to face punishment at the hands of the American authorities.[45] However, the evidence points to the idea

that the majority of Canadians were in favour of the policy of admission to all those seeking immigration, regardless of their military status in their country of origin.

Both the government and the people saw admission of dodgers and deserters seeking refuge in Canada as a way to assert autonomy from American influence.[46] Historian John Hagan argues that Canada began a more autonomous, independent and benevolent foreign policy by admitting Vietnam War resistors – a legacy that led to Canadian decisions such as establishing relations with Cuba, and becoming a leader in the effort to create an international criminal court.[47] Beginning in the 1950s, Canadians became increasingly aware of a trend of Americanization in industry and culture, and continuing into the 1960s and '70s it became a Canadian priority to establish a unique identity in the face of increasing American influence.[48] To admit fleeing US citizens was not only a way to assert political autonomy, but also to assert moral superiority against a country "running amuck."[49]

House of Commons debates reveal a feeling that accepting "those who are essentially political refugees" was a Canadian tradition that went back to the times of the United Empire Loyalists.[50] This connection establishes an argument for an ethically sound decision that reflects Canadian tradition in the face of American actions, again indicating Canadian autonomy. Poll results in the early 1970s convey this shift of opinion. When asked "do you think the Canadian way of life is, or is not, being influenced too much by the U.S.?" the results in the affirmative grew from 27 percent in 1956 to 57 percent by 1974.[51] Indeed, it seems that "when the United States is involved in foreign military adventures, Canadians become most conscious of their distinct national identity. Canadians see themselves as a peace-loving people. . . Canadians reason that to maintain their distinct national identity as [a] peaceful, tolerant nation . . . they must protect themselves from American cultural influences."[52] This emphasis on a conception of Canada as a peaceful country is echoed in the words of one deserter, who recounted a story about Ottawa in the summer of 1969:

> The National Capital Commission has a mandate to keep Ottawa looking like a park…so there were obviously large areas that were grassy which

> people walked across because they liked walking across grassy areas. When they walked across it too much and wore the grass out, the NCC would come in and replace the sod with new sod. And in the U.S. what they would do is they would just put up "Keep Off the Grass" signs. . . "Violators Subject to Prosecution." And that to me, that was the kind of profound subtle difference that is one of the dividing lines between the US and Canada.[53]

The controversy over the Vietnam War and the admittance of draft dodgers and deserters into Canada was arguably a significant factor in turning the tide of public opinion against the United States. As the *Manual for Draft-Age Immigrants to Canada* wrote, Canadians are "uncomfortable about American militarism and generally sympathetic to draft dodgers."[54] Indeed, the pressure to secure a definite culture apart from American influence can be seen in the establishment of the Radio-Television Commission in 1968, which was the first commission to effectively set up content rules for Canadian radio and television programming. This resulted in regulations in 1971 calling for 30 percent of all music played on Canadian radio stations to be Canadian in origin.[55] In addition to increasing anti-American sentiment, the draft dodgers helped to create a climate for new social movements such as the gay and lesbian liberation movement, and the movement for alternative schooling, which would become important in Toronto in the 1970s.[56]

Despite common conceptions in the United States that draft dodgers and deserters wanted to "go home," when President Jimmy Carter granted amnesty in 1977 to "remove that festering wound,"[57] few decided to return.[58] Draft dodgers, and to a lesser extent deserters, recognized the choice to move to Canada as a permanent life decision rather than a temporary place to hide out until things blew over. Those who left recognized "that if I left the country that would be it, there was no hope of return at the time. You would always be a criminal and subject to arrest upon return to the country."[59] Early on, when asked whether they would return to the United States if they were granted amnesty the next day, draft dodgers and deserters often answered that they would; however, they also recognized that "there was no suggestion of the possibility for amnesty."[60] By the time amnesty was granted, most of these

men had assimilated into Canadian culture, with careers and families that tied them to the country. Above all, the amnesty was seen as an opportunity to return to the States to visit loved ones, but not to remain in a country that had become foreign.

During the Vietnam War era, Canada gained valuable human resources through the immigration of thousands of draft dodgers and deserters. Popular conceptions about who these men were often prove inaccurate. For the most part, draft dodgers and deserters were better educated than other immigrants and made positive contributions to Canada. In examining testimony from those who came north, a picture comes into focus of men who wanted to move on with their lives in a country that represented hope and opportunity. Further, Canada's decision to admit draft dodgers and deserters represented a definite break in policy with the United States, as the only message to be gleaned from such an action was one of censure towards American internal and international actions. The idea that Canada created a haven for those who deserted their country in a time of war (even a war that was not, in the end, supported by its own people) is still a sensitive topic. The issue of draft dodging still plays a prevalent role in American politics, even coming up as part of smear campaigns against presidential candidates Bill Clinton and George W. Bush during their bids for the White House. However, in Canada, draft dodgers and deserters have noticed a palpable attitude of nonchalance when the issue is raised.[61] This dichotomy of reaction clearly indicates how the policy of admitting dodgers and deserters established a definite break with American hegemony in politics and culture. The acceptance of these men was not only a statement about Canadian independence; it was a statement about fundamental Canadian values.

Endnotes

1 Allan Briesmaster and Steven Michael Berzensky, eds. *Crossing Lines: Poets Who Came To Canada In The Vietnam War Era*. (Hamilton, ON: Seraphim Editions, 2008) 191.

2 Private Interview, March 19, 2009. Page 3.

3 Byron Wall, ed. ***Manual for Draft-Age Immigrants to Canada,*** rev. 5th ed. (Toronto, ON: House of Anansi, 1970) 1.

4 David S. Surrey. ***Choice of Conscience: Vietnam Era Military and Draft Resisters in Canada.*** (New York: Praeger Publishers, 1982) 37.

5 (Surrey, 37)

6 Roger Frank Swanson, ed. ***Canadian-American Summit Diplomacy, 1923-1973: Selected Speeches and Documents.*** (Ottawa: Carleton University Press, 1975), 281.

7 Estimate range from 10,000 up to 120,000; however, 40-60,000 seems like the most reasonable number given the statistical material available for consultation. This number quoted in John Hagan. *Northern Passage: American Vietnam War Resisters in Canada*. (Cambridge: Harvard University Press, 2001), 3; Suzanne Morton, "Canada, the US and the Cold War," Hist 203, McGill University, Montreal, Quebec, 23 March 2009.

8 Frank Kusch. ***All American Boys: Draft Dodgers in Canada from the Vietnam War.*** (Connecticut: Praeger, 2001) 2.

9 Kusch, 3, 7, 100; Renee G. Kasinsky, ***Refugees from Militarism: Draft-Age Americans in Canada.*** (New Brunswick: Transaction Books, 1976), 24.

10 Kusch, 87, 105; Private Interview, March 19, 2009. Page 2-3.

11 As quoted in Kusch, 71.

12 (Kusch, 72)

13 Ibid., 82.

14 Jack Todd, ***The Taste of Metal: A Deserter's Story***. (Toronto: Harper Flamingo Canada, 2001), 145.

15 Private Interview, March 19, 2009. Page 2.

16 Private Interview, March 19, 2009. Page 2.

17 This conception is important and interesting for a variety of reasons. In Arthurian legend, Sir Galahad represents a knight that is almost Christ-like in his gallantry and purity. However, Galahad was conceived illegitimately through the union of Sir Lancelot and the Daughter of the Fisher King, Elaine. Although this fact is overlooked in importance for the Arthurian legend, the choice of Sir Galahad as a symbolic characterization of the draft dodgers and deserters in Canada provides insight into a vision of something like stained purity. See Arthur Edward Waite, ***The Holy Grail: The Galahad Quest in the Arthurian Literature.*** (New York: University Books, 1961), 208-16, 502.

18 As quoted in Kusch, 86.

19 (Kasinsky, 53); (Kusch, 88, 96, 97, 100)

20 Kusch, 83. The ***Manual for Draft-Age Immigrants to Canada*** includes an entire section detailing educational facilities in Canada and what the student body and faculty are like at each one. Wall, ed. 79-89.

21 As quoted in Kusch, 94.

22 As quoted in Ibid., 99.

23 Ibid., 99, 104.

24 As quoted in Ibid., 101.

25 Private Interview, March 19, 2009. Page 2.

26 (Kasinsky, 67)

27 John Saywell, ed. *Canadian Annual Review 1969.* (Toronto: University of Toronto Press, 1970), 211.

28 Roger Neville Williams, *The New Exiles: American War Resisters in Canada.* (New York: Liberight Publishers, 1971), 50.

29 Although some are argued that this trend did not actually exist and rather there was an influx of brain rather than a drain, the importance here is that there was a popular conception of Canada losing the best and the brightest to the United States, whether it is true statistically or not. See Edward Fletcher Sheffield, *A Data-Paper on the Migration of High-Level Manpower to and from Canada.* Prepared for a seminar on "The Brain Drain: Fact or Fiction?" on October 23, 1964. Canadian Universities Foundation.

30 (Surrey, 108); (Kusch,111)

31 (Surrey, 109)

32 (Kasinsky, 65)

33 Suzanne Morton, "Great Depression – Responses," Hist 203, McGill University, Montreal, QC, 4 March 2009.

34 Allan J. MacEachen, Minister of Manpower and Immigration. May 22, 1969. Canada. Parliament. House of Commons. *Debates*. 28th Parl. 1st sess., (1969) p. 8930.

35 House of Commons, May 22, 1969. p. 8931.

36 Lewis Seale, "Deserters will be eligible for status as immigrants." *The Globe and Mail*, 23 May 1969, theglobeandmail.com; Jay Walz, "Canada to Admit Any U.S. Deserter." *New York Times, 23* May 1969, via proquest.

37 Walz, Page 5.

38 Trudeau even recognized this culture. See Roger Frank Swanson, ed. *Canadian-American Summit Diplomacy, 1923-1973: Selected Speeches and Documents.* (Ottawa: Carleton University Press, 1975), 281.

39 As quoted in Kusch, 95.

40 Private Interview, March 19, 2009. Page 4.

41 David Stewart Churchill, ***When Home Became Away: American Expatriates and New Social Movements in Toronto, 1965-1977.*** (PhD diss., University of Chicago, Illinois, 2001), 223.

42 Graeme S. Mount and Edelgard E. Mahant, ***An Introduction to Canadian-American Relations***. (Toronto: Mathuen, 1984), 216.

43 (Kasinsky, 57, 72)

44 Churchill, ***When Home Became Away,*** 223.

45 (Mount, 217); (Surrey, 114)

46 (Kasinsky, 57)

47 Hagan. *Northern Passage: American Vietnam War Resisters in Canada*, 219.

48 Arguably, this was a more important project for English Canadians who were not protected by a difference in language the same way that French Canadians were. Suzanne Morton, "Politics," Hist 203, McGill University, Montreal, Quebec, 25 March 2009.

49 Private Interview, March 19, 2009. Page 4.

50 Allan J. MacEachen, May 22, 1969. Canada. Parliament. House of Commons. ***Debates***. 28th Parl. 1st sess., (1969) p. 8932.

51 (Mount, 218)

52 Ibid., 214.

53 Private Interview, March 19, 2009. Page 3.

54 (Wall, 91)

55 (Mount, 229)

56 For a thorough discussion of the impact of American expatriates on Toronto's social movements from 1965 to 1977, see Churchill, ***When Home Became Away***.

57 Private Interview, March 19, 2009. Page 4.

58 Freda Hawkins, ***Canada and Immigration: Public Policy and Public Concern***. 2nd ed. (Montreal: McGill-Queens University Press, 1988), 357; Kusch, 97, 124.

59 Private Interview, March 19, 2009. Page 2.

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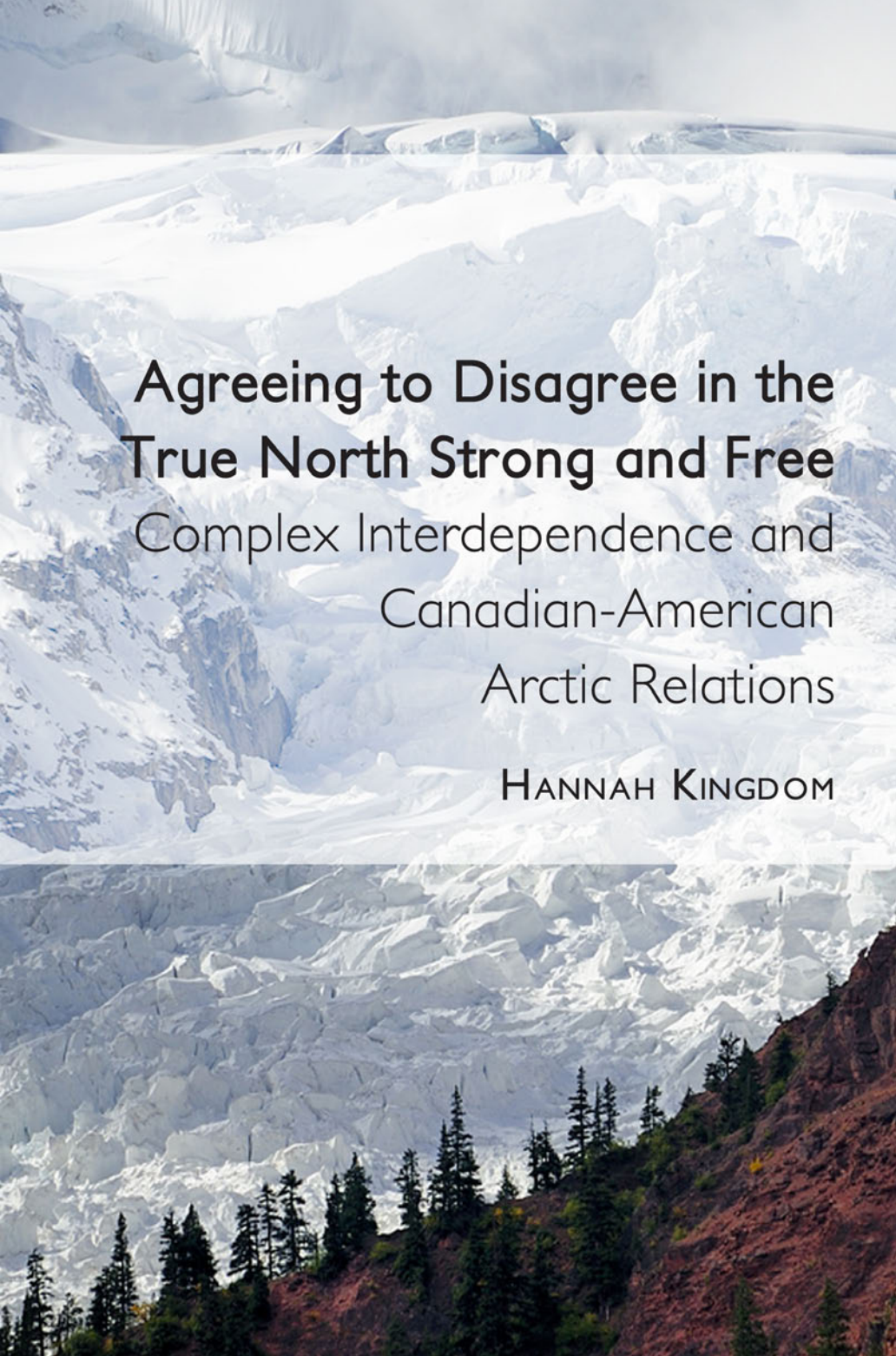

Agreeing to Disagree in the True North Strong and Free

Complex Interdependence and Canadian-American Arctic Relations

Hannah Kingdom

Introduction

Pragmatic moves by Canada in regards to Arctic sovereignty in the twentieth century have been brought into fruition due to threats put forth by the United States. Characteristics of complex interdependence between Canada and the United States in the face of such threats constitute an obstacle to complete resolution of the issue in favour of either state, due to multiple channels of interaction, an absence of hierarchy in interests, and a lack of military force[1]. Climate change in the Arctic as well as increasing global pressure to find energy sources present potential threats to Canada's Arctic sovereignty claims, and any agreement to end such would-be disputes will likely resemble either the 1970 *Arctic Waters Pollution Prevention Act* or the 1988 *Arctic Cooperation Agreement,* both of which dodged the issue of sovereignty itself. Circumstances of complex interdependence in the Canada-US relationship have precluded resolution of the issue of Arctic sovereignty in the latter half of the twentieth century; however, while the United States is not encroaching upon the status quo, the time is right to bring to an end to the underlying dispute by embarking on integrative bargaining bilateral negotiations. The solution to this ongoing issue in Canadian foreign policy must be cognizant of continuing complex interdependency, and pragmatically affirm both Canadian and American interests, yet reframed away from legal disagreements on territorial jurisdiction.

History of the Dispute

The dispute of Arctic sovereignty can be divided into three main phases,[2] beginning with the early days of the Canadian dominion. Britain transferred its northern territories in North America to the government of Canada in 1880, prompting concerns about how best to establish Canadian territorial sovereignty over the land.[3] While Prime Minister John A. Macdonald had far-sighted notions about the North's potential value, there remained uncertainty about what needed to be done in order to establish sovereignty in a place where climate effectively prohibited extensive settlement.[4] In 1907, Senator Pascal Poirier proposed "sector theory" as a means of asserting Arctic sovereignty based on the concept of contiguity: all those lands and waters north

of the Arctic Circle between Canada's eastern and western borders were to be considered Canadian, up to the North Pole.[5] Though not recognized by the United States, this theory has been alluded to continually in relation to Canada's claims.[6] Following the First World War, the RCMP permanently established stations on Arctic islands, and the Northwest Territories Council was appointed in order to regulate activities in the north,[7] evidence of Canada's incremental[8] assertion of jurisdiction in the area. The United States was more focused on Antarctic claims during the early 1900s; however, a study of U.S. State Department letters during the 1930s and 1940s indicates a recognition of Canadian claims during this time.[9]

The second phase of Canadian-American historic Arctic relations begins with the Second World War and the subsequent joint defense activities between the states. During this period, Canada was growing uneasy about American operations in its North, and what such activities would have on Canada's "de facto sovereignty."[10] When the United States joined the war in 1941, joint military cooperation increased under the Permanent Joint Board on Defense (PJBD).[11] Efforts centred around two major projects: the Crimson Route and the Alaskan Highway, both of which involved a high degree of American presence in order to meet their aims of stretching communications, transport, and supply across deserted areas – all funded by the United States.[12] This renewed concerns in Canada about their control of the North,[13] though generally the United States was careful to avoid any violation of Canadian sovereignty in its PBJD activities.[14] Wartime military collaboration laid the groundwork for mutual postwar cooperation between Canada and the United States,[15] however, some Canadians feared that growth of such informal cooperation could only be at the expense of Canadian identity and freedom.[16] In response, the Canadian government and military decided that, whenever possible, Canada would unilaterally carry out its projects.[17] Scholar James Eayrs, however, argues that the development of the Distant Early Warning Line was an implicit threat to Canadian sovereignty, as there was no way to ensure its rules would be observed: "de facto control of the Canadian North had passed into American hands."[18]

The 1969 voyage of the American tanker *Manhattan* through the Northwest Passage marks the beginning of the third phase of Canadian-American sovereignty relations in the Arctic, now a challenge of maritime jurisdiction in addition to territorial sovereignty.[19] Although the *Manhattan* passage was a private voyage by the Humble Oil Company, the US Coast Guard informed Canada it would send a Coast Guard ship to assist the company's efforts, whose goal it was to assess the feasibility of commercial use of the Northwest Passage.[20] While Prime Minister Trudeau welcomed the exercise, public outcry against the passage as an intrusion of sovereignty grew, prompting a response from the government.[21] Trudeau decided to find a compromise between what he saw as a unilateral assertion of sovereignty by proposing pollution regulations in the Arctic.[22]

Complex Interdependence Theory & Application to Canada-United States Relations

Post 1960, it became evident that world politics was changing. Classic realist theory could not account for the changes in international politics that brought economic, social, ecologic, and other problems to the table.[23] Security was no longer the primary issue faced by states, and thus the traditional framework for understanding both international and interstate politics needed alteration. Keohane and Nye's theory of complex interdependence is a direct response to these observed changes, and exemplifies the relationship between Canada and the United States. Division between issues of domestic policy versus those of foreign policy becomes blurred under complex interdependence, rendering traditional conceptions of national interest pursuits "un-instructive" for explaining the new forms of conflict taking place.[24] Under the three conditions of complex interdependence identified by Keohane and Nye, the outcomes of world politics are very different to those observed under realist conditions.[25] These three conditions are a lack of military force, an absence of hierarchy of issues, and multiple channels of interaction, and each are evidenced in the Canada-United States relationship.[26]

Force plays only a minor role in conditions of complex interdependence, as it is often an inappropriate or uselessly costly means of achieving the economic and ecological goals that come to the foreground.[27] Between Canada

and the United States, force has only played a limited role in the relationship; the most recent Canadian military plans for defense versus an attack or invasion from the United States were dismantled in 1931.[28] Keohane and Nye argue that although force may only have a minor role, it may also have a latent role; therefore, force is in theory a broad constraint on Canadian-American relations while its use remains highly unlikely.[29]

An absence of hierarchy of interests is the second characteristic of complex interdependence. There is no longer a hierarchy of state interests with military security at its height.[30] U.S. Secretary of State Henry Kissinger referenced this fact in 1975, when he stated that "the problems of energy, resources, environment [… and] the use of the seas now rank up with questions of military security."[31] The multitude of issues without a clear or consistent hierarchy is seen between Canada and the United States. Typically, there are a high number of economic issues on the agenda between the two countries.[32] It has also been difficult for either country to consistently discern a hierarchy of interstate issues, and as such, the realist assumption of a consistent hierarchy of goals with security at its precipice is not suited to the Canadian-American relationship.[33]

Finally, multiple channels connecting societies also characterize conditions of complex interdependence. As opposed to realism, under which only interstate relations are of relevance, this characteristic of complex interdependence recognizes informal ties between government elites, formal ties between foreign offices, informal ties amongst non-governmental elites, as well as transnational organizations.[34] This characteristic is typical of relations between advanced industrial countries, argue Keohane and Nye, and is especially true of those relations between Canada and the United States.[35] The post 1960 increase in participation of large organizations, in interstate relations represents a new facet to world politics.[36] These actors and channels act as "transmission belts, making government policies in various countries more sensitive to one another."[37] Canada and the United States are each respectively the other's largest trading partner,[38] constituting a significant and influential channel between the two countries. The Canadian and American economies are bound together, reinforced by historical and cultural ties.[39] Estimates of

border crossings place 38 million Americans and 34 million Canadians traveling to the other country annually, which, in addition to shared media cultures, and the multitude of federal agencies and their equivalents, demonstrates that Canada and the United States do not interact in the way that realism predicts.[40]

Complex interdependence does not assume that interstate relations will automatically be peaceful, and the relationship between Canada and the United States exemplifies this qualification.[41] Issue outcomes will differ from those assumed under realism due to the role of transnational and transgovernmental actors, creating a more equal pattern in bargaining outcomes under which the relatively weaker state – Canada – will win some games over time.[42] The United States continues to hold more power than Canada, but Canada has learned how to use both "growing nationalism and public politicization" to attain more favourable outcomes[43] in conflicts with the United States. The particular complex interdependent relationship between Canada and the United States is also important as it demonstrates a requirement of joint gains rather than those zero-sum wins of realist theory due to the cognizance of potential joint losses if integral economic interdependence is impeded.[44]

Failure to Resolve Canadian Sovereignty Claims is Due to Complex Interdependence

The post-war relationship between Canada and the United States is understood by theorists Keohane and Nye to focus more on the joint gain than zero-sum aspects of their complex interdependence.[45] As such, strategies in conflict and outcomes pursued have tended to be pragmatic in nature, with an avoidance of those issues on which the two countries will not be able to agree upon, or in which it is not in the joint interests of the two to resolve the situation in the direction of either country's preference. Disputes and their resolutions between Canada and the United States in regards to Arctic sovereignty demonstrate this line of reasoning. Complex interdependence places Canada in a better position to bargain with the United States in this area, and contributes to Canada's ability to bring the outcome more in line with their own preferences than classic realism would predict; however, legal

recognition by the United States was not and continues to not be in its best interests. As such, it does not constitute the joint gain ideal favoured between the two countries, and therefore pragmatic, issues-based solutions have been resorted to in order to remove irksome disputes from the relationship.

A. Arctic Waters Pollution Prevention Act [AWPA], 1970

Following the 1969 passage of the U.S. tanker *Manhattan*, growing public and media pressure forced Prime Minister Trudeau to address the issue of Canadian Arctic sovereignty. Ottawa enacted the Arctic Waters Pollution Prevention Act in April of 1970,[46] creating a hundred-mile pollution prevention zone around the Arctic in which Canada claimed the right to control shipping.[47] Canada argued that this legislation was necessary due to the danger to the environment posed by oil tankers. The *Manhattan* had been damaged on its first voyage, and although it was empty of oil for this passage, Canada recognized the trip could represent the start of international navigation by oil tankers in the area, whose spills would permanently damage the fragile environment.[48] Prime Minister Trudeau argued that Canada was not asserting its sovereignty, but rather protecting itself against environmental attack – an innovative claim for the time.[49] Gordon Robertson, former Clerk of the Privy Council, conversely insisted that this approach "continued a tradition of Canadian attempts at asserting positions that would be defensible and would not lead the Americans to a plain, flat, denial of Canadian sovereignty."[50] In any case, the United States quickly protested against the act, believing it was a violation of international law norms, and set a precedent for other passages in the world that they similarly saw as international straits.[51] Canada and the United States embarked on distributive bargaining to resolve their dispute, a move that ultimately doomed any chance that negotiations would resolve the status of the Northwest Passage.[52] The United States could not budge on its interpretation that the passage was an international strait, for this was not in its interests, as it would weaken its stance for freedom of the seas and create a precedent for other states to act similarly, thus blocking United States' global shipping needs.[53] Canada maintained its position of environmental custodianship and refused to back down on its interpretation.[54] The overriding right of self defense Canada saw in protecting the

domestic environment gave way to a refusal to allow the act to be ruled on by the International Court of Justice. Canada would not allow an international body to deal with such issues that were wholly of Canadian jurisdiction.[55] Canada was eventually able to gain support from other Arctic countries for its interpretation, and translated the AWPA to the United Nations Convention of the Law of the Sea in 1982 in Article 234 of the agreement (the "Arctic Exception").[56] There was no direct resolution to the issue of sovereignty itself or the status of the passage, due to the uncompromising and confrontational position taken by both Canada and the United States in distributive bargaining.[57]

The positions and actions taken by both Canada and the United States demonstrate the complex interdependent relationship between the two countries. This placed Canada in a better position versus the United States than realism would predict; however, recognizing Canadian jurisdiction – functional or territorial – of the Northwest Passage was incongruous with American interests and thus not a joint gain for the relationship, and the issue was left unresolved. Military force was absent in the dispute, as the costs of using it would have been too high for the relationship. The United States only uses force in oceans issues when the costs to diplomatic or other relations are low,[58] and this was not the case in its relations to Canada. As described earlier, Canadian plans for defense versus the use of force by the United States were scrapped in 1931.[59] There was also an absence of hierarchy of interests evidenced in the conflict. There are multiple issues and interests involved in oceans disputes, and they cannot be organized into a clear or consistent hierarchy:[60] naval and commercial mobility, petroleum resources, protection of the environment, fisheries, and the seabed,[61] and, for Canada, sovereignty. Whether Canada was ultimately asserting the need to protect the environment or implicitly asserting its sovereignty in the area is indeterminate; these interests cannot be ranked consistently into a hierarchy. Additionally, Canadian and American interests converge on some of these interests but not on others,[62] further elaborating the difficulty to establish a hierarchy of concerns. Multiple channels of interaction are of particular relevance to this outcome. All levels of government were involved in dealing

with the confrontation,[63] a departure from the realist assumption of governments interacting through their foreign offices. In addition, transnational organizations played a role in determining an outcome that is seen as closer to Canadian objectives than to America. When the interests of transnational organizations (TNOs) do not coincide with those of their domestic government but rather with the foreign country, the TNO will improve the foreign bargaining position. Humble Oil operated the *Manhattan*, and needed Canada's approval and support before it could undertake a second voyage through the passage, strengthening the Canadian claim.[64] They requested Canadian assistance of the voyage, which Canada understood to be an acknowledgement of jurisdiction, and ultimately of sovereignty, contrary to the official stance of the United States.[65] Despite Keohane and Nye's assertion that the result of the 1969 *Manhattan* voyage was closer to Canadian objectives due to complex interdependence and the role of TNOs,[66] there was no resolution of the Arctic sovereignty dispute, as its specific resolution was outside the realm of joint Canadian and American interests. The use of distributive bargaining constituted a competitive pursuit of separate goals, and without the preponderance of military power, neither could assert its interpretation of the claim with force. Pragmatism and a tone of moderation[67] prevailed with a focus on environmental concerns, and the controversial issue of sovereignty itself remained unsettled.[68]

B. Arctic Cooperation Agreement [ACA], 1988

Canada claimed the Northwest Passage and the Arctic Archipelago waters as "historic internal waters" in 1973 and again in 1975, yet both times the United Stated denied such a designation,[69] and the underlying disagreement continued. The United States directly confronted Canada's claims in 1985 with the *Polar Sea* icebreaker voyage through the Northwest Passage,[70] reigniting the Canadian foreign policy issue once again. The resolution of this specific clash came in 1988 with the *Arctic Cooperation Agreement*, and came about due to the use of integrative bargaining,[71] the continued relationship of complex interdependence between Canada and the United States, and the joint gains incurred from removing the specific disagreement from the relationship. The issue of sovereignty itself remained unsettled after the agreement as Canada

and the United States agreed to disagree on the legal claim, although both countries benefited from the agreement's resultant shared gains in other areas.

Initially Canada was unperturbed, and authorized the *Polar Sea* passage due to American insistence that the voyage was "without prejudice" to Canada's legal position on the passage,[72] and only meant to save the travel time and fuel costs that would be incurred by the icebreaker if it went through the Panama Canal.[73] The U.S. Embassy in Ottawa assured Canada that its reasons for going through were purely operational.[74] Over the summer of 1985 however, public and political opposition to the incursion grew in intensity, forcing the Mulroney government to work to avoid future transits through a series of "legal, military, navigation, and diplomatic measures designed to strengthen the Canadian position on northern waters."[75] Canada established straight baselines around the archipelago, effective January 1st 1986, in order to assert that these waters (which included the passage) were internal and thus part of Canada's sovereign territory.[76] Secretary of State Joe Clark stated that it was the government's policy to preserve "Canadian greatness undiminished."[77] The Mulroney government subsequently removed the former refusal to have the AWPA of 1970 brought under review by the International Court of Justice, and announced it was now ready to discuss Arctic issues with the United States[78] on the basis of full respect for Canadian sovereignty.[79] This decision was spurred on by the *Polar Sea* passage, and likely also due to scholar Donat Pharand's prediction that, unless Canada took preventive measures to assert itself in the North, the passage would become an international strait[80] by dereliction. The stance originally taken by the United States was consistent with President Ronald Reagan's 1983 statement that "the United States will not acquiesce in unilateral acts of other states to restrict the rights and freedoms of the international community in navigation and over-flight and other related high seas issues."[81] The United States responded to Canada's actions by standing by this previously stated position and its arguments that there was no basis with which to support Canada's claim of internal waters,[82] but agreed to begin discussions immediately.[83] Dialogue between the two countries continued through 1986 and 1987, but to no avail. With the

spring of 1987 came fresh impetus towards an agreement with the meeting of President Reagan and Prime Minister Mulroney in Ottawa. Reagan announced that he was "determined to find a solution based on mutual respect for sovereignty and our common security and other interests."[84] After further integrative bargaining negotiations, a mutually satisfactory outcome and unique agreement that met the practical interests of both countries was met. American passage of research ships was traded in return for an agreement to attain Canadian consent, and the legal claim of sovereignty per se was once again placed out of sight.[85]

As had been the case for the 1969 *Manhattan* voyage and subsequent AWPA, the positions and actions taken by both Canada and the United States are demonstrative of their complex interdependent relationship. Canada was in a better position against the United States than realism would predict, yet as explicit recognition of Canadian jurisdiction remained incongruous with American interests and thus not a joint gain, the disagreement was left unresolved. The agreement was seen as a "practical operation, a way for life to go in a constructive manner" by government insiders,[86] and the two countries were able to maximize their joint interests as characteristics of their complex interdependent relationship. Military force remained off the table as a means of resolution, as it had in 1970, and there continued to exist an absence in hierarchy of interests, as well as unusual and multiple channels of interaction. Also on the bilateral agenda in 1987 was the developing free trade agreement, and neither Mulroney nor Reagan wanted any impediment to its resolution.[87] This is evidence of Keohane and Nye's understanding of an absence of hierarchy of interests, as well as the importance of non-military or security concerns under conditions of complex interdependence. This also meant, however, that finalizing the legal claim of jurisdiction was politically unaffordable for Reagan, and thus outside the joint interests of the relationship. The special relationship seen between Mulroney and Reagan was at its precipice during this period, as demonstrated at the Shamrock Summit in 1985, in which Reagan recognized Mulroney as "kin" and stressed that the American relationship to Canada was its most important one.[88] This friendship made all the difference in finding an agreement for Arctic cooperation,[89]

and represents a departure from the assumption of negotiation solely through foreign offices under realism (according to Keohane and Nye).[90] The media pressure that pressed Canadian action demonstrates another channel of interaction between the two countries, as the emphasis both societies placed on the issue created domestic stress[91] on both the President and Prime Minister to find a solution. Conditions of complex interdependence characterize this period between the United States and Canada. Additionally, the two countries were dependent on each other for the fulfillment of their interests,[92] a dynamic not seen in the 1970 proceedings. The ACA demonstrates that when addressing unresolved claims of jurisdiction, states do not need to bargain in distributive terms, for mutually satisfactory solutions can be achieved through cooperative problem-solving methods[93] under conditions of complex interdependence. This outcome was the best Canada could attain[94] under the conditions of complex interdependence with the United States and the resultant need for joint gains.

A Pragmatic Future for the North

Circumstances of complex interdependence in the Canada-US relationship have precluded resolution of legal Arctic sovereignty claims in the latter half of the twentieth century; however, while the United States is not encroaching on the status quo, the time is right to bring to an end to the underlying dispute by embarking on integrative bargaining bilateral negotiations. The solution to this ongoing issue in Canadian foreign policy must be cognizant of continuing complex interdependency, and pragmatically affirm both Canadian and American interests, reframed away from legal disagreements on territorial jurisdiction. Agreeing to disagree on the status of the Northwest Passage and archipelagic waters is a necessary inconvenience for the type of complex interdependent relationship shared by Canada and the United States, as one that is focused on joint gains.[95] There are potential losses involved for both countries in attempting to finalize an agreement on this specific claim: a loss for Canada at the ICJ,[96] or a loss for the United States' position and thus a damaging precedent set for other straits integral to American global transit. Building on the type of pragmatic solutions for navigation disputes that have been historically pursued by both countries in the latter half of the twentieth

century, and the 1988 ACA in particular, is the best course of action for the interests of both countries.[97]

Canada's Arctic claims are not under direct threat by the United States, meaning that now is the best time to embark on integrative bargaining while the situation is not inflamed by emotion or the need to remove a conflict from the bilateral agenda.[98] The ACA has demonstrated the usefulness of such an approach to the Canadian-American relationship.[99] The United States has been consistently unwilling to recognize Canadian claims, although in practice it has implicitly respected Canadian jurisdiction, most recently in 2007 as stated by former President G.W. Bush at the Montebello summit.[100] The United States cannot afford to alienate Canada due to the multiple channels of contact shared, and the overall relationship of complex interdependence under which Canada is sometimes able to have outcomes closer to its own objectives, despite the overall power disparity.[101] In order for the compromise of continuing to agree to disagree to prevail, Canada must untangle its identity from legal claims of the Arctic, and reframe it around respect for bilateral cooperation and protection of the environment.[102]

Global warming is a real threat to the Arctic environment, and will bring about new openings in the ice that present concerns for both the environmental and the military security of the continent. Such problems will benefit from a joint approach to finding solutions alongside the United States, provided the issue of sovereignty can finally be set to one side. Canada should continue to agree to disagree on legal claims and attempt to sell to the United States the idea that Canadian control of the Northwest Passage is a means of securing the North American perimeter amidst growing security concerns presented by melting ice,[103] a compromise that fits with Canada's historic need to collaborate with the United States on matters of security,[104] as seen in the PBJD of the Second World War. The 2005 Jakarta Initiative may provide some basis for determining the root of relations between Canada and United States in the Arctic.[105] This multilateral solution to a similar dispute concerning the designation of water as internal or an international strait has allowed Malaysia and Indonesia, as well as the 31 countries that use the strait, to share the roles associated with environmental protection and monitoring of its

use.[106]The strait, however, was designated as international, and as Canada and the United States remain hesitant to utilize a third party to resolve its bilateral disputes,[107] the innovative role sharing demonstrated in this initiative is all that should be borrowed from this resolution, and would fit well with the countries' shared interests. Canada cannot expect the United States to leave the Arctic alone, as rising temperatures would leave the continent militarily vulnerable. However, it will also not unduly encroach Canadian claims due to the complex interdependent relationship and joint gains associated with agreeing to disagree on the claim. The time is ripe to embark on integrative bargaining, similar to that of the 1988 ACA, in order to develop a comprehensive Arctic relationship agreement for this new century.

Conclusions

Circumstances of complex interdependence in the Canada-US relationship have precluded resolution of the issue of Arctic sovereignty in the latter half of the twentieth century, and as such the two countries must continue to agree to disagree on legal claims of jurisdiction. By embarking now on bilateral integrative bargaining negotiations while there is no specific invasion to fill the discourse with nationalistic sentiments, Canada and the United States can establish an agreement that will meet their growing mutual interests and concerns in the Arctic while maintaining the tradition of avoiding determination on legal claims. The complex interdependent conditions of multiple channels of contact, absence of a hierarchy in interests, and a lack of force in Canada's relationship with the United States compel the two countries to enact only those agreements that center on the promotion of their joint gains. In the face of growing environmental destruction, Canada must reframe its national identity away from legal ownership of the Northwest Passage and the archipelagic waters in order to collaborate with the United States and protect Canadian autonomy within its borders.

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Eugenics and the Victorian Ideal of Women in Canada

Amy Johnson

After establishing a sense of national autonomy in the Confederation of 1867, Canada was faced with the task of attempting to clarify its national identity, which would have included defining criteria for national membership and a distinct, collective national character. Concurrently, Victorian social movements and ideological currents were laying the foundations of modern moral society in the western world. The simultaneous development of Canadian society and implementation of Victorian moral social models were certainly not mutually exclusive; the social identity of the newly autonomous Canada was shaped by the currents of Victorian moral trends and structures, and Canada's adoption of Victorian ideals worked to reinforce their relevance in North American society.

The Victorian discourse that can be said to have influenced the nature of Canadian society was premised on moral restraint and propriety, with racial nuances and an emphasis on the preservation of traditional gender disparity. This paper will attempt to unearth the different methods of gendered social regulation that pervaded Canadian society in the post-Confederate era and the ways in which social discourse was manoeuvred to rationalize the moral control and domination of women on a large scale. To do so, I will investigate a series of different examples from the late 19th to the early 20th century of institutionalized and legal efforts that were made to reaffirm social hierarchies, and control and regulate the lives and sexualities of women in Canada. I plan to look specifically at the eugenics movement in the Canadian West, with attention to the Sexual Sterilization Act and implemental boards of Alberta in comparison to British Columbia; the Andrew Mercer Reformatory for Women in Toronto, and its operation in relation to the Female Refuges Act of 1897; and finally the women, doctors, and procedures for "hysterical women" at the provincial Asylum for the Insane in London, Ontario.

In this process, I will recognize that though these efforts reflect a socio-sexual hierarchy and patriarchal directive, they were also supported and championed by many women, such as notable suffragettes who defended eugenics, the decisions of countless women to either commit family members or to work as prison guards that would sustain female reformatories, and women who sought refuge in asylums from their demanding, and often

poverty-stricken, domestic lives. I will regard these regulatory efforts as integral to nation-building and national clarification; in containing the lives and rights of women, Canada could establish one of many important social hierarchies and develop a social infrastructure in agreement with Victorian ideals. It is worth noting that while the paper will put paramount focus on gender subjugation, the significance of race and class can and will be easily incorporated into the discussions of Victorian notions of social acceptability.

Moral regulation of women took on a number of forms and levels of urgency in the Victorian era. While certain methods of moral and sexual control of women were subtler and generally assumed, such as guidelines for attire or gendered divisions in public space, other reformatory methods were more explicit and severe, such as legal acts directed at incarcerating morally unfit women and their eventual imprisonment. The most notable piece of legislation targeted at women considered to be falling out of moral order that would enable their subsequent incarceration was Ontario's 1897 Female Refuges Act. Originally established in 1897 to regulate "Houses of Refuge" in Ontario for women "liable to be sentenced", the Female Refuges Act was broadened in 1919, delegating to magistrates the power to sentence women who, upon informal testimony, were deemed "incorrigible."[1]

The nuances of language seemed to take precedent over formal evidential processes or legal justice. This piece of legislation allowed for the incarceration of women, between the ages of 18 and 35, for up to five years, without formal charge or trial.[2] The one required condition for incarceration was premised on subjective linguistic interpretation: the woman under question must be deemed generally "incorrigible"[3] in whatever sense of the term the prosecutor saw fit. Women who appeared to challenge Victorian guidelines of propriety, or who were more specifically considered to be "out of control" in the sense that they either drank in public or kept late hours, were considered "sexual deviants" or "promiscuous."[4] In more extreme cases, if women had children out of wedlock or were accused (without proof) of having venereal diseases, they were not only immediately deemed suitable for sentencing under the Female Refuges Act, but also considered potentially insane.[5] In addition, the majority of women charged under the act and

eventually sent to female reformatories were white, and of Anglo-Celtic origin,[6] which emphasized the racial nuances of Victorian ideals of sexual purity: women worth "saving" who were involved with men of particular ethnic origins were considered sexual deviants, and sexually promiscuous, "incorrigible" women were believed to be in need of reform and distinction from the unfixable sexual deviants of other cultures.[7] In order to clarify what Canada represented both culturally and socially as a nation with a white-Anglophonic hegemonic culture, any suspicion of social deviance or traversing of gender or racial boundaries was the object of immediate rehabiliatory efforts.

The direct assail on sexual "deviance" in attempts to cure social ills did not end with a simple charge under the Female Refuges Act. After a woman was legally confirmed as "incorrigible" or a moral threat to society, the next necessary step to her potential impact on Canadian society was containment. As mentioned before, most of the women charged under the Female Refuges Act were sent to regionally respective reformatories where they would undergo an intensive process of feminine "retraining" or "reprogramming". Perhaps the most notable of these women's institutions was the Andrew Mercer Reformatory for Women in Toronto, which opened in 1874.[8] The Mercer was a correctional facility for incorrigible females, where inmates were actively punished for their various "criminal" behaviours by often brutal physical methods such as whipping, "ice baths" and the use of handcuffs.[9]

Velma Demerson, who was committed to the Mercer in 1939 at the behest of her parents for being romantically involved with a Chinese man[10], has written an autobiography that attests to the extreme forms of punishment common at the Mercer: she addresses the alarmingly subjective nature of the Female Refuges Act, claiming it "allowed a woman to be confined, not for a 'crime' but for being *considered* 'idle or dissolute.'"[11] From her experiences at the Mercer, or what she calls a "dark, formidable fortress,"[12] Demerson depicts the lengths to which the Mercer administration went to enforce their message by inflicting physical punishment on the female social "deviants," through such barbarous clinical procedures as pouring burning liquid on the sexual organs of subjects to discourage physical temptations.[13] Demerson also notes the psychological punishment that women at the Mercer were subject to; she

emphasizes how methods of isolation and the rule that women must "remain silent" were geared at keeping subjects from encouraging deviant behaviour in each other.[14] Demerson's example can stand as a vocal representative of how the question of gender behaviour, within the context of defining Canada's national identity and social propriety, was never far from hegemonic judgments of race and ethnic belonging.

The institutionalized response to the social ill of female "incorrigibility" was the advent of women's reformatories, where misled females still had the opportunity to reintegrate into proper Canadian society if they completed domestic rehabilitation programs, such as being taught manners and how to cook.[15] Nevertheless, not all female targets of social regulation were considered suitable for integration into society, and for women who were considered "feeble-minded," the emphasis instead was on directly preventing their participation in society. The rhetoric of the sterilization movement was built around the protection of an ideal, morally-sound society, or the "mental and physical betterment of *our* racial life", as put by women's activist Emily Murphy in a 1932 article for the *Vancouver Sun* newspaper.[16] In claiming that "sterilization is more serious with women,"[17] eugenics discourse, like the previously discussed efforts to contain and rehabilitate "incorrigible" women, insinuates the imperative to shape Canadian society through the enforced social and sexual regulation of women, yet this said method of regulation was considerably more extreme, and was targeted more severely at women.

The general imperative for eugenicists was to curb the contamination of society by relinquishing the feeble-minded woman's ability to procreate. In many senses, the philanthropic rhetoric in the eugenics movement was aimed to legitimize the compulsory sterilization of women through the construction of the "feeble-minded threat,"[18] as it offered a solution to what many were becoming convinced was a growing phenomenon in particular parts of the world. For example, in 1933, the lieutenant governor of Ontario, Dr. H.A. Bruce, printed an address that predicted that by the end of the century, one half of the population would be institutionalized for insanity if Canada did not begin to enact widespread sterilization.[19]

The wave of widespread support for eugenics that peaked during the 1920s and 1930s was a complicated movement that had specific class-based, racial, and regional nuances in Canada in addition to the implications it had for gender control. While eugenics was popular nationwide, the Canadian west was particularly enthusiastic about enforcing eugenics legislation; British Columbia and Alberta were the only provinces to actually enact sterilization laws.[20] A large immigrant presence that raised "hereditarian concerns" and a smaller population of Catholics in opposition rendered the sterilization movement more powerful in the west,[21] where establishing a definitive Canadian societal identity was an important directive. In 1928, the province of Alberta introduced the Sexual Sterilization Act, which allowed for the sterilization of a patient from a mental institution after a consensus was reached by the province's elected eugenics board, granted that the patient or his parent or guardian gave consent.[22] What distinguished Alberta's legislation from that of British Columbia is that the consent clause was lifted from the law in 1937, allowing for the compulsory sterilization on those who the board felt were fit.[23]

Conceived as the "final solution to various social problems,"[24] eugenics in Canada can be understood as a multifaceted ideological apparatus geared at controlling the fate of Canadian society. Much like the Female Refuges Act and the purpose of the Mercer Reformatory, the sterilization movement was premised on Victorian social ideals of gender, seeing as maternal responsibility was considered essential to the role of the female,[25] and the regulation of women's sexual relations was intended to promote the most proper fulfillment of that duty both in the behaviour of the mother and the "health" of the child.

As seen with the rise of eugenics, adopting a medical angle to the discourse on women's sexuality and its potential impact on Canadian society was common during the late nineteenth century and early twentieth century. While reformatories sought to punish and rehabilitate "wild girls", and eugenics sought to stem the proliferation of "mentally defective" women, the institutionalization of "hysterical women" suggests yet another similar tactic of socio-sexual regulation of women. The hysterical woman, also known as

the insane woman or female lunatic, was different than the female imbecile, moron or idiot: her mental condition was openly believed to be sexually exclusive, and was usually attributed to complications in the reproductive system or a fixation with sexuality.[26]

Due to the perception that the feminine body was saturated with sexuality and that the "physical and the moral nature…could not be separate,"[27] the body of the insane or hysterical woman became a serious target of medical and moral "repair" in the Victorian era.[28] Therefore, in attempts to cure hysteria and prevent the contamination of the bourgeoning Canadian society by said female lunacy, insane asylums for women began developing across Canada, with medical practitioners and hysteria specialists assigned to each one[29].

Perhaps Canada's most notable progressive psychiatrist and surgeon specializing in "female lunacy" was British-born and McGill-educated Richard Maurice Bucke, who pioneered many of the gynaecological operations and procedures believed to cure women of hysteria at London Ontario's Asylum for the Insane.[30] In an article published in the *American Journal of Insanity*, Bucke's piece on hysteria's links to female sexual organs speaks to the Victorian fear of women's socio-sexual corruption, and the perceived urgent duty to adhere to gender ideals. Bucke can be seen as an appropriator of this discourse not only with medical assertions like "there is a great deal of ovarian disease and sexual over-stimulation in female lunatics"[31] or that ninety percent of female patients are "supposed to have some sort of pelvic disease,"[32] but also in his insistence that other asylums enact such a gynaecological focus and that the government should provide specific funding for this medical direction.[33]

Procedures such as ovariotomies, hysterectomies, and a handful of obscure internal operations, were performed on women to cure hysteria and curb the perceived overwhelming sexual desire that affected their mental health.[34] Women committed to institutions like the London Asylum were often sent under arguably arbitrary evidence, such as a parent's unwritten consent, that deemed them "overly emotional" or "hysterical."[35] While surgeons like Dr. Bucke claimed widespread success in the "mental improvement" of

the women who underwent the aforementioned operations for hysteria,[36] it can be argued that most women were in reality subdued by shock and their apparent "improvement" was instead evidence of post-traumatic social detachment.[37] Either way, the ultimate goals of a recovered docility and the social regulation of the Victorian female were achieved through the treatment of hysterical women in insane asylums.

It has thus far been argued that through the implementation of different institutions and political movements, women in Canada have been the subjects of oppressive and manipulative social and moral regulation from the late nineteenth century throughout the first half of the twentieth century. Through the discursive imaginings of "incorrigible", "feeble-minded" and "lunatic" women, the female component of Canada's budding mainstream society was restricted and controlled to the point of medical intervention and physical containment so as to appropriate proper, exclusively middle-class gender ideals into the new social infrastructure. It should be acknowledged, however, that these oppressive social institutions were also negotiated and used in subversive ways to meet the needs or interests of women in Canada. Several women across Canada participated in the enforcement of these social movements and helped sustain the discourse that restricted the lives and rights of females in Canadian society.

In the case of those who were charged under the Female Refuges Act and sent to reformatories like the Mercer in Toronto for behaviour incongruous with Victorian gender ideals, women were not only victims of unjust incarceration and legislative loopholes. The fact that female prisons such as the Mercer were partly premised on first-wave feminist ethos or "the principle of maternal guidance" meant that women had a central role in establishing the ideological importance of these institutions by continuing to send their daughters, or working as supervisors or officials in the buildings themselves.[38] In this sense, it can be seen how women were not just victimized by, but also contributed to, the continuation of such legal behavioural reform tactics as the Female Refuges Act and the Andrew Mercer Reformatory.

While eugenics in Canada, like the Female Refuges Act and incarceration of young women in reformatories, is widely considered to have been an

affront to the basic human rights of women, the current of explicitly female support that ran through the sterilization movement cannot be sidelined or ignored. It is increasingly recognized in critical and social history that most of the women known as first wave feminists were staunch supporters of the eugenics movement, and the success of sterilization legislature in certain parts of Canada can perhaps be owed to the efforts made by these women to advance the cause. While there was a strong "patriarchal focus to the construction of feeblemindedness," first wave feminists appropriated the racially and morally-nuanced discourse of eugenics to argue towards the preservation of an ideal Canadian society, one that would involve and appeal to mainly middle-class, white women.[39] Influential female figures in the fight for sterilization were Emily Murphy[40] and Nellie McClung, who argued for the "inextricable" links between the women's movement and eugenics as such:

> The Woman Movement, which has been scoffed and jeered at and misunderstood most of all by the people whom it is destined to help, is a spiritual revival of the best instincts of womanhood – the instinct to serve and save the race.[41]

Though eugenics certainly reflects a patriarchal directive, it is important to recognize how many politically influential women championed the movement and helped to disseminate these politics on a national scale.

While women often worked directly as propagators of gendered behavioural and physical reform movements like female reformatories and sterilization laws, other women negotiated their role as targets of reform in subversive and creative ways. In the case of female lunacy and insane asylums, certain women feigned commonly understood symptoms of hysteria or insanity in order to be sent to an asylum, or even voluntarily committed themselves.[42] For many women, a voluntary stay at an asylum could mean a temporary escape from the drudgery and demands of domestic life; the majority of women committed to the London Asylum were in their childbearing years, which suggests a certain portion of the committed women were seizing the opportunity to retreat from the throes of domestic stress.[43] In addition, while these asylums are often considered brutal from a presentist perspective due to the basic and perhaps dangerous surgical methods that were used

on the patients, several of these asylums were considered positive refuges that promoted "regimes of moral treatment", which required staff to treat patients with dignity and kindness.[44] It is assumed that many women sought out the kind of serenity, economic stability and therapeutic pastimes offered in certain asylum settings that they could not access in their home lives, such as gardening, and the option of full, healthy diets.[45] For many underprivileged or overly-strained women, these psychiatric asylums were renegotiated and subversively reimagined as a much needed getaway from home life.

In this paper, I have attempted to prove how over the cusp of the twentieth century, women's lives and rights were seriously regulated and restricted with respect to Victorian notions of sexuality and race in order to distinguish a morally-sound Canadian national identity. It should also be recognized that in doing so, the institutionalized determination of women's socio-sexual identity certainly violated modern human rights' standards: women were charged and committed to detention centres without substantial evidence of criminal behaviour, targets of compulsory sterilization without consent in Alberta, and subjects of harsh and often unwarranted medical treatment and containment for being considered emotional. While eugenics legislation remains tricky to defend, it should be noted that these reformatories and asylums did contain women who were serious legal criminals, and were in severe need of medical attention for legitimate mental illness. Nevertheless, this essay has sought to expose the ways in which social discourse was manipulated and manoeuvred to exert the control of women who might not have warranted such extreme social regulation in order to explicitly clarify the gendered, class-based and racially-nuanced boundaries of Canada's bourgeoning national identity.

Endnotes

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Kitchens and Knives

The Gang of Eight's Conflicted History

Denis Douville

During the constitutional negotiations on November 5 1981, a provincial alliance of premiers called "the Gang of Eight" was broken by the federal government, and every province except Québec signed on to what would become Canada's 1982 Constitution Act. When viewed through Jocelyn Létourneau's historiographic framework of ambiguity, the Gang of Eight's historical representation reveals an intricate relationship between memory, information resources, and politics. Lacking alternative information resources, journalists and later historians relied on their premier's politicized versions of the story. Because the premiers' stances differed according to their political ties, this reliance grew into dual recollections of the Gang of Eight's narrative, which yields different symbolic meaning for Québec than the rest of Canada. Indeed, two myths have spawned from the Gang of Eight's destruction: the Canadian myth of unity versus the Québec myth of betrayal. Finally, because the political conflicts themselves—in particular, the dispute over Québec's veto—are rooted in historical ambiguity, one notices the potential presence of a political-historical vicious circle.

Létourneau challenges Canadian historians to acknowledge and embrace the ambiguity, dissonance, and disagreements in our national narrative. In other words, according to Létourneau, rather than attempting to find universal "truths" in Canadian history, historians should take note of and study the discordant representation of events.[1] Létourneau's framework is applicable to the Gang of Eight's historical representation for various reasons. In particular, historians who wish to study the Gang of Eight benefit greatly from Létourneau's framework, because it provides not only a lens through which one might understand conflicts within the Gang of Eight's historical representation, but also an opportunity to study the causes and effects of historical ambiguity with regard to Québec's relationship to the rest of Canada.

The Gang of Eight began as an unlikely alliance of eight provincial premiers who opposed the Trudeau government's agenda to patriate the Canadian constitution unilaterally. On October 2 1980, Trudeau announced his plan to amend the Canadian constitution in the British parliament without provincial consent.[2] William Davis, premier of Ontario, and Richard Hatfield, premier of New Brunswick, were the only leadersto pledge their

support for Trudeau. [3] The other eight premiers saw the Trudeau government as a common threat to their rights to influence constitutional matters. In the past, the provinces had always been consulted before amending the Canadian constitution;[4] as a matter of practicality and urgency, they set aside their differences and mobilized to oppose the unilateral patriation agenda.

The new provincial alliance faced a problem: although they opposed Trudeau, they had no ulterior proposition to his constitutional package. On April 15 1981, after a series of telephone conferences, the eight premiers met to discuss the possibility of a shared stance.[5] Rene Lévesque, premier of Québec, argued strongly for an "opt out clause" that would adequately replace Québec's historic veto, because it granted provinces more autonomy in the federation.[6] The other premiers were reluctant to agree with Lévesque's anti-federalist view point. They argued with him late into the night, but it was Lévesque who persuaded them to accept the 'opt out' clause. The next morning, national television stations reported live as the premiers signed what became known as the April 16 Accord.[7]

The premiers would later disagree over the nature of the April 16 Accord. For Québec officials Lévesque and Claude Morin, the deal was set in stone: the accord was not to be changed without the consent of each province—it was inflexible, meant as a binding deal against Trudeau's federalist vision.[8] For Alberta, Saskatchewan, British Columba, and other provinces, the April 16 Accord was in no way irrevocable, inflexible, or binding; rather, it was meant as a temporary united front against the federal government, one that would be dropped if Trudeau reopened negotiations with the provinces.[9] For these provinces, the accord was only a matter of practicality. This disagreement would later transcend politics and make its way into historical memory.

The lack of objective, third-party information resources can be seen as a contributing factor to the Gang of Eight's historical ambiguity. Records are scarce, because the conferences that led to the patriation of the constitution were held privately and without public consultation.[10] During the discussions, the premiers met privately in hotels across Canada. In each case, the media had no access to the meetings, and no minutes were taken. Unfortunately, historians are left only with the subjective memoirs of politicians who had much

to lose in the high stakes negotiations. Hence, any representation of the Gang of Eight is based upon the differing—indeed "ambiguous"—accounts of each politician. With politicized memoirs as the only source of primary information, the Gang of Eight's historical representation is ripe for conflict.

With only the memoirs of premiers to draw information from, historians favor their premiers' political stance and provide two different historical interpretations of the April 16 Accord. Québec historians have followed Lévesque's argument: the accord held a binding value. For instance, when Francophone historian Pierre Godin mentions the April 16 Accord, he deliberately notes the accord's "solemn" nature, and explains that the other premiers signed and later betrayed it. He mentions nothing of the notion that the accord might have been temporary.[11], Conversely, the rest of Canada's historians have also followed their own premier's stance: to them, the accord was temporary. When Albertan historian David Wood discusses the accord, he consults Albertan Premier Peter Lougheed himself, and goes into great detail about the premier's position. When it comes to Lévesque's argument (that the deal was binding), however, Wood notes that it is "interesting," but leaves it at that. [12] Indeed, each historian appears to emphasize and echo their premier's stance.

The political stakes at hand for the two interpretations are high**,** because if the accord was only temporary, Québec cannot rightly claim that the other provinces betrayed it in any "official" sense. Naturally, Lévesque, a separatist Québec politician and the only premier who later did not sign on to Trudeau's constitution, condemns the other premiers for straying from the accord. It is likely that he does so in order to save political face and further the separatist cause. After all, if the rest of Canada betrayed Québec, why stay within the federation?[13] The other premiers argue that the accord was temporary, likely in order to avoid political blame for their later compromise with Trudeau.[14] Regardless of which is true, one notices that both the premiers and the historians place a political spin on the matter that fuels two different accounts of the accord.

Unaware of their future quarrels over the April 16 Accord, the premiers cooperated surprisingly well, and opposed Trudeau through the legal system.

When Newfoundland's Supreme Court ruled against the federal government's right to unilateral patriation, the case was brought forth to the Canadian Supreme Court. On September 28 1981, after six months of deliberations, the Supreme Court ruled that Trudeau would have to obtain substantial provincial consent in order to amend the constitution.[15] Privately, Trudeau fumed,;he nevertheless accepted the ruling and prepared to negotiate one last time with the Gang of Eight's dissident premiers.[16] The federal government met with the provinces on November 1 1981. In an unexpected turn of events, four days later, the federal government and all provinces—except Québec, who apparently had not been informed—had reached an agreement. The Gang of Eight's united front broke against Trudeau, and Québec was left in constitutional limbo, unwilling to sign on to the new Canadian Constitutional package.

One major question rises from the Gang of Eight's breakdown against Trudeau: which premier first abandoned the provincial alliance? Yet again, premiers provide conflicted, politicized responses. Lévesque argues that William Bennett and Allan Blakeney were the first to deviate from eight provinces' previous arrangement, when they hinted at a compromise with Trudeau. For example, Bennett conveniently "lost" the gang of eight's written statements, seemed in no hurry to find them, and negotiated with Trudeau on minority education rights.[17] Furthermore, the next morning, Blakeney produced a new constitutional draft that specifically eliminated Québec's opt-out clause. It was so thick, Lévesque claims, that it could not have been written so quickly over night.[18]

From Lougheed and the other premiers' perspectives, however, it was Lévesque that officially abandoned his allies when he struck a deal with Trudeau in the afternoon of November 4. On that day, Trudeau suggested an alternative plan: immediately patriate the constitution, and then take the Charter of Rights and the amending formula to a Canada wide referendum if the provinces and federal government could not reach an agreement after two years. During a private pause, Lougheed warned his colleagues that Trudeau's plan was a trap to break the group apart. The other seven premiers, including Lévesque, agreed. Lévesque, however, later obliged Trudeau's referendum

suggestion, and thus officially deviated from the earlier agreement and abandoned the Gang of Eight.[19]

Historians approach this matter in the same way that they approach the April 16 Accord. They emphasize and sympathize with their premiers' politicized version of the story. True to Lévesque, Godin elaborates on Bennett and Blakeney's suspicious maneuvers.[20] When it comes to Lévesque's "agreement" with Trudeau's referendum suggestion, Godin excuses the Québec premier, and notes that Lévesque was merely bluffing in regard to Trudeau's proposal.[21] Likewise, Western historians also sympathize with their premiers. In accord with Lougheed's memoirs and letters, Albertan history echoes his version of the story. Though Albertan historians Paul Bunner et al note Blakeney and Bennett's flirtations with the federal government, they do so not with Godin's suspicious tone; furthermore, they cite Lévesque's fall for the referendum suggestion as the Gang of Eight's true end, one that "freed all its members to make and receive new compromise offers."[22] Finally, Wood provides three pages of quotations from Lougheed's perspective, but only quotes Lévesque in a minor paragraph.[23]

In retrospect, the Gang of Eight either possessed a communication problem, or each premier simultaneously went against the April 16 accord out of fear that their united approach would inevitably fail. Blakeney and Bennett could have discussed the matter of losing the Gang of Eight's planned text, or the new plan that lacked the opt-out clause, but Lévesque claims that they did not. Lévesque could have consulted with the other premiers after his bluster with the Trudeau deal, asking them why they acted so suspiciously earlier in the day, but he did not.At least, not according to the other premiers. Alternatively, the premiers purposefully deceived the others due to suspicion, and ended up only looking out for themselves. Either way, Trudeau capitalized on the slow erosion within the provincial allegiance.

On November 4, Trudeau purposefully baited Lévesque with the referendum suggestion, with the intent to break apart the provincial alliance. He specifically targeted the Québec premier, a self-proclaimed democrat, with the most democratic device in Canadian politics: a referendum. When Lévesque took the bait, Trudeau turned to the other premiers (and later

the press), smiled coyly, and bragged explicitly about the new Francophone Québec-Ottawa alliance.[24] After a brief lunch break, Trudeau returned with a thick document filled with "nuances and subtleties," and a clause that required each province to consent to the referendum idea before it could take place.[25] Trudeau knew that unanimous provincial consent was highly unlikely, especially since the other premiers expressed their discontent with the idea beforehand. Briefly put, Trudeau had brilliantly bluffed and cornered Lévesque.

Trudeau's bluff had its costs. The Prime Minister effectively burned down the already unstable political bridge that had been built between Québec and the rest of Canada. Before the Gang of Eight, Québec had rarelyengaged in such a vocal agreement with the English speaking provinces. Even Trudeau himself was "astonished" when he heard that Québec gave up its constitutional veto and admitted equality with the other provinces through an opt out clause.[26] Although shaky, a connection had been built between Québec and the rest of Canada; Bunner et al. claim that it was thanks to Lévesque's unique, friendly relationship with Lougheed.[27] However, Trudeau specifically targeted Lévesque in his ploy, and then played on the cultural and linguistic differences to alienate him from the other provinces—boasting to the press and the media of a Francophone alliance. Indeed, Trudeau destroyed the political common ground that Québec's government had forged with other provinces.

Nevertheless, the November 4 negotiations still appeared fruitless. As the sun set, the premiers and Trudeau had yet to reach an agreement. Exasperated, they decided to call it a night. Preferring to sleep on Québec soil, Lévesque did not stay at the Chateau Laurier Hotel with the rest of the premiers and Trudeau.[28] Just in case anything new occurred, he left his telephone number with his erstwhile Gang of Eight colleagues. Saying nothing more, Lévesque departed for his separate hotel. Before the meeting adjourned, however, Jean Chretien, federal Minister of Justice, whispered a single thing into Trudeau's ear. Chretien asked for permission to negotiate one last time.

Impatient and tired, Trudeau begrudgingly gave Chretien permission, provided that he obtain an equal amending formula with no veto for Québec. With an unaware Lévesque across the Ottawa River, the premiers and federal

government were about to reach a nocturnal compromise. In the Chateau Laurier kitchen, federal officials met with Saskatchewan and Ontario attorneys general and negotiated.[29] Throughout the negotiations, nobody called Lévesque. The federal government allowed the "notwithstanding clause" into their Charter of Rights; in exchange, the provinces gave up Québec's "opt out" clause. The parties agreed on equal provincial representation via the "seven fifty" amendment.[30] After more than ten years of constitutional haggling, the federal government and all but one of the provinces reached a constitutional agreement, and for the first time in Canada's federation, they did so without Québec.

Because Québec was left out of the negotiations, the agreement would be remembered in two very different ways. A pair of diverging myths emerged, and the first was that of Canadian national unity. Through its media, English Canada celebrated the "The Kitchen Accord," or the patriation of the constitution, as the continuing unity of the nation. The reports defer to their premiers' political positions: the agreement marked a pinnacle of nation building and Canadian unity.[31] For example, The Globe and Mail wrote an article titled "The Federation Stands," and beside it, an artist had sketched a depiction of Trudeau and the English premiers gloriously raising the Canadian flag together—with Lévesque refusing to help in the background.[32] A Maclean's editor claimed that "The Craft of Statesmanship Won despite the Spoiler from Québec," and praised Trudeau and the other premiers in what he called the "crowning achievement" of Canadian compromise.[33] Indeed, English media outlets across the nation published praise for the patriation of the Canadian constitution.

The second myth was, and indeed still is, Québec's much darker "Night of Long Knives" narrative of betrayal. The implication is that the other premiers "stabbed" Lévesque in the back." Before he left the conference, Lévesque turned to Trudeau and his colleagues and said: "it will be up to our people to draw what conclusions they can" from the November 5 accord.[34] Lévesque was correct. In Québec, Francophone media wrote according to their political stances, and echoed Lévesque's anger, shame, and discontent. Le Devoir editors, journalists, and reporters filled their November 6 issue of the newspaper

with nationalist rhetoric. In stark contrast to English media's praise, one Québec writer called the accord "A Convention of Dupes."[35] Another emphasized that Québec is "isolated and excluded," and preached that the ordeal was not over.[36] From the media frenzy, the "Night of Long Knives" myth was born.

In contemporary terms, Québec and the rest of Canada have dealt with their myths differently, and the difference is primarily a matter of perseverance. Québec has yet to sign the Canadian constitution; unsurprisingly, then, the "Night of Long Knives" lives on. Current Le Devoir journalist Robert Dutrisac tells a brief narrative of the Gang of Eight and calls the November 5 Accord "treachery."[37] Even Québec academics hint at the myth. Godin titles his chapter on patriation "A Knife's Strike in the Night."[38]Albert Nitchock, in an advertisement for the Parti Québecois, a Québec separatist party, dramatizes the event: his short film depicts the nine Anglo premiers and Trudeau laughing, drinking, and playing pool. In an allusion to the myth's namesake, they then sneak up to an unsuspecting Lévesque, each carrying a large knife.[39] The fact that Nitchock places a Parti Québecois logo at the end of the short animation indicates his political purposes.

In the Anglophone provinces, however, the myth of "Canadian unity" appears to have vanished. Contemporary journalists rarely remind their populace of the Gang of Eight and November 5 accord.[40] Academics such as Wood optimistically note that, in the end, Alberta and Albertans received what a great majority wanted legally, or constitutionally.[41] Bunner et al. echo Wood's emphasis, but also add that some Albertans were upset because of jurisdictional disputes over natural resources (in particular, oil).[42] Indeed, the pride of confederation and Canadian unity has been replaced by political, legal, and constitutional technicalities. The two myths not only differ in terms of meaning, but also in life span and evolution. Québec still boils with the anger of betrayal; the rest of Canada has moved on from their fleeting confederate pride.

Finally, one should note that Québec's political friction with the Gang of Eight and Trudeau is itself rooted within historical ambiguity. Lévesque argued for the "opt out" clause because it replaced Québec's historic veto. Québecois claimed a veto due to a belief in the "two nations" principle,

and because, historically, no government had amended the constitution without consulting Québec.[43] Essentially, Québec claimed right to a veto due to a historical precedence. Unsurprisingly, the rest of Canada valued such history differently. Federal inquiries claimed that the Québec veto was not widely discussed or acknowledged in the rest of Canada, nor did it exist in any constitutional or legal sense.[44] Furthermore, Western political scientists have also argued that a provincial veto gives Québec undue "special status"; in other words, that Québec does not have a "right" to exercise any sort of veto, because it goes against federal ideals of provincial equality.[45]

It would appear that, in the Québec-Canada relationship, historical and political disagreements reinforce historical ambiguities, and vice versa—in effect, one perceives a sort of political-historical circle. Different views of history (Québec's right of veto) have caused friction between the politicians.[46] However, as has been discussed at length above, historical conflict can also be based upon political conflict. The memoirs of the premiers influenced diverging historical narratives. Later, political actors such as Nitchock use the "betrayal" myth to further their agendas. Perhaps because Québec's historical perception (or misperception) influences its politics, and its political conflicts influence its history, the province may be caught within political and historical cycle in which political and historical conflict fuel each other simultaneously. Given this notion, one wonders whether Canada will ever reconcile the political conflict or the dissonant historical narrative(s). Not all hope is lost, though.

Létourneau defines "Canadianness" as the country's potential to heal and reach positive compromises from dissonances and ambiguities in history. However, in order to do so, the country must first acknowledge these conflicts, tensions, and disagreements—both in politics and historical representation.[47] Politically, Québec has yet to sign the Canadian constitution and, arguably, has yet to heal. Whether it is caught in a vicious circle or not, the French province and its relationship with Canada has been fraught with political conflict and historical ambiguity. From the conscription crises of 1917 and 1944, to the failure of the Meech Lake Accord, The Gang of Eight and "The Night of Long Knives" is but one of many frictions between the

province and the rest of the country. Indeed, should historians from both the West and East sides of the Ottawa River document Québec-Canada conflict with the dissonance in mind, they may perhaps recognize the impact of scarce information resources, the influence of politics on history, of history on politics, and the possible vicious circle that such influences entail. Reconciliation might yet be possible. With historical awareness and political compromise, Québec's "Canadian" story might yet have a happy, if admittedly ambiguous, ending.

Endnotes

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29 (Trudeau, 321)

30 (Lougheed, 26)

31 CBC Digital Archives, "The Kitchen Accord," The Canadian Broadcasting Corporation, http://archives.cbc.ca/politics/constitution/clips/6044/, Accessed 16 March 2009. The report quotes various premiers that, arguably, set the basis for the myth. Blakeney claimed that "we have completed a major act of nation building." Lougheed concluded: "It has proved that Canada works, and that Canada as a confederation will continue to work, and work well."

32 The Globe and Mail, "The Federation Stands," editorial section 1, November 6, 1981.

33 Peter Newman, "The Craft of Statesmanship Won despite the Spoiler from Québec," Maclean's editorial, section 3, November 16, 1981.

34 (Lévesque, 333)

35 Jean-Louis Roy, "Le Québec Exclu et Isolé," Le Devoir, section 8, November 6, 1981.

36 Le Devoir. "Une Convention de Dupes," section 8, November 6, 1981. This issue is filled from front to back with similarly titled articles; indeed, Québec's press spared no pages in their reproach.

37 Robert Dutrisac, "Il y a 25 ans, la nuit des longs couteaux - Une Constitution inachevée," Le Devoir, November 4-5, 2006, online edition, http://www.ledevoir.com/2006/11/04/122165.html, accessed March 16 2009.

38 (Godin, 521)

39 Albert Nitchock, "La nuit des longs couteaux," YouTube, http://www.youtube.com/watch?v=eqUeGzcJZcc, Accessed 16 March 2009. The short film used to be on the organization's website, but the website has been taken down recently. The YouTube popular video database has a viewable version, however. In a black humor allusion to Alfred Hitchcock's film, Psycho, this film's Gang of Eight actually "stab" Lévesque in the shower. "Albert Nitchock" is likely a pseudonym and a nod to Hitchcock.

40 I have yet to find a newspaper outside of the Québec province that discusses the Gang of Eight in such a context, in any case.

41 (Wood, 231)

42 Bunner et al., 256. Bunner et al. focus primarily on the National Energy Program's implications on Albertan oil and the Charter of Rights with regards to provincial autonomy. They do not linger on the Gang of Eight.

43 Mollie Dunsmuir and Brian O'Neal, Québec's Constitutional Veto: The Legal and Historical Context, (Ottawa: The Library of Parliament, 1992), 2.

44 (Dunsmuir and O'Neal, 1)

45 Garth Stevenson. Unfulfilled Union, (Toronto: Gage Educational Publishing, 1989), 244.

46 See note 6 above. Lévesque argued vehemently for the "opt out" because he saw it as the only way to protect Québec's historic veto. The other provinces only agreed after terse and lengthy negotiations.

47 (Létourneau, 69)

Les coopératives de santé et les groupes de médecine familiale

pour un meilleur accès en milieu rural

Pascale Boudreau

Avoir accès à un médecin ou à de simples soins de santé peut être un véritable casse-tête pour certains Canadiens. La majorité de ceux-ci demeurent dans les grands centres économiques du pays. Cependant, un certain nombre de personnes ne vivent pas dans un milieu urbain là où la majorité des services de santé sont relativement faciles d'accès. La population vivant dans les milieux ruraux fait face à d'importantes carences dans l'accessibilité aux soins de santé. Le Canada est réputé à travers le monde pour son système de santé public et sa couverture universelle; mais cette dernière l'est-elle vraiment? Cet essai se penchera sur la problématique de la pénurie de médecins dans les milieux ruraux de la province de Québec. Deux politiques seront analysées : les coopératives de santé et les groupes de médecine familiale (GMF). Malgré un consensus plus solide envers les GMF, les deux politiques présentées afin d'enrayer la pénurie de médecins dans les milieux ruraux sont complémentaires : elles sont plus efficaces si elles sont appliquées simultanément et de manière conjointe. D'abord, une identification de la problématique sera abordée. Ensuite, chacune des politiques sera présentée et analysée. Finalement, une conclusion sera tirée de cette analyse.

La problématique

D'abord, les milieux ruraux sont difficiles à définir. La donnée la plus utilisée est celle du nombre d'habitants dans une municipalité. Alors que certains parlent de 10 000 habitants et moins, il est plus réaliste de parler de localités ayant moins de 5000 habitants. Si l'on se fie à cette dernière donnée, ceci représenterait 20% de la population du Québec.[i1] Toutefois, un milieu rural est défini par le gouvernement à l'aide d'un indice de développement construit à partir des facteurs suivants : l'évolution du nombre d'habitants de la municipalité, le taux de chômage, l'emploi selon la population active, les revenus des ménages provenant de transfert et leur revenu moyen, le taux de scolarité et la proportion de la population à faible revenu.[2]

La pénurie de médecins, dans plusieurs de ces milieux, est un fait inévitable qui perdure. L'émergence de cette problématique s'est développée au cours des dernières années. Les médecins sont moins nombreux pour

i. Selon le recensement de 2001. Ce nombre n'inclut pas les réserves et les territoires Inuits.

répondre aux besoins de la population. Plusieurs causes ont été identifiées jusqu'à maintenant : la coupure dans le nombre d'entrées en médecine, les nombreuses mises à la retraite et une baisse des omnipraticiens au profit des spécialistes.[3] L'urbanisation est aussi un important facteur; les gens sont de plus en plus tentés par la ville. Les médecins préfèrent également le travail d'équipe et une meilleure qualité de vie jumelée à une pratique stimulante.[4] Le milieu rural ne répond pas toujours à ces critères : peu d'échanges professionnels sont possibles en raison du nombre de médecins requis, il y a peu d'opportunités pour la recherche et la haute technologie, et la pratique demeure familiale, préventive et de base. Les médecins d'aujourd'hui recherchent une conciliation travail-famille et une meilleure qualité de vie faisant des nombreuses heures afin de couvrir toute la population vieillissante une charge de travail importante.[5]

La pénurie de médecins en milieux ruraux apporte des conséquences importantes. Il y a un manque d'accès aux services de santé, autant en médecine préventive que curative, et cela entraîne presque automatiquement une dévitalisation des municipalités, c'est-à-dire une diminution de tous les services de proximité[ii] et donc un exode des habitants, autant des jeunes que des aînés, qui amène un manque de masse de population pour soutenir ces services.[6] Les écoles primaires et les centres de la petite enfance (CPE) se font de moins en moins nombreux également. Tout ceci conduit à une baisse de la qualité de vie et un développement économique en baisse.

Les politiques

Les coopératives de santé sont relativement nouvelles dans le paysage québécois. Leur majeure particularité est qu'elles sont une initiative citoyenne plutôt qu'un programme découlant d'une initiative gouvernementale. Les objectifs principaux des coopératives sont l'accessibilité aux services de santé et la prise en charge citoyenne des services de santé et de leur santé en générale. Selon Jean-Pierre Girard, pionnier dans l'étude des coopératives de santé au Québec, quatre principes caractérisent celles-ci: « la pratique

ii. Services essentiels dans une municipalité tels que l'épicerie, le poste d'essence, le dépanneur, le restaurant etc. (Conseil québécois de la coopération et de la mutualité 2009)

médicale par équipe, » « la pratique préventive, » « le paiement périodique,» « le contrôle démocratique ».[7] Ce genre d'institution de santé est souvent développée à partir et à l'aide du mouvement des caisses populaires Desjardins, la plus grande coopérative de la province empreinte d'un énorme succès au Québec. Les membres de la coopérative en sont les propriétaires. L'objectif n'est donc pas le profit mais le bien-être de tous les membres. Il y a donc un « *empowerment* » citoyen menant à un processus décisionnel démocratique et une orientation donnée par les différents acteurs du milieu et les habitants plutôt que par les médecins uniquement.[8] Puisque les membres sont les propriétaires de la coopérative, l'administration de celle-ci ne tombe pas dans la responsabilité du médecin.

De plus, en ayant un esprit coopératif et communautaire, ces installations sont orientées vers une prise en charge préventive de la santé des membres et non uniquement sur la pratique curative.[9] Lorsque la coopérative est bien en marche, plusieurs intervenants peuvent s'y greffer; une coopérative multiservices est donc possible incluant, par exemple, des travailleurs sociaux, psychologues, chiropraticiens, diététiciens, optométristes etc.[10] Le monde rural en général supporte l'idée de ces coopératives ainsi que les médecins embrassant une approche plus communautaire. Les détracteurs sont plus nombreux : les médecins ne s'intéressant pas à l'approche communautaire et certains politiciens municipaux en raison des surenchères pour accueillir les facilités. Le gouvernement, quant à lui, s'adapte à la situation et écrit présentement un projet de loi pour encadrer les coopératives de santé sans toutefois avoir une grande ouverture.[11]

Deuxièmement, les groupes de médecine familiale sont dédiés aux services de première ligne autant en milieu urbain que rural. Ils sont composés de médecins de famille, omnipraticiens, travaillant en groupe et appuyés par des infirmières cliniciennes. Ils ont été implantés par le Ministère de la Santé et des Services sociaux au printemps 2001 à la suite d'une recommandation de la commission Clair.[12] Les médecins peuvent affilier de manière volontaire leur clinique à d'autres cliniques ou à des cabinets privés. Les médecins peuvent répartir leur temps entre des établissements privés ou publics.[13] Un médecin est nommé responsable du GMF et, tous ensemble, ils s'entendent sur

les orientations que le groupe adoptera et sur un horaire de sans-rendez-vous qui permettra aux patients du GMF de maximiser leur accès à un médecin.

Par la suite, la mise en réseau des cliniques se fait par l'informatisation et le partage des dossiers des patients. Les principaux objectifs du gouvernement avec l'implantation de ces groupes sont un meilleur accès aux services de santé et à un médecin de famille, améliorer les services de première ligne, développer un partenariat avec les Centres de santé et de services sociaux (CSSS) et « reconnaitre et valoriser le rôle du médecin de famille ».[14] Les GMF offrent donc un travail d'équipe pour les médecins de famille ce qui les brise de leur isolement professionnel. Une concertation est également de mise pour pallier aux problèmes de la région dans laquelle le groupe est implanté. Le soutien pour les groupes de médecine familiale est important puisque le gouvernement supporte l'idée et supporte les GMF financièrement; les agences régionales de santé et services sociaux et les centres de santé et services sociaux (CSSS) donnent également leur appui.[15] Les cliniques et les médecins sont généralement en faveur du projet. Cependant, l'opposition provient de certaines cliniques et certains médecins; ils ne veulent pas être en réseau et travailler en collaboration avec d'autres cliniques. Sans un tel appui, les GMF tombent à l'eau.

Les coopératives de santé sont viables en raison de la prise en charge par les citoyens de leur santé, surtout au niveau préventif. Ainsi, les gens sont plus en santé et le médecin voit sa tâche allégée. L'administration de la clinique en vient au même résultat puisque les membres propriétaires sont ceux responsables du bon roulement administratif de la coopérative et non le médecin, qui conséquemmentpeut se concentrer sur sa pratique et arrêter d'être un entrepreneur.[16] Ainsi, une meilleure qualité de vie est offerte aux médecins puisqu'ils peuvent travailler moins d'heures par semaine et ont l'opportunité tant recherchée de combiner travail et famille. Les objectifs sont atteints par une concertation locale et une entraide des différents acteurs régionaux : les institutions financières, les gouvernements municipaux (Municipalité régionale de comté), les centres locaux de développement, les entreprises et commerces du secteur et, bien sûr, les citoyens.[17]

En ayant une meilleure qualité de vie et une charge de travail moindre, les médecins sont plus enclins à venir pratiquer en milieu rural et donc atténuer la pénurie de médecins qui sévit en régions au Québec. Les impacts sont importants. Pour les producteurs de services de santé, les coopératives offrent une alternative de pratique sans administration et une conciliation travail-famille plus possible. Du côté des utilisateurs, les avantages sont nombreux. Ils sont responsables de leur institution de santé et peuvent en décider l'avenir de manière démocratique, une personne, un vote; ils sont plus impliqués dans le processus décisionnel de leur coopérative. Une plus grande implication dans la gestion de leur santé responsabilise les citoyens envers leur santé; plus de prévention et un accès sont des formules gagnantes pour une population en santé.[18]

Les coûts associés à cette politique sont les installations (loyer ou construction), les coûts administratifs, le matériel de base et le salaire des infirmières[iii]. Ceux-ci sont assumés par la coopérative. Le salaire du médecin est assumé par la Régie de l'assurance maladie du Québec selon la méthode de rémunération à l'acte. Il est important de mentionner qu'habituellement, une partie du salaire des médecins va à l'administration de la clinique. Cependant, comme ceci n'est pas la responsabilité du personnel médical, celui-ci n'a pas à investir cette partie et a donc un avantage financier contrairement à la pratique en clinique privée. Finalement, la contribution « *membership* » est assumée par les membres[iv] de la coopérative.[19]

Également, les groupes de médecine familiale quant à eux sont viables car les médecins peuvent retrouver la pratique en équipe, de manière collaborative avec d'autres médecins même si ceux-ci sont dans d'autres cliniques. Les GMF permettent une valorisation de la médecine familiale ce qui risque d'attirer de futurs diplômés dans la profession.[20] Les GMF dans les milieux ruraux permettent de briser l'isolement des médecins et leur offre une alternative pour une concertation entre collègues grâce entre autres grâce à l'informatisation des cliniques. Ainsi, les omnipraticiens sont attirés vers les

iii. Sauf s'il y a une entente avec le CSSS de la région.

iv. Les membres, le plus souvent, payent une fois leur contribution et sont membres de la coopérative à vie.

milieux ruraux car la pratique devient plus stimulante et un esprit de groupe est créé. La pénurie se trouve donc réduite puisque de nouveaux réseaux se créent et l'accès aux soins de santé pour les citoyens s'en trouvent grandement améliorés.

Les objectifs des GMF sont atteints par une grande aide du gouvernement dans l'installation et l'aide financière qu'il procure à ceux désirant se regrouper. Une volonté des cliniques privées est également essentielle puisque les GMF ne sont pas une obligation gouvernementale mais implantés de façon volontaire. Les impacts sur les producteurs de services de santé sont une meilleure gestion des dossiers due à l'informatique reliant les différentes cliniques, la possibilité de travailler en équipe apportant une pratique plus stimulante et un meilleur service aux patients avec les relais de cliniques d'urgence sans rendez-vous et des heures de garde qui stimule également la pratique.[21] Tous ces impacts sont une solution à la problématique exposée ci-haut. Pour les utilisateurs, les impacts sont également tangibles. Un meilleur accès à un médecin de famille, crucial de nos jours, est offert en plus d'une couverture importante sur le territoire par le réseautage des cliniques. Un accès à un poste sans rendez-vous est possible et une meilleure gestion du dossier personnel donne de la latitude aux patients au niveau du choix de la clinique visitée.[22] Les coûts associés aux GMF sont en grande partie assumés par le gouvernement, qui paye le salaire du personnel administratif et infirmier, l'équipement informatique nécessaire à l'informatisation de la clinique et le salaire du médecin rémunéré à l'acte en plus d'un montant par patient inscrit au GMF.[23]

Analyse

À la lumière de ces observations, la problématique de pénurie de médecins serait grandement améliorée si l'implantation des deux politiques se faisait de manière simultanée et conjointe. La pénurie peut s'expliquer en partie par le désir d'une meilleure qualité de vie et d'une conciliation travail-famille.[24] Comme l'analyse des coopératives de santé l'a démontré, il est possible d'offrir ceci aux médecins venant pratiquer en milieu rural si l'on implante ce genre d'institution. L'absence d'administration d'une clinique et la prise en charge citoyenne de la santé le permet. De plus, les médecins ne

veulent pas installer leur pratique en région car ils ne peuvent travailler en équipe et que la pratique devient moins stimulante ainsi.[25] Les groupes de médecine familiale sont une bonne solution, déjà à l'œuvre un peu partout dans la province, afin d'enrayer ce problème. De nouveaux outils informatiques, et des collègues en constante collaboration, stimulent la médecine familiale.

Donc, les politiques semblent s'attaquer à des causes différentes de la problématique. Ainsi, si les deux politiques sont implantées en collaboration, deux fois plus de possibilités d'attirer des médecins en milieu rural seraient possibles. De plus, les coopératives de santé peuvent être une des cliniques affiliées à un GMF; un médecin pratiquant dans une coopérative de santé faisant partie d'un GMF en milieu rural permettrait une meilleure qualité de vie permettant une conciliation travail-famille, une pratique plus stimulante et une collaboration entre médecins. Aussi, il ne faut pas oublier les primes octroyées par le gouvernement à un médecin qui s'installe en région : la possibilité d'avoir 100% et même plus de son salaire et un montant supplémentaire si la région connaît une pénurie de médecins ou est éloignée.[26] Ainsi, les médecins considéreraient de plus en plus l'option d'aller pratiquer en région rurale et aideraient à enrayer la pénurie de médecins qui sévit présentement.

En conclusion, la pénurie de médecin en milieu rural est une réalité déroutante pour les instances municipales mais surtout pour les citoyens. Sans services de santé de moins en moins de gens sont en mesure de demeurer dans ces régions et une dévitalisation est inévitable. Les jeunes familles et les aînés sont plus enclins à habiter près des services, et donc, de se diriger vers les villes. Cependant, les deux politiques observées, les coopératives de santé et les groupes de médecine familiale, sont de bonnes mesures visant à attirer les médecins dans ces municipalités en besoin. Les GMF sont déjà en bonne progression partout dans la province; les coopératives le sont moins. Toutefois, comme cet essai l'a démontré, les deux politiques implantés conjointement semblent être une façon de maximiser les avantages de cette pratique. Tous les efforts dédiés à régler cette problématique démontrent que la collaboration entre le citoyen et son gouvernement est primordial, surtout en relation avec un domaine essentiel : la santé et le bien-être.

Endnotes

1 Selon le recensement de 2001. Ce nombre n'inclut pas les réserves et les territoires Inuits.

2 Ghislaine Vézina, Pierre Blais, et Claude Michaud. «Les collectivités viables en milieu rural : bref regard sur les enjeux et sur certaines pistes d'actions.» Ministère des Affaires municipales, Régions et Occupation du territoire. 2003. http://www.mamrot.gouv.qc.ca/publications/obse_muni/collectivites_tire_a_part.pdf (accès le November 20, 2009).

3 Ministère des Affaires municipales, Régions et Occupation du territoire. «Ruralité-Portraits socio-économiques.» *Ministère des Affaires municipales, Régions et Occupation du territoire.* 10 November 2009. http://www.mamrot.gouv.qc.ca/regions/regi_rura_port.asp (accès le November 20, 2009).

4 Institut canadien d'information sur la santé. «Un nouveau rapport de l'Institut canadien d'information sur la santé (ICIS) éclaircit la question de la pénurie perçue de médecins.» *Institut canadien d'information sur la santé.* 5 June 2002. http://secure.cihi.ca/cihiweb/dispPage.jsp?cw_page=media_05jun2002_f (accès le November 20, 2009).

5 Association médicale canadienne. «Les enjeux de l'exercise de la profession en milieu rural et éloigné.» *Politique de l'AMC.* 2000. http://policybase.cma.ca/dbtw-wpd/PolicyPDF/PD00-08F.pdf (accès le November 20, 2009), 1.

6 Ibid., 6.

7 Services essentiels dans une municipalité tels que l'épicerie, le poste d'essence, le dépanneur, le restaurant etc. (Conseil québécois de la coopération et de la mutualité 2009)

8 Conseil québécois de la coopération et de la mutualité. «Services de proximité.» *Conseil québécois de la coopération et de la mutualité.* 2009. http://www.coopquebec.coop/site.asp?page=element&nIDElement=2221 (accès le November 20, 2009).

9 Jean-Pierre Girard. *Notre système de santé, autrement.* Montréal: Éditions BLG, 2006, 42-43.

10 Ibid., 43.

11 Ibid.

12 Ibid., 88.

13 Ibid., 105.

14 Ministère de la Santé et des Services sociaux. *Évaluation de l'implantation et des effets des premiers groupes de médecines famille au Québec.* Québec: La Direction des ccommunications du ministère de la Santé et des Services sociaux, 2008, 19.

15 Ibid., 20.

16 Ibid., 19-21.

17 Ibid., 20.

18 (Girard, 71)

19 Ibid., 87.

20 Ibid., 43.

21 Sauf s'il y a une entente avec le CSSS de la région.

22 Les membres, le plus souvent, payent une fois leur contribution et sont membres de la coopérative à vie.

23 Ibid., 88.

24 (Ministère de la Santé et des Services sociaux, 20)

25 Ibid., 78.

26 Ibid., 81-82.

27 Ibid., 21.

28 (Association médicale canadienne, 6)

29 Ibid., 1.

30 Société de la médecine rurale du Canada. «The Quebec region.» ***Société de la médecine rurale du Canada.*** 2004. http://www.srpc.ca/ (accès le November 20, 2009).

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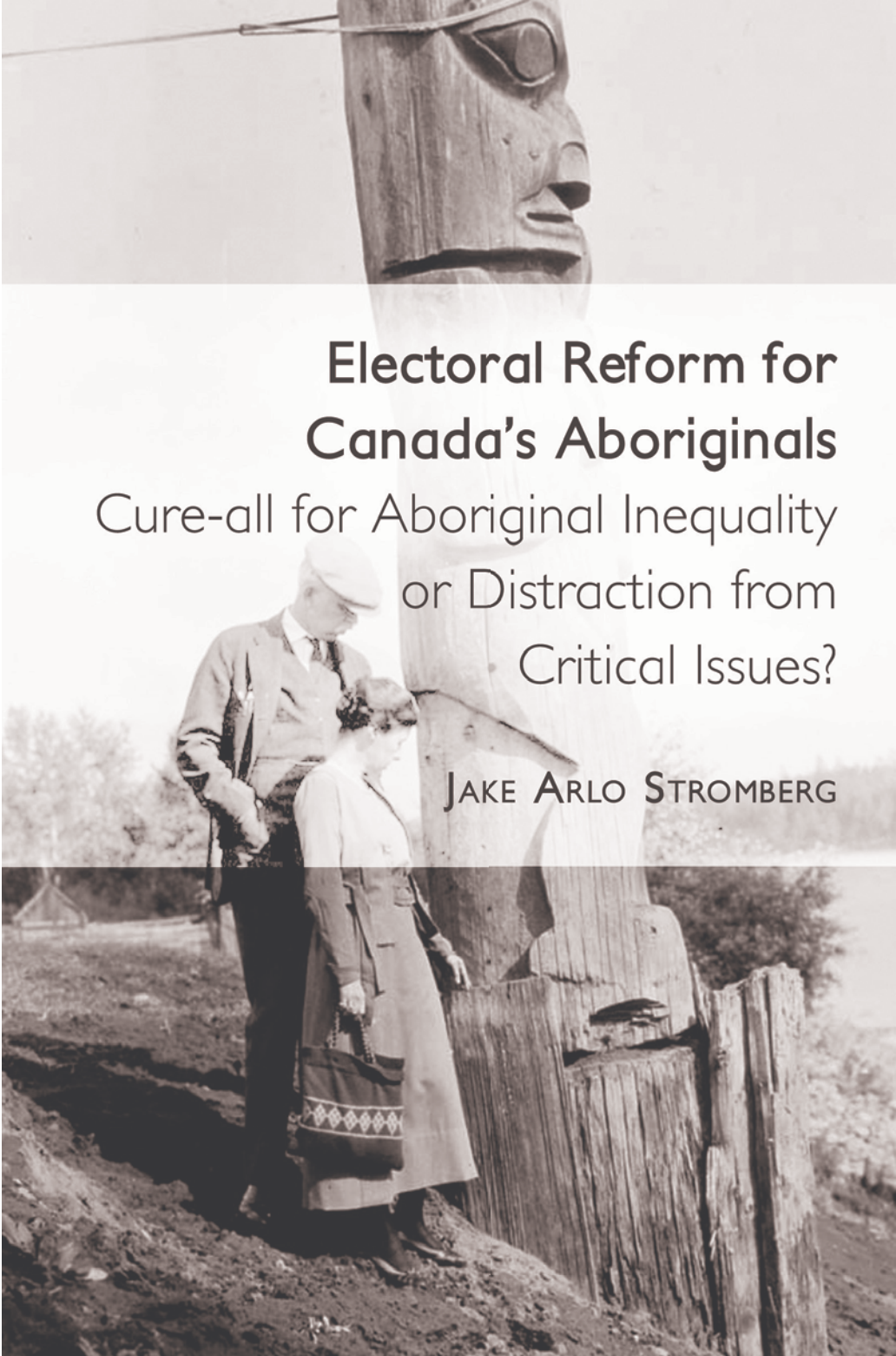

Electoral Reform for Canada's Aboriginals

Cure-all for Aboriginal Inequality or Distraction from Critical Issues?

Jake Arlo Stromberg

Introduction

The social and economic inequality between the general Canadian population and aboriginals[1] living in Canada is arguably the country's greatest humanitarian failure. To address Canada's ineptitude in this area, some have suggested the electoral system be reformed in a relatively small but meaningful way, by creating a handful of aboriginal electoral districts, or AEDs. Aboriginals would vote for aboriginal candidates in a handful of large ridings covering the country in order to secure guaranteed representation. With this representation, aboriginals would supposedly be able to influence decision making in the Cabinet and secure the measures required to create equality between aboriginals and Canada's two other founding nations. This paper seeks to first examine grievances with the present first-past-the-post (FPTP) electoral system, and then assess the purported benefits of AED reforms, after which it will be argued that while greater influence on federal and provincial governments could help procure the sort of policies necessary to address aboriginal issues, electoral reform does not necessarily produce greater influence. Simply put, Canada must address its consistent failure to support aboriginal peoples; however, electoral reform is a rather imprecise tool for solving socio-economic disparity.

I. What Makes FPTP Purportedly Deficient?

At the heart of most complaints about FPTP is the way in which the system uses votes to produce seats within the House of Commons and the provincial legislatures.[2] Under FPTP in Canada, federal and provincial geographical jurisdictions are divided into ridings. Citizens within each riding vote for their representatives using a categorical ballot[3]. The candidate with a plurality (not majority) of votes is declared the winner. To win elections then, parties do not need to claim a majority of votes across the country. Rather, they are incentivized to have as many regions as possible where their support is concentrated enough to win a plurality of votes in each riding. In essence, FPTP rewards parties with a strong regional base while punishing those with nationally dispersed support.[4] The argument is that because of FPTP's regional incen-

tive structure, aboriginals are put at a disadvantage, since they constitute a geographically dispersed minority population.

As a result, they are usually unable to reach the roughly thirty-five percent[5] voter-threshold that is normally required in Canadian federal ridings for a candidate to win[6]. In fact, as advocates for electoral reform note, between 1960 and 2001, only nine aboriginals had been elected to the House of Commons,[7] six of whom came from the territories.[8] Given the fact that over one million people identify themselves as aboriginal, and that they constitute one of Canada's three founding nations, they should statistically be winning around eleven seats in the House of Commons – or so the argument goes. The next question that has to be asked then, is why advocates of electoral reform draw a causal linkage between a lack of representation in Canada's legislatures and the continuance of aboriginal inequality?

The answer is based on the idea that greater representation allows for the extraction of benefits from democratic institutions. As one scholar explains, "the under-representation of Aboriginal people in Parliament is of concern to the extent that such under-representation prevents Aboriginal people from fully accessing the benefits of the democratic system."[9] So the causal linkage between FPTP and the persistence of aboriginal inequality is as follows: (1) FPTP places aboriginals at a competitive disadvantage electorally because they are predominantly geographically dispersed, which means (2) they cannot effectively compete for seats in Canadian legislatures and (3) are therefore politically underrepresented so that (4) they do not reap the benefits of representation, such as influence over policy and resources, which in turn (5) hinders aboriginals' ability to improve their overall quality of life.

Given the aforementioned causality, the terms by which the success of AEDs should be measured are not dependent on whether they will boost representation. Rather, it is whether or not the predicted increase in representation will lead to an increase in influence over policy and access to provincial and federal resources in a sufficient way. In reality, the projected increase in representation cannot garner the amount of resources or influence necessary to improve quality of life. In fact, as will be discussed further on, the establishment of AEDs could instead lead to a decrease in both. Thus, while the fact

that FPTP hinders aboriginal representation within democratic institutions is not in doubt, the premise that it hinders progress toward equality is. Before pursuing reform, detractors of FPTP should first decide whether or not the normative value of democracy outweighs the measurable value of equality.

II. The Proposal for Guaranteed Aboriginal Electoral Districts

Proposals for AEDs in Canada have been traced back as early as the 1970s,[10] but gathered momentum when the concept was fine-tuned by the Committee for Aboriginal Electoral Reform (CAER) in 1991 and published in the Lortie Commission's findings on electoral reform.[11] The Lortie Commission gave a comprehensive recommendation for how AEDs would be formed. It proposed that the estimated number of aboriginal voters in each province would be divided by the average number of voters each riding contained, in order to determine how many potential AEDs would be created in the province.[12] The numbers would later be finalized once aboriginals interested in AEDs had registered.

At the time, it was anticipated that up to eight AEDs would be created by this formula, although there is some dispute about the exact number.[13] The AEDs would be distributed within provincial boundaries in order to avoid constitutional challenges, and AED MPs would carry the same responsibilities as ordinary MPs.[14] Finally, AEDs would substitute for one of the province's regular electoral districts, thereby forcing a reconfiguration of riding boundaries anytime the number of AEDs changed. There are three factors to consider when examining the concept of AEDs and how well they could provide influence and resources to aboriginals: who AED MPs would represent, how well they would work together, and how they would go about procuring benefits for aboriginals.

The question of who AEDs would represent may appear redundant - the first letter in the acronym would seem like an obvious answer. However, given the scale of diversity between aboriginal peoples within provinces and across the country, it is a question that merits a thoughtful answer. According to the 2006 census, the largest segment of the aboriginal population in Canada is First Nations, at roughly sixty-six percent, with the Métis at thirty-three and the Inuit at about four, while 'other' aboriginal groups make up the

remainder.[15] Since the Inuit constitute such a small proportion and are concentrated in the northern territories of Canada, it is highly unlikely that they would participate in AEDs. Furthermore, given the size of the First Nation population compared to the Métis, there is a concern that First Nations would be able to drown out the voices of the Métis.[16] Indeed, it is not all too surprising that many of the most notable aboriginal proponents of AEDs are from First Nations communities.[17] But there are greater problems than simply a risk of First Nations hegemony among the AEDs.

On a deeper level, there is great diversity not just between the three main aboriginal groups, but also extensively within each group. Some counts place the number of status-Indian bands at over six-hundred.[18] Consider again that the notion that AEDs would amount to around seven or eight seats in the House of Commons under prevailing conditions. Could aboriginals be sure that the preferences of the Cree, Mohawk, and Inuit in Québec be represented by a single MP and that such preferences would not conflict? Could urban aboriginal interests be reconciled with those of rural aboriginal interests? Would every community even want to participate in AEDs? Most likely not. Attempts at creating pan-aboriginal organizations in Canada have often been met with great difficulty and there is nothing to suggest that AEDs would be any different.[19]

In many respects, AEDs would simply replicate the very inequalities that FPTP creates, except on a micro level. The larger, more concentrated aboriginal majorities would dominate AED elections, rendering representation for smaller communities an empirical improbability. In some ways, the term 'aboriginal' is itself misleading for proponents of electoral reform, since it depicts aboriginals as united group of small minorities, which is simply not the case. There is no single cohesive pan-aboriginal identity, and for this reason AEDs are insufficient for addressing aboriginal concerns in parliament. Some have suggested that Métis, Inuit, and First Nations should all have their own AEDs within parliament.[20] However, if all three groups were afforded a number of seats in the House of Commons, their representation would begin to proportionally exceed those of Canadians, which would seem counter to the democratic principles of adding AEDs[21] in the first place.

Assuming for the moment that the representation provided by AED MPs would not be problematic and that they would work together as a collective group, how would they procure the benefits that aboriginal groups need? Proponents for AEDs in Canada and other parts of the world have regularly posited that reserved seats would allow aboriginals to influence their fellow legislators on issues of education, health care and infrastructure.[22] There is no doubt that effectual policy negotiation is a regular part of democratic life for legislators in most democracies; however, Canada has cultivated a reputation as an outlier for its strict system of parliamentary discipline among political commentators[23] and scholars[24] alike. In most cases, party discipline takes precedence over what legislators may perceive to be as the best alternative for their constituents. One study found that on the whole, Canadian federal "party discipline forces individual legislators to frequently vote against the best interests of their constituents."[25] AED MPs would then have to remain outside of the federal parties in order to sincerely represent the interests of their constituents.

If AEDs would have to remain outside the federal parties, under what conditions could they procure benefits from the government of the day? Minority governments would likely allow for the greatest chance of success since they naturally depend on the support of one or more parties to stay in power. But minorities tend to be aberrations on the Canadian political scene and majority governments are significantly harder to cajole into passing policy they may not endorse. In this regard, it would also be a mistake to assume that any political party would adopt AED policies. Even the New Democratic Party, which was instrumental in procuring an apology from the federal government on behalf of the residential school program, opted to topple a government that was in the process of enacting the Kelowna Accord, an accord that would have provided billions in funding to aboriginal communities and was supported by the NDP caucus.[26] Thus, even with a potential for more influence in rare minority parliament, results are not a given.

Simply put, guaranteed aboriginal electoral districts would stand little chance of providing accurate representation or procuring benefits for aboriginals in Canada. The number of proposed AEDs would represent only a

part of a diverse aboriginal population and would likely favour First Nations. After all, such diversity has historically served as a barrier for many aboriginal aspirations in Canada, such as sovereignty – a fact which some commentators are all too willing to point out.[27] On the issue of procuring tangible benefits, Canada's adversarial parliamentary system of government maintains such a strict form of discipline that AED MPs would have a difficult time garnering the necessary support from party MPs There is also nothing to suggest that the major parties would pay any more attention. In the end, parliamentary discipline, aboriginal diversity, and Canada's historical indifference toward aboriginals are fundamentally bigger issues than electoral reform. Without addressing these differences first, there is no point in pursuing aboriginal electoral districts.

III. Problems on the Horizon in an 'AED Canada'

In addition to the ineffectiveness that AEDs would have in enhancing the quality of life for aboriginals, there are also a number of risks associated with reform. Namely, AEDs would overshadow more pressing aboriginal concerns, while at the same time risk increasing tensions with those Canadians who already place aboriginal people in an unfavourable light. The Lortie Commission proposal overlooked the risks of AEDs largely because they automatically (and rather simplistically) felt that more aboriginal representation in Canadian institutions was an inherently good thing. Some political theorists have also mentioned that in culturally pluralistic countries such as Canada, certain political protection may be required for minority groups.[28] The idea that artificially boosting aboriginal representation could trigger a public backlash against aboriginal issues is, however, overlooked by AED proponents.

It is fair to say that there is a significant amount of racism toward aboriginal peoples in Canada, which has made advocating for aboriginal causes particularly difficult.[29] The question then becomes, how would Canadians feel about providing for AEDs, and would such a move be supported by the general population? Electoral reform has been a sensitive issue for Canada since before Confederation, from the time when George Brown was advocating for 'rep-by-pop,'[30] and through three later waves of debates on electoral reform.[31] Amidst all the debates, no concrete reforms have been made to Canada's electoral

system. Is it unlikely then, given many Canadians' lack of knowledge regarding aboriginal peoples, and Canada's non-history of reform, that AED electoral reform would ever be supported. Canada has simply been inhospitable for pursuing aboriginal equality and electoral reform. By coupling the two together, there is a high risk of a public backlash against aboriginals for comparatively little gain. Again, policy makers must consider whether the few benefits AEDs could deliver are worth the costs.

A less dramatic (but no less important) possibility is that aboriginal issues would completely drop off the Canadian political radar. As the Lortie Commission proposal has demonstrated, the primary expectation of AEDs is that greater representation will be afforded through reform, with the implicit expectation of tangible benefits. The problem in touting the vital importance of such representation is that it can lead one to the conclusion that representation is an end in itself rather than a means to an end. Canadians may then be under the impression that once AEDs have been implemented, aboriginal equality is only a matter of time. In other words, equal representation will naturally lead to social and economic equality and serve as justification for future inaction. It could also considerably raise the bar for aboriginal leaders to argue for additional and necessary assistance from the Canadian government. In essence, there is a strong risk that Canadians could view AEDs as a self-fulfilling prophecy.

A number of aboriginal groups have also expressed their concern that direct participation in the House of Commons would hinder attempts at attaining self-government. The main argument is that a guarantee of representation carries with it a necessary abandonment of ambitions toward self-government.[32] Considered in light of the fact that aboriginals would have to cooperate with the Canadian government to have a real impact on policy, the argument seems to make sense. Canadian governments are simply not likely to invite secessionist elements of society into the House of Commons, no matter how small they may be. In New Brunswick, aboriginal leaders rejected a proposal for guaranteed representation specifically because they saw it as an affront to their goals of self-government.[33] In the Mohawk reserve of Kahnawake, which has regularly

rejected Canadian authority, it is unlikely that they would see AEDs as anything but an effort to rout their push for self-government.

One final point to make involves how AEDs could function in minority government. As mentioned previously, aberrant minority governments present the best opportunity for AED MPs to exert some form of influence over the legislative process, since minority governments depend on the support of smaller parties for their survival. An aboriginal party or group of aboriginal seats would pose a unique problem under a minority regime, as it would open up the possibility of commodifying aboriginal votes. The government and opposition could conceivably attempt to win over aboriginal seats through bargaining. Given the extent of aboriginal diversity though, it would be difficult to obtain the full support of every AED MP within the house. As a result, political opportunism, rather than any sort of moral imperative, could constitute the guiding force in terms of which AED MPs attain influence and which ones are left out in the cold.

In short, AEDs run the risk of shrouding aboriginal issues in overly optimistic expectations for democratic representation, and ignore the possibility of unintended consequences. The Lortie Commission proposal fails to recognize the inherent risks of augmenting tensions between aboriginals and the general Canadian population, instilling an even greater culture of indifference toward aboriginal issues among the electorate, a weakened position on the sovereignty front, and a commodification of aboriginal concerns. Naturally, there are potential benefits and risks to any proposal for electoral reform. What is troubling, however, is that the risks to the aims of aboriginal communities appear not to have been acknowledged. Reformers thus far have misrepresented reform as an end in itself, which clouds the effects of moving toward AEDs. It is one thing to set out new electoral rules, but it is another thing entirely to accurately predict the outcome of those rules.

Conclusion

The greatest concern with the proposal for guaranteed aboriginal electoral districts in the first-past-the-post system is that it conflates democratic representation with social and economic equality. There is nothing to object to on principle of attempting to increase the visibility and importance of

aboriginal issues vis-à-vis greater representation. In fact, such actions should be wholeheartedly encouraged given the plight of aboriginals in Canada. What *is* objectionable is the way in which that representation should be procured. AEDs would be ineffectual among Ottawa or provincial policy circles, and more importantly, the debate and process of their implementation would overshadow demands for economic and social equality. By catering to the institutions in which typical Canadian politics play out, aboriginals would be weakening their ability to argue from the position of a distinct society that does not subscribe to the same principles as white Canadians. It is this distinct cultural identity that needs to be protected and emphasized if aboriginals are to progress towards greater economic and social equality. To homogenize the diversity between aboriginal communities in order to produce a handful of institutionalized counterparts would therefore be a mistake. It is also a logic that is fundamentally flawed at its core, and should be discarded as a viable option for improving the lives of aboriginal peoples. There has been too much dithering on aboriginal equality to validate distraction and ineffectual electoral tinkering.

Endnotes

1 The term 'aboriginal' is in reference to status and non-status Indians (also referred to as First Nations), Métis, and Inuit.

2 Norris, Pippa (1997). Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems. *International Political Science Review,* 18(3), 297-312.

3 A categorical ballot involves voters choosing one party or candidate, rather than an ordinal ballot in which they rank-order their preferences.

4 Norris, Pippa (1997). Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems. *International Political Science Review,* 18(3), 297-312. 169

5 Lijphart, Arend (1994). *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies, 1945-1990*. Oxford: Oxford University Press.

6 The Northwest Territories and Nunavut, which have one seat each in the House of Commons are exceptions where Inuit make up the majority of the population.

7 More people who identify themselves as aboriginals have since been elected.

8 Lortie, Pierre et. al. (1991a). *Reforming Electoral Democracy: Final Report (Volume 1)*: Royal Commission on Electoral Reform and Party Financing. 169

9 Knight, Trevor (2001). Electoral Justice for Aboriginal People in Canada. *McGill Law Journal,* 46, 1063-1115. 1068

10 See Schouls, Tim (1996). Aboriginal Peoples and Electoral Reform in Canada: Differentiated Representation versus Voter Equality. *Canadian Political Science Association,* 29(4), 729-749.

11 Their findings on AEDs can be found in two volumes: Lortie, Pierre et. al. (1991a). *Reforming Electoral Democracy: Final Report (Volume 1)*: Royal Commission on Electoral Reform and Party Financing, and, Lortie, Pierre et. al. (1991b). *Reforming Electoral Democracy: Final Report (Volume 2)*: Royal Commission on Electoral Reform and Party Financing.

12 Lortie, Pierre et. al. (1991b). *Reforming Electoral Democracy: Final Report (Volume 2)*: Royal Commission on Electoral Reform and Party Financing.

13 See Niemczak, Peter & Jutras, Célia (2008). *Aboriginal Political Representation: A Review of Several Jurisdictions* and Schouls, Tim (1996). Aboriginal Peoples and Electoral Reform in Canada: Differentiated Representation versus Voter Equality. *Canadian Political Science Association, 29*(4), 729-749. 730

14 Niemczak, Peter & Jutras, Célia (2008). *Aboriginal Political Representation: A Review of Several Jurisdictions*. 14

15 See Statistics Canada (2008). *Aboriginal Peoples in Canada in 2006: Inuit, Métis and First Nations, 2006 Census*. 10

16 Schmidt, Jennifer (2003). *Aboriginal Representation in Government: A Comparative Examination*: Law Commission of Canada.

17 Moses, Don (2004). *Submission to the Citizens Assembly for Election Reform*: All Nations Party of British Columbia.

18 Flanagan, Thomas (2006). Native Sovereignty: Does Anyone Really Want an Aboriginal Archipelago. In M. Charlton & P. Barker (Eds.), *Cross Currents: Contemporary Political Issues* (5th ed., pp. 38-52). Scarborough: Thomson Nelson. 46

19 Tennant, Paul (1990) *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*. Vancouver: University of British Columbia Press.

20 Schmidt, Jennifer (2003). *Aboriginal Representation in Government: A Comparative Examination*: Law Commission of Canada. 6

21 Other proposals include a aboriginal province composed of all aboriginal territory within Canada or an entirely separate aboriginal parliament. See: Schmidt, Jennifer. "Aboriginal Representation in Government: A Comparative Examination." Law Commission of Canada, 2003.

22 Murphy, Michael A. (2008). Representing Indigenous Self Determination. *University of Toronto Law Journal, 58*(2), 187-216.

23 Simpson, Jeffery (2001). *The Friendly Dictatorship*. Toronto: McClelland and Stewart.

24 Longely, Neil (1998). Legislative Systems with Absolute Party Discipline: Implications for the Agency Theory, Approach to the Constituent-Legislator Link. ***Public Choice, 97***(1/2), 121-140.

25 Longely, Neil (1998). Legislative Systems with Absolute Party Discipline: Implications for the Agency Theory, Approach to the Constituent-Legislator Link. ***Public Choice, 97***(1/2), 121-140. 137

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28 Kymlicka, Will (1989). ***Liberalism, Community and Culture***. Oxford: Oxford University Press.

29 York, Geoffry, & Pindera, Loreen (1991). Shock Waves ***People of the Pines: The Warriors and the Legacy of Oka***. Toronto: Little Brown and Company Canada.

30 Moore, Christopher (1998). ***George Brown and Impossibility 1867: How the Fathers Made a Deal***. Toronto: McClelland and Stewart.

31 Massicotte, Louis (2006). ***Electoral Reform in Canada and its Provinces***. Montréal: Université de Montréal.

32 Knight, Trevor (2001). Electoral Justice for Aboriginal People in Canada. ***McGill Law Journal,*** 46, 1063-1115. 1108

33 Niemczak, Peter & Jutras, Célia (2008). ***Aboriginal Political Representation: A Review of Several Jurisdictions***. 20 (what is this source? A book? Improper citation)

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Quebec Secession?

Not without a constitutional dialogue...

Bianca Déprés Tremblay

With the onset of the quiet revolution in the early 1960s, the Quebec government began to pressure for constitutional reform, aiming primarily at the recognition of Quebec as a distinct society, particularly concerning the vast majority of francophone in the province. In the aftermath of the Failure of the Meech Lake accord in 1987 and the Charlottetown town accord in 1991-92, rising discontent and feelings of alienation in Quebec started to be more pronounced. Thus, on October 30 1995, the province referendum took place. The motion to decide whether or not Quebec should secede from Canada resulted in: 50.58% in favour of the "No," against 49.42% in favour of the "Yes".[1] In response to this close margin the federal government decided to put forward three questions to the Supreme Court of Canada in the eventuality that a dispute concerning this issue should arise again. The ruling of the Supreme Court is known as the *Reference re Secession of Quebec (1998)*. The reference thus concerned the legality of any "secession action" undertaken by Quebec. In this instance, the essence of the reference was to ask the court: "to give an advisory opinion on important legal questions that may or may not have arisen in the context of concrete disputes between interested parties, without the benefit of findings of fact made at trial."[2] The ruling of the Supreme Court raised many concerns, namely regarding the role of the judiciary and the legislature. The aim of this paper will be to shed light on the fundamental concept concerning the separation of power, through analyzing the reference ruling in response to Quebec secessionist movement. The separation of power doctrine stipulates different roles for the three branches of government: namely the executive, the legislative and the judiciary. By responding to the reference question, the judiciary was numerously criticised for embarking on the policy making process, a task reserved for the other branches of government. This paper will be divided into two parts. The first part will argue that the Supreme Court ruling, in the reference referendum, was a clear example of judicial activism. Judicial activism, in this sense, is best defined when the judiciary reviews the constitutionality of a legislation or a government action. The second part will focus on the legislatures' response to the reference ruling, namely the Clarity Act and Bill 99. It will be argued that both of these legislations represented a

form on dialogue. A dialogue is best defined when both the legislature and the judiciary are able to use devices to formulate constitutional interpretation of legislations or actions *per se*. As a matter of fact, a dialogue is not necessarily an equal relationship between the legislature and the judiciary, but rather it is understood that both have distinct but complementary roles in serving to protect the fundamental values of society.

Supreme Court's response to the Quebec referendum

Following the close result of the referendum, the federal government put forward three questions to the Supreme Court regarding the legality of any secession from Canada by Quebec. The questions focused on the right to secede under domestic law, international law and in the face of a conflict between the two.[3] Although the three questions are very interesting and revealing, for the purpose of this essay only the question concerning domestic law will be studied. Thus, the court was to respond whether a province – Quebec in this case – could legally secede from Canada under domestic law. In this instance, the court was adjudicating on the constitutionality of the Quebec government's action. This is a clear example of judicial activism on the part of the Supreme Court. Perhaps the best definition of judicial activism as been offered by Peter H. Russell, Rainer Knopff and Ted Morton: "judicial vigour in enforcing constitutional limitations on the other branches of government on constitutional grounds".[4] In fact, the term judicial activism is often associated with judicial review, a process by which the court reviews legislations in terms of their consistency with principles stipulated in the Charter. If the legislation is then found to violate the Charter, the court must determine whether or not this violation constitutes an "unreasonable limitation" on protected rights and freedoms.[5] The Supreme Court's response then, to the reference question, represents a clear example of judicial activism, because it challenged the constitutionally of the national project of Quebec. The ruling stipulates that there was no right for Quebec under domestic law – under international law as well – to legally secede from Canada. Professor Manfredi best explains it: "The Court's 1998 decision in the Quebec Secession Reference established the framework within which our most important national question will be resolved."[6] The introduction of the Charter meant broader principles and

concepts, which often required judicial discretion in their interpretation. As a result, the concept of judicial activism takes form. When the court is asked to formulate an interpretation regarding broad principles found in Charter, it often engages itself – by default – in a policy-making process. This is often the basis of criticism regarding judicial review. They argue that the court starts detaching itself from its intended role of adjudicating disputes when it starts interpreting the Charter, thus blurring the separation of power that exists between the branches of government.[7] Although in this instance the Supreme Court challenged the constitutionality of the national project of Quebec, the Court placed a legal obligation on the government in the eventuality that a dispute concerning the future of Quebec shall arise again. The Supreme Court stipulates, in its ruling, that if a "clear majority of Quebecers on a clear question" favoured separation, it would then be the duty of the federal government to negotiate the terms of secession.[8] As Kelly and Murphy puts it: "the Court reasoned that the clear repudiation of the existing constitutional order and the clear expression of the desire to pursue secession by the population of a province would give rise to a reciprocal obligation on all parties to Confederation to negotiate constitutional changes to respond to that desire".[9] Although the Supreme Court ruling concerning the reference on Quebec secession is best qualified as judicial activism, it does not represent judicial supremacy. The Supreme Court took the lead in adjudicating Quebec secession, but it also left room for legislative's interpretation in its own ruling.

Clarity Act in response to the Supreme Court decision

Based on the constitutional obligation that the Supreme Court placed on the government, namely to determine the terms of negotiation if a referendum on secession was to be successful, both levels of government responded. The federal government introduced the Clarity Act and the Quebec government introduced its Bill 99. The Clarity Act represents a legislation passed by the federal government that established the conditions under which the government would have to enter into negotiation regarding terms of secession. It stipulates that in order to lead to negotiations, a referendum must have a clear majority in favour, on a clearly framed question regarding secession.[10] Ironically, the bill did not provide the definition of "clearly worded"

and "clear majority," but instead stipulated that the federal government would determine "whether the question is clear" and whether a "clear majority" is achieved. Following the adoption of the Clarity Act by the federal government, the Quebec government also responded with Bill 99, stipulating under this bill that 50 percent plus one of the votes would represents a clear expression of the majority on the question of secession.[11] Bill 99 then stipulates that a clear majority in favour of secession would mean that Quebecers would be free to determine their future, well as a right to claim territorial integrity of their province. These two pieces of legislation were a direct response to the Supreme Court ruling on the terms of negotiation between the governments facing a secession movement. In its ruling, the Court had remained vague concerning the terms of negotiation regarding secession. It mentioned that "a clear majority" on "a clear question" in favour of secession "whatever that may be", would require the governments to enter negotiations. It instead left the "clarification" of these terms to the political actors. As a result, the federal and the provincial government introduced their legislations to shed light on the meaning of these vague terms used by the Supreme Court. Thus the Clarity Act and Bill 99 represent a clear example of constitutional dialogue.

Peter W. Hogg and Allison Bushell offer a definition of the dialogue metaphor in an article called "The Charter dialogue between courts and legislatures." In this article, they stipulate that a dialogue "consists of those cases in which a judicial decision striking down a law on *Charter* grounds is followed by some action by the competent legislative body."[12] Thus, according to them, four mechanisms are available to the legislators to respond to a court ruling. The first, Section 33, allows the legislatures to enact legislation notwithstanding the fundamental freedoms, legal and equality rights protected under the charter. The section refers to section 1, which allows legislatures to prescribe by law reasonable limits on all charter rights in the name of any pressing and substantial governmental objective. Third is the use of "qualified rights," in sections 7, 8, 9 and 12, by which the legislative body can respond through inaction, by pursuing no legislative response if the Court nullifies legislation. Another important feature is the availability of remedial discretion, found under section 15, in such a way as to leave room for governments to revise or

devise a response from a range of constitutional options.[13] In fact the definition offered by Hogg and Bushell is by no mean exhaustive. They assume that a dialogue between the branches of government is initiated by the Supreme Court through activist decisions and as a result the legislature will simply react to the ruling of the court.

In the case of the secession reference, the legislature was not simply responding to the Court's ruling: it in fact introduced the dialogue by presenting a reference question to the Supreme Court. Contrary to what Hogg and Bushell argue, the dialogue is not necessarily initiated when parliament responds to the court's ruling: "The complexity of constitutional dialogue is also evident within the parliamentary arena, where dialogue is initiated not by the Supreme Court, but through legislative efforts to create a more principled policy process that explicitly links constitutional values with legislative objectives."[14] A dialogue then represents an exchange between the legislature and the court regarding constitutional issues. In the Supreme Court reference ruling concerning Quebec secession, the government initiated the dialogue by asking the court's advisory opinion, and then the Supreme Court reinforced the dialogue by interpreting the broad constitutional principles found in the Charter. In this instance a dialogic judicial review must account for the unique but complementary role of the judiciary and the legislature.[15] In its reference ruling, the Supreme Court ensured to leave some manoeuvring room for the political actors to find remedy in accordance with their policy objectives by framing their response "vaguely."[16] It much the same vein, the Supreme Court avoided imposing comprehensive solutions and instead interpreted the *constitutional framework* within which political actors would have to negotiate in order to formulate their policy objectives so as to conform to constitutional obligations. The incomplete assessment regarding the "clear majority and the clear question" best represents the Supreme Court engaging in a dialogue with the other branches of government, so as to reinforce the democratic process in society. A dialogue is best characterized when "legislatures are recognized as legitimate interpreters of the constitution and have an effective means to assert that interpretation."[17] Following the reference ruling, both levels of government responded by introducing respective legislations

that would clarify their position; this clearly represents the dialogic dynamic that took place. The principal goal of the dialogue is to ensure that the political branches learn the judiciary's views about constitutional meaning. It also represents a process by which the judiciary assists the legislature in the drafting or amending of legislations so as to conform to fundamental constitutional principles.[18] The interesting feature about a constitutional dialogue is that an exchange takes places between the judiciary and the legislature so as to arrive at a consensus concerning the proper interpretation of societal values. The Charter then "contemplates and invites dialogue between courts, legislatures and the larger society about the treatment of rights in a free and democratic society."[19] In this instance, the constitutional dialogue permitted an assessment of the consequences of secession from Canada by Quebec from a judicial and political perspective. It is also important to understand that judicial review in itself favours the dialogue. In fact, one might recall that the broad principles stipulated in the Charter insist that the judiciary provide and interpret, which can then help us reach a consensus among branches concerning the appropriate legislation. But realization of this dialogue depends also on how the political branches of government respond to judicial decisions. What is interesting then is to examine whether the actions taken by the legislatures represent a response to the court's ruling. This essay has rejected Hogg and Bushell's definition of a dialogue because it simply underestimated the role of parliament in the dialogue metaphor: "Where a judicial decision is open to legislative reversal, modification, or avoidance."[20] This view simply assumes a reactive, rather than proactive role, for parliament. The aim of this essay is to instead argue that parliament can deliberately initiate the dialogue. In the reference referendum, the federal government formulated a set of questions that required the Supreme Court to give its advisory opinion. In doing this, the government not only initiated the dialogue, but also made it clear that it was seeking an alternative legal solution in the face of a secession movement. Parliament's awareness of its role is best seen the legislative preambles contained in the Clarity Act and Bill 99. A legislative preamble states the legislative intents or facts:

"It will form an important element in a subsequent dialogue about reasonableness and justification. What is attractive about the use of the legislative preamble is that it makes explicit the concerns and intents animating legislative decisions and leaves less room for courts to ascribe objectives to parliament."[21]

In response to the Quebec referendum, the legislatures, both federal and provincial, used preambles in their legislation, which clearly represents a mechanism that facilitated dialogue. In both the *Clarity Act and Bill 99*, the legislators used words such as "the result of a referendum" or "1995 referendum,"[22] which was clearly intended to respond to the Supreme Court ruling by acknowledging the recent facts.

Legislative preambles are thus excellent device to respond to a court ruling because legislators are able to mention the facts and their intention within the present legislation. Legislators can, in this sense, provide their interpretation of both the facts and the ruling, and then provide their remedy or answer. Nevertheless, one must keep in mind that a dialogue is not necessarily an equal relationship between the judiciary and the legislator; it is rather context-bound. In the reference question, the judiciary and the legislature made important contributions regarding the future of any secession negotiation. The important feature of the constitutional dialogue is that both parties are able to make a claim concerning the constitutional meaning of legislation or a government action, which was clearly the case following Quebec referendum of 1995.

Conclusion

Thus it is clear that the Supreme Court decision of the Quebec Referendum was an example of judicial activism. In taking on a question concerning the constitutionality of the Quebec National Project of secession and stipulating a framework within which future referendum will be approached, the judiciary engaged itself in a policy-making process. However, this ruling cannot be classified as judicial supremacy, since the legislators were asked to formulate the terms of negotiation in the eventuality of future disputes concerning secession. The Clarity Act and Bill 99, introduced respectively by both level of governments, represented a clear example of a constitutional

dialogue as a process by which the legislators and the judiciaries contributed to constitutional interpretation. In short, judicial activism and constitutional dialogue enable judges to protect rights and freedoms as stipulated in the Charter, while at the same time facilitating political answers to constitutional questions. Therefore, Quebec may want to secede in the future, but it is unlikely to do so without a constitutional dialogue...

Appendix A: Preamble to the Clarity Act

An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference

Whereas the Supreme Court of Canada has confirmed that there is no right, under international law or under the Constitution of Canada, for the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally;

Whereas any proposal relating to the break-up of a democratic state is a matter of the utmost gravity and is of fundamental importance to all of its citizens;

Whereas the government of any province of Canada is entitled to consult its population by referendum on any issue and is entitled to formulate the wording of its referendum question;

Whereas the Supreme Court of Canada has determined that the result of a referendum on the secession of a province from Canada must be free of ambiguity both in terms of the question asked and in terms of the support it achieves if that result is to be taken as an expression of the democratic will that would give rise to an obligation to enter into negotiations that might lead to secession;

Whereas the Supreme Court of Canada has stated that democracy means more than simple majority rule, that a clear majority in favour of secession would be required to create an obligation to negotiate secession, and that a qualitative evaluation is required to determine whether a clear majority in favour of secession exists in the circumstances;

Whereas the Supreme Court of Canada has confirmed that, in Canada, the secession of a province, to be lawful, would require an amendment to the Constitution of Canada, that such an amendment would perforce require negotiations in relation

to secession involving at least the governments of all of the provinces and the Government of Canada, and that those negotiations would be governed by the principles of federalism, democracy, constitutionalism and the rule of law, and the protection of minorities;

WHEREAS, in light of the finding by the Supreme Court of Canada that it would be for elected representatives to determine what constitutes a clear question and what constitutes a clear majority in a referendum held in a province on secession, the House of Commons, as the only political institution elected to represent all Canadians, has an important role in identifying what constitutes a clear question and a clear majority sufficient for the Government of Canada to enter into negotiations in relation to the secession of a province from Canada;

AND WHEREAS it is incumbent on the Government of Canada not to enter into negotiations that might lead to the secession of a province from Canada, and that could consequently entail the termination of citizenship and other rights that Canadian citizens resident in the province enjoy as full participants in Canada, unless the population of that province has clearly expressed its democratic will that the province secede from Canada;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

APPENDIX B: PREAMBLE TO BILL 191

AN ACT RESPECTING THE QUÉBEC PROPOSAL FOR CONSTITUTIONAL PEACE

WHEREAS Quebecers constitute a distinct society, free and capable of assuming its destiny and assuring its economic, social and cultural development;

WHEREAS Québec has already demonstrated its respect for democratic values and individual human rights and freedoms;

WHEREAS Québec has recognized that Quebecers wish to see the quality and influence of the French language assured and to make French the language of Government and the Law, as well as the normal and everyday language of work, instruction, communication, commerce and business ;

WHEREAS Québec intends to pursue this objective in a spirit of fairness and open-mindedness, respectful of the rights and institutions of the English-speaking community of Québec;
WHEREAS Québec recognizes the right of Amerinds and the Inuit of Québec to preserve and develop their specific identity and culture and to assure the progress of their communities;
WHEREAS Québec considers the contribution of the cultural communities to be of prime importance for the development of Québec;
WHEREAS Québec supports French-speaking communities outside Québec and contributes to the international French-speaking world;
WHEREAS the economy of Québec is mature and vigorous and Quebecers clearly wish to see its development and growth assured, while respecting the demands of both market globalization and social justice;
WHEREAS the Constitution Act, 1982, was proclaimed despite the opposition of the National Assembly;
WHEREAS the 1987 Constitutional Accord, the aim of which was to allow Québec to become a party to the Constitution Act, 1982, has failed;
WHEREAS the 1992 Charlottetown Agreement was rejected by a majority of Quebecers who judged it to be insufficient, particularly as regards the powers attributed to the National Assembly;
WHEREAS sovereignty associated with a proposal for a treaty on an economic and political partnership was rejected by a majority of Quebecers in the 30 October 1995 referendum;
WHEREAS changes to the political and constitutional status of Québec are necessary in order to settle the dispute between Québec and Canada;
WHEREAS the opinion of the Supreme Court of Canada rendered on 20 August 1998 concerning certain questions relating to the secession of Québec from Canada opens new perspectives of settlement by conferring a right to initiate constitutional change on each participant in Confederation;
WHEREAS the existence of this right imposes a corresponding duty on the participants in Confederation to engage in constitutional discussions in order to acknowledge and address democratic expressions of a desire for change;

WHEREAS that being the case, it is expedient to initiate constitutional change by submitting a proposal for constitutional peace, and to do so in a climate conducive to good understanding;

ENDNOTES

1 Harold D. Clarke and Allan Korberg. ***Choosing Canada?*** (Political Science and Politics, 1996),3

2 ***Reference re Secession of Quebec 1998*** (Law and Morality, University of Toronto Press, 2007), 664

3 Anonymous, ***Reference Re Secession of Quebec***, Law and Morality, 665

4 Peter H. Russell, Rainer Knopff and Ted Morton. ***Federalism and the Charter***, 19

5 James B. Kelly, ***Governing with the Charter***, 18

6 Christopher P. Manfredi. ***Overstepping its bounds***, 20

7 Barry Friedman, ***Dialogue and Judicial Review,*** 653

8 Kelly and Murphy, ***Shaping the Constitutional dialogue on Federalism,*** 233

9 Kelly and Murphy, ***Shaping the Constitutional dialogue on Federalism,*** 238

10 The Clarity Act: paragraph 1 "House of Commons to consider question"

11 Bill 99: Chapter 1: "The Québec People," Paragraph 4: "Majority"

12 Peter W. Hogg and Allison Bushell. ***The Charter Dialogue between courts and legislatures***, OHLJ, 82

13 Ibid, 82

14 (Kelly and Murphy, 221-222)

15 Roach Kent. ***Dialogic Judicial review and its critics***, Law and Morality, 604

16 (Kelly and Murphy, 89)

17 Manfredi and Kelly. ***Six degree of dialogue***, 37

18 Christine Bateup, ***The dialogue Promise***, 17

19 Roach Kent. ***Dialogic judicial review***, Law and Morality, 589-590

20 Hogg and Bushell, ***The Charter Dialogue***, OHLJ, 79

21 Jane Hiebert, ***Enriching constitutional dialogue***, 10

22 Clarity Act and Bill 99 Preambles

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