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# Why Is It So Difficult to Talk to Each Other?

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Since 1982, we have been grappling with the multinational reality that coexists with the historic definition of Canadians as a federal people. Working this new constitutional world is difficult because competing nationalisms — in Quebec, of Aboriginal peoples, and the inchoate nationalism of the "Rest-of-Canada" — transform the intellectual and emotional climate of our encounters with each other.

Institutional barriers and nationalist ideologies inhibit reasoned discussion of our constitutional future. The Rest-of-Canada has no one with authority to speak for it, and Quebecers are being conditioned to believe that a Canadian civic identity frustrates their self-development and that sovereignty is inevitable. On another front, non-Aboriginals are having difficulty responding to Aboriginal nationalism, powerfully expressed in recent decades. We are no longer, if we ever were, a community of discussion. We are suffering, as well, from a crisis of representation.

The disrespect historically accorded Aboriginal peoples and the inability to accommodate Quebec nationalism have reduced the allegiance of these communities to the country as a whole. The pressures for solidarity within competing nationalist communities deepen the differences between them, and impede the discovery and stimulation of commonalities that would strengthen citizenship ties across the country. Our survival can no longer be assumed.

Depuis 1982, nous devons faire face à une réalité multinationale qui coexiste difficilement avec la définition de «Canadiens» en tant que peuple fédéré. Ce nouveau monde constitutionnel pose problème, car divers nationalismes — au Québec, chez les peuples amérindiens, en plus du nationalisme naissant du «Reste-du-Canada» — transforment le climat intellectuel et émotif de nos rencontres.

Les barrières institutionnelles et les idéologies nationalistes empêchent une discussion raisonnée de notre future constitutionnel. Le «Reste-du-Canada» n'a pas de porte-parole pouvant le représenter avec autorité, alors même que les québécois sont conditionnés à croire qu'une identité civique canadienne entrave leur développement et que la séparation est inévitable. Sur un autre front, les non-amérindiens éprouvent de la difficulté à répondre au nationalisme amérindien, lequel s'est fortement affirmé au cours des dernières décennies. Nous ne sommes plus, si même nous l'avons jamais été, une communauté de dialogue. Nous souffrons également d'une crise de représentation.

Le peu de respect accordé historiquement aux amérindiens, de même que l'incapacité à s'adapter au nationalisme québécois, ont conduit à une perte d'allégeance envers le Canada au sein de ces communautés. Le besoin de solidarité à l'intérieur de communautés nationales en compétition les unes contre les autres approfondit les différences et entrave la recherche et le développement d'éléments communs aptes à renforcer les liens civiques à travers le pays. Dès lors, notre survie ne peut plus être tenue pour acquise.

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## Introduction

*The co-existence of several nations under the same State is a test, as well as the best security of its freedom. It is also one of the chief instruments of civilization ... The combination of different nations in one State is as necessary a condition of civilized life as the combination of men in society ... A State which is incompetent to satisfy different races condemns itself.*<sup>1</sup>

Whether we, as Canadians, can meet Lord Acton's test is an open question. We are in a period of profound transition — to what, we do not know. We do know, however, that an old constitutional order is under attack, and that its survival cannot be taken for granted. The challenges are many, but the most important is the challenge presented by Quebec and Aboriginal nationalisms.<sup>2</sup> Quebec nationalists of all kinds, and sovereignists in particular, seek to rearrange the jurisdictions north of the United States to enhance the recognition of a distinctness they believe is inadequately valued within Canada. Aboriginal nationalists seek a partial exit, via self-government, from a society that has historically stigmatized their sociocultural identities. In a period of transition such as this, the need for political talk across internal nationalist divides is overwhelming. Unfortunately, these rival nationalisms have erected numerous road-blocks on the road to mutual understanding and civil dialogue.

Canadians have never found it easy to confront the contentious issues of our constitutional existence. We developed and practiced a culture of avoidance that allowed us to put off, until some future time of ripeness, answers both to questions of who we were as a people and to the location of sovereignty.<sup>3</sup> We did not take control of our judicial future until 1949.<sup>4</sup> We did not take complete control of our amending procedures until 1982.<sup>5</sup> We were perhaps unwittingly following Michael Foley's shrewd admonition in *The Silence of Constitutions* that a wise people knows which problems can be addressed and which should be avoided.<sup>6</sup> The raising of the latter

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<sup>1</sup> Lord Acton, *Essays on Freedom and Power* (Glencoe, Ill.: Free Press, 1948) *passim*, cited in P.E. Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan, 1968) at 179.

<sup>2</sup> A friendly critic challenged my application of "nationalism" to Aboriginal peoples on the ground that Aboriginal ambitions fall far short of complete statehood. I agree. However, the label "nation" is ubiquitous, the language of nationalism — nation to nation — is recurrent, and the consequences of nationalism — the pleas for solidarity and the negative views of the "other", the majority society which stands in the way — are easily observed. "Nation", "nationalist" and "nationalism" are in my view, therefore, appropriately applied to Aboriginal peoples.

<sup>3</sup> For a more elaborate discussion, see A.C. Cairns, *Reconfigurations: Canadian Citizenship and Constitutional Change*, D.E. Williams, ed. (Toronto: McClelland & Stewart, 1995) c. 3 [hereinafter *Reconfigurations*].

<sup>4</sup> See *An Act to Amend the Supreme Court Act*, S.C. 1949 (2d. Sess.), c. 37, s. 3, amending R.S.C. 1927, c. 35.

<sup>5</sup> See *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, Part V.

<sup>6</sup> M. Foley, *The Silence of Constitutions: Gaps, "Abeyances", and Political Temperament in the Maintenance of Government* (New York: Routledge, 1989) at xi-xiii.

highlights and politicizes areas of profound disagreement, but moves us no closer to their resolution.

Our capacity to leave such troubling issues alone depends on the existence of an evolving status quo, that is, a living constitution acceptable to all the major players. In Canada, that capacity was twice shattered: initially by the federal government's 1969 white paper on Indian policy<sup>7</sup> and its rejection by the Indian people, and then again by the Parti Québécois ("P.Q.") election victory in 1976 (followed by its loss in the 1980 referendum and the subsequent enactment of the *Constitution Act, 1982*).<sup>8</sup> These brutal episodes in Canadian history signalled and catalyzed a conflict of nationalisms that afflicts us still; they also ended the tacit agreement that an imperfect present was preferable to pursuing brighter futures that might or might not be attainable.

For Pierre Elliot Trudeau, full citizenship, not anomalous and retrogressive special status, was the way to a brighter future for the Indian people. They rejected that bold and unilateral suggestion (about which they had not been consulted) and presented their countervision of "self-government", a vision that implied a positive special status in the future. In this search, they were joined by the Inuit and the Métis, defined in the *Constitution Act, 1982* as belonging to the newly minted constitutional category "aboriginal peoples of Canada".<sup>9</sup> For the P.Q., the better future was an escape from the shackles of federalism to the superior status of "sovereignty-association". Trudeau's overall competing vision for the country he sought to strengthen focused on the *Charter*<sup>10</sup> which, he hoped, would dilute provincialism, weaken Quebec nationalism and strengthen the pan-Canadian community by basing it on a coast-to-coast citizenry of rights-bearers.

The *Constitution Act, 1982* — a compromise agreement that brought together the federal government's *Charter* and the "Gang of Eight" amending formula<sup>11</sup> — was an incomplete answer to Quebec and Aboriginal nationalisms, institutionally embodied in the P.Q. and the emerging Aboriginal organizations.<sup>12</sup> The Quebec government's rejection of the constitutional package meant that one of the two founding European peoples was not officially on-side. The Aboriginal peoples, who had in fact achieved a significant breakthrough by obtaining greater constitutional recognition, nevertheless saw their gains as only the beginning. The commitment in the *Constitution Act, 1982* to hold a constitutional conference to define protected Aboriginal rights underlined the unfinished nature of the 1982 Aboriginal settlement.<sup>13</sup>

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<sup>7</sup> Department of Indian Affairs and Northern Development, *Statement of the Government of Canada on Indian Policy, 1969* (Ottawa: Queen's Printer, 1969).

<sup>8</sup> *Constitution Act, 1982*, *supra* note 5.

<sup>9</sup> *Ibid.*, s. 35(2).

<sup>10</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, *ibid.* [hereinafter *Charter*].

<sup>11</sup> See A.C. Cairns, *Charter versus Federalism: The Dilemmas of Constitutional Reform* (Montreal: McGill-Queen's University Press, 1992) at 86-90.

<sup>12</sup> Some of these Aboriginal organizations are the Assembly of First Nations, Native Council of Canada, Metis National Council, Inuit Tapirisat, and Native Women's Association of Canada.

<sup>13</sup> See *Constitution Act, 1982*, *supra* note 5, s. 37(2), as rep. by *ibid.*, s. 54.

From a current perspective, it is evident that the *Constitution Act, 1982* weakened the British cast of our constitutional inheritance and sought, via the *Charter*, to establish a new Canada of rights-bearing citizens coast-to-coast. It was, nevertheless, an inadequate response to our struggling transition from a federal to a multinational people. Since 1982, we have been grappling with the multinational reality that coexists with the historic definition of Canadians as a federal people. We have failed to find a synthesis between the federalism that provides — along with parliamentary government and the *Charter* — the institutional mirror in which we are supposed to see ourselves, and the competing view that defines us in terms of distinct national communities that line up only imperfectly with our federalist definitions.

Working this new constitutional world is difficult, not only because multinational and federalist definitions of community do not coincide, but because competing nationalisms transform the intellectual and emotional climate of our encounters with each other. The coexistence of rival nationalisms within Canada gravely undermines our capacity to discuss where “we” should go. Nationalism raises the stakes, escalates emotional language and weakens empathy. It increases the chances of failure by reducing the capacity for candid exchanges and for compromise among citizens and governments.

We know how constitutional debate is structured by our constitutional arrangements: how the amending formula gives pride of place to governments as the official actors in implementing change; how this governmental monopoly is weakened by the requirement of legislative resolutions,<sup>14</sup> which provide opportunities for private voices and interests to be heard; how the *Charter* has given the general citizenry a personal stake in the constitutional order, which has driven us along the path to referenda; how specific *Charter* clauses, and those elsewhere in the *Constitution Act, 1982*, have generated a host of new constitutional actors including women’s groups,<sup>15</sup> Aboriginal peoples,<sup>16</sup> the disabled,<sup>17</sup> official-language minorities,<sup>18</sup> and many others.<sup>19</sup> These groups have challenged the hegemony in constitutional matters formerly enjoyed and taken for granted by governments.

These constitutional factors structure our constitutional debate; they markedly influence the agenda for discussion, the arenas where discussion occurs, and who the participants are. These are all taken for granted in this paper, which focuses on another set of phenomena that also structures the debate and interacts with our constitutional arrangements — internal nationalisms and the competition among them. Internal nationalisms refer, in the first instance, to the Quebec and Aboriginal nationalisms

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<sup>14</sup> See *ibid.*, ss. 38, 41-43.

<sup>15</sup> See *Charter*, *supra* note 10, s. 28.

<sup>16</sup> See *ibid.*, s. 25. See also *Constitution Act, 1982*, *supra* note 5, s. 35.

<sup>17</sup> See *Charter*, *ibid.*, s. 15.

<sup>18</sup> See *ibid.*, s. 23.

<sup>19</sup> See *ibid.*, s. 15. For a discussion of the constitutional activity of these new actors, see *Reconfigurations*, *supra* note 3, c. 4; see also A.C. Cairns, *Disruptions: Constitutional Struggles, from the Charter to Meech Lake*, D.E. Williams, ed. (Toronto: McClelland & Stewart, 1991) c. 4 [hereinafter *Disruptions*].

that challenge the status quo, and to the inchoate nationalism of the "Rest-of-Canada" that is slowly crystallizing as an anticipatory response to the possible breakup of Canada. The general focus of this paper is on the contribution of internal nationalisms to our difficulty in agreeing on a constitutional future; the more specific focus is the antecedent difficulty we have in talking civilly to each other in a climate where competing nationalisms struggle for living space.

## I. Quebec — Canada — Rest-of-Canada

### A. How Uncertainty over a Shared Future Shapes Present Discussions

In normal times, membership in the same polity implies that the citizenry will share a future civic togetherness. In such circumstances, interpersonal, intergroup and, in the Canadian case, federal-provincial behaviour is governed by two considerations: civic camaraderie and instrumentalist logic.

The assumption of continuing shared citizenship means rejecting the kind of behaviour that is appropriate for foreigners, strangers or enemies. When the going is good, this can produce a civic camaraderie or solidarity based on the acceptance of shared rules applicable to an ongoing community, even when there are passionate conflicts over issues. These relations, in their most ideal form, exemplify "fraternity".<sup>20</sup>

Shared citizenship also encourages a cool instrumentalist logic driven by calculation rather than emotion. It is sensible to pull one's punches and engage in positive exchanges with present colleagues, be they citizens or governments, when they will also be future colleagues. Reciprocities between individuals, groups and provinces occur over time. They presuppose the continuity of the nation, defined in Ernest Renan's classic language as "a great solidarity, built on an awareness of the sacrifices we have made in the past, and those which we stand ready to make in the future ... It can be summed up in the present by one tangible fact: the consent, the desire, clearly expressed, to continue living together."<sup>21</sup>

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<sup>20</sup> See S.V. LaSelva, *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Nationhood* (Montreal: McGill-Queen's University Press, 1996) at 22-27 for a helpful discussion of fraternity. LaSelva's book is reviewed in this issue (see J. Whyte, Book Review (1997) 42 McGill L.J. 189).

<sup>21</sup> Remarkably, this quote was part of a full page advertisement by Morris & Mackenzie Inc. (insurance brokers) devoted to a lengthy extract from Renan placed just prior to the referendum in *The [Toronto] Globe and Mail* (28 October 1995) B3. The original of Renan, in French, reads:

Une nation est donc une grande solidarité, constituée par le sentiment des sacrifices qu'on a faits et de ceux qu'on est disposé à faire encore. Elle suppose un passé; elle se résume pourtant dans le présent par un fait tangible: le consentement, le désir clairement exprimé de continuer la vie commune (E. Renan, *Qu'est-ce qu'une nation?/What Is a Nation?*, trans. W. Romer Taylor (Toronto: Tapir Press, 1996) at 48).

Contemporary Canada is far removed from Renan's vision. When future civic togetherness can no longer be taken for granted, the fraternal bond is weakened and a different calculus emerges. A new question surfaces: How will we treat each other if we do become foreigners?

Sovereignists prepare Quebecers for an independent future by portraying the past not as a record of joint achievement with their partners, but as an unending history of rebuffs, humiliations and failures by the Rest-of-Canada to recognize the distinct nature of Quebec society.<sup>22</sup> The possibility that this historical trend could change within a renewed form of federalism is dismissed by Lucien Bouchard, who eagerly awaits the time when "notre partenaire sera allé au bout de son impuissance à reconnaître notre réalité de peuple."<sup>23</sup> The sovereignist political elite prepares for that future, dropping hints into public debate about how the Rest-of-Canada will be treated by a sovereign Quebec.<sup>24</sup>

From the sovereignist perspective, therefore, Canada is already seen as a foreign country. Future relations are viewed from the perspective of Quebec's self-interest. What will happen outside Quebec is relevant only to the extent that it will have an effect in Quebec. This attitude results in a negligible concern for "Canada-outside-Quebec" as such. If the pro-sovereignty ("Yes") side had carried the 1995 referendum, the P.Q. government would have been ready to launch a massive assault on an unprepared Ottawa, designed, according to press accounts, to humble Ottawa and to "bring the federal government to its knees".<sup>25</sup>

In 1994, Premier Mike Harcourt of British Columbia asserted that should Quebec separate, "we wouldn't be the best of friends; we'd be the worst of enemies. ... There will be great bitterness and a nasty split."<sup>26</sup> Premier Roy Romanow of Saskatchewan supported Harcourt's tough position, which "tapped into the sentiment of a lot of people in Western Canada."<sup>27</sup> In the spring of 1994, Reform Party leader Preston

<sup>22</sup> See A. Picard, "Parizeau Sees Federalist Win as Erasing Gains" *The [Toronto] Globe and Mail* (12 September 1995) A1.

<sup>23</sup> "Bouchard au Parti québécois" *Le Devoir [Montréal]* (22 November 1995) A7, reporting on the speech announcing his willingness to be a candidate for the P.Q. leadership.

<sup>24</sup> Thus Jacques Parizeau suggested that if negotiations on partnership dragged on, Quebec might simply delay sending its share of interest payments on the debt to Ottawa (see R. Séguin & R. Mackie, "Quebec Won't Delay Exit, Premier Says" *The [Toronto] Globe and Mail* (21 October 1995) A4). Bouchard laid out the strategy even more graphically by asserting, according to a reporter, that Canada will have "to beg Quebec to assume its share of the national debt," which will be leverage in negotiating an economic partnership (T. Thanh Ha, "Canada Will 'Beg' for Talks: Bouchard" *The [Toronto] Globe and Mail* (28 September 1995) A1).

<sup>25</sup> R. Séguin, "Separatists Were Poised to Humble Ottawa" *The [Toronto] Globe and Mail* (9 November 1995) A1.

<sup>26</sup> M. Cernetig, "Harcourt Talks Tough on Quebec" *The [Toronto] Globe and Mail* (17 May 1994) A1.

<sup>27</sup> D. Roberts, "Quebec Hot Topic for Western Premiers" *The [Toronto] Globe and Mail* (18 May 1994) A2. Harcourt reiterated his tough position more than a year later, stating that "[t]he people of British Columbia would be very angry ... That anger would be very real, very manifest" (W. Caragata, "He Said, They Said" *Maclean's* (4 September 1995) 11).

Manning addressed to the prime minister twenty "hard questions being asked by rank and file Canadians regarding Quebec's potential separation from Canada".<sup>28</sup> All sentiments, based on past togetherness, were cast aside in the Reform Party's subsequently published draft answers. They displayed an unremitting toughness guided by the self-interest of Canadians outside Quebec.<sup>29</sup>

The inhabitants of both the Rest-of-Canada and Quebec are being conditioned for a future in which they are, at best, strangers rather than each others' fellow citizens;<sup>30</sup> these anticipations — even if only of what might be — influence present behaviour. Suspicion increases. Trust erodes. Threats are uttered. Bargaining is designed to score points, not to reach agreement. Every slip by the other side — real or concocted — is pounced upon, distorted if necessary, and broadcast to the public. As the assumption that we will continue to be one civic people weakens, the common constitutional discourse, which is the ideological expression of our shared civic allegiance, begins to crumble. Exchanges between sovereigntists and federalists become, *inter alia*, vehicles for escalating threats.

In brief, as the breakup of Canada becomes a serious possibility, the idea of membership in a common society, and thus of civil discussion among citizen equals, begins to erode. The catalyst is not an increasing divergence of values, but of identity — a recognition that our membership in the same civic community can no longer be taken for granted.<sup>31</sup>

Of course these tendencies do not yet dominate the way in which we view each other. They coexist with the ongoingness of the existing system. Even in Quebec a complete break from Canada is not sought by the majority. The point nevertheless remains that on both sides, inside and outside Quebec, a possible future in which we no longer belong to the same country is becoming part of popular consciousness. This possibility negatively affects how we relate to each other even now, when formally we are still one people. A degree of reserve, tension and suspicion plays an increasingly prominent role in our encounters — a tendency greatly stimulated by the results of the 1995 referendum in Quebec.

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<sup>28</sup> Draft of Open Letter of P. Manning to Prime Minister J. Chrétien (8 June 1994).

<sup>29</sup> See Reform Party of Canada, "Reform Responses to the Twenty Questions Posed to the Prime Minister on June 8, 1994" (mimeo., draft) [unpublished]. See also S. Delacourt, "Reform's Opposition Bid Stymied" *The [Toronto] Globe and Mail* (22 November 1995) A4, reporting on Manning's statements: "'Let's lay it on the line' as to what separation really means, from Canada's perspective ... 'I found a stiffening on that. Let's lay out the Canadian position. They're tired of having this position defined by separatists who don't understand the aspirations of the rest of the country.'"

<sup>30</sup> Paul Martin, minister of finance, informed Quebecers of the benefits they would lose on independence, for "countries are not in the business of doing favours for foreigners" (cited in A. Freeman, "No Favours, Martin Tells Quebec" *The [Toronto] Globe and Mail* (27 September 1995) A1).

<sup>31</sup> What we now see in Quebec-Canada relations is the antithesis of what happened in 1949, when Newfoundland joined Canada. Welfare-state programs were immediately extended to encompass this new group of Canadian citizens. The new identity of Newfoundland as part of the Canadian community triggered a process of mutual civic empathy — a positive response to the coming together of formerly separate peoples.

## **B. The Conflict of Nationalisms**

The developing tendency in Quebec—Rest-of-Canada encounters to treat the “other” as the stranger it might become is not the only impediment to a fruitful constitutional conversation. Another is the muffled voice of the Rest-of-Canada — the constitutional entity that is supposed to emerge alongside a sovereign Quebec.

### 1. The Rest-of-Canada: The Empty Chair at the Table

The survival of Canada has been a question mark since the initial P.Q. victory in 1976. Logically, discussion of and preparation for the alternative futures we face entail four actors — federalists and sovereignists within Quebec, and federalists and “Rest-of-Canada sovereignists” outside Quebec. Federalists, within and outside Quebec, pursue the common objective of a renewed federalism, although agreement on its content has thus far eluded them. Sovereignists in Quebec, however, do not have a clear counterpart outside Quebec busily engaged in preparing non-Quebeckers for the possibility that they too might have to go it alone. The Rest-of-Canada, the residual Canadian survivor of Quebec’s possible departure, enjoys only a shadowy existence, and thus far has been incapable of preparing for the future that might be visited on it. It is the empty chair at the bargaining table.

The structural reason for this absence of voice and incapacity for introspection is obvious. The Rest-of-Canada has no institutional or constitutional existence, and thus has no one with authority to speak for it. It is headless and therefore officially voiceless. The partner with whom a sovereign Quebec would seek to share economic and political space exists only as an anticipation — as a possibility. The nine remaining provincial and two territorial governments do not constitute, and cannot speak for, the Rest-of-Canada. They represent territorial particularisms and would not, simply aggregated, produce a whole. Further, should Quebec’s sovereignists attain their goal, some of the other provinces might be tempted to consult and follow their own self-interest and go it alone, or regroup with their provincial neighbours. The federal government, of course, does not and cannot speak for “Canada-without-Quebec” at the same time that it speaks for a Canada that includes Quebec.

Until the 1995 referendum, the strategic reason for the silence of the Rest-of-Canada had been equally inhibiting. Public preparation for the possible breakup of Canada had been resisted on the grounds that it would legitimate and give momentum to the Quebec sovereignist project. The unpreparedness of the Rest-of-Canada was therefore reasoned, conscious and deliberate. This was especially so for the federal government — for it to speak for Canada-without-Quebec would have implied that it had lost the battle with Quebec sovereignists and that it would only survive in a truncated form, if at all.

While preparing for an unwanted future might very well have been counterproductive in the short-term, non-involvement has not been costless. First, the overall quality of the debate has been worsened by the absence of one of the major possible future actors. Second, the bargaining position of federalists outside Quebec has been

damaged by their inability to explore alternative visions of Canada-without-Quebec.<sup>32</sup> Third, the unpreparedness of the Rest-of-Canada, for its own future and for its response to a Quebec vote to separate, has contributed to a lack of realism in Quebec about possible responses.<sup>33</sup> Fourth and most importantly, Canadians outside Quebec have been denied the self-education in alternative futures that Quebecers, with the imperfections just noted, have undergone over the past two decades.

Two provincial referenda (1980, 1995), living under P.Q. governments,<sup>34</sup> major inquiries (Bélanger-Campeau, Allaire),<sup>35</sup> a scholarly community sympathetic to sovereignist aims,<sup>36</sup> and a nationalist culture<sup>37</sup> have all contributed to Quebec's self-education. The equivalent activity outside Quebec prior to the 1995 referendum was sparse, consisting of a handful of books published by academics. The one significant exception was the high profile performance by the Reform Party. Yet, the Reform Party's approach — typical of what has been termed "Plan B"<sup>38</sup> — focuses on the potential federal response to Quebec and does not address the larger question of Canada's future without Quebec.<sup>39</sup>

The socialization of the Rest-of-Canada into a sense of separate selfhood, prepared for a future without Quebec, has therefore been negligible. Most of the consti-

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<sup>32</sup> Quebec federalists can always remind their bargaining partners in Ottawa that there is a tougher, sovereignty-seeking actor waiting in the wings. Federalists outside Quebec, speaking for all of Canada, have had no such capacity, no backup position. This may explain the oft-noted weakness of the federal government at the bargaining table in both the Meech Lake and Charlottetown rounds. Federalists outside Quebec have been incapable of informing Quebec sovereignists who their counterpart would be, how Canada-without-Quebec would be constituted and how it would behave should Canada fracture.

<sup>33</sup> This weakness was especially pronounced prior to the 1995 referendum. Indeed, one of the more bizarre aspects of our recent constitutional discussion has been that the P.Q., whether in government or in opposition, has been the chief interpreter of how Canada or the Rest-of-Canada would survive and relate to an independent Quebec. Not surprisingly, these representations have been marred by insensitivity and shaped by self-interest. A poorly informed Quebec electorate is one major consequence and a second, depending on how much of what it says is believed, is a sovereignist elite whose poorly grounded predictions jump from desire to probability.

<sup>34</sup> The P.Q. has been in power in Quebec between 25 November 1976 and 12 December 1985, and since 12 September 1994 (K. O'Handley & C. Sutherland, eds., *Canadian Parliamentary Guide* (Toronto: Gale Canada, 1996) at 928).

<sup>35</sup> See Quebec, *Report of the Commission on the Political and Constitutional Future of Québec* (Quebec: National Assembly, March 1991) (Co-chairs: M. Bélanger & J. Campeau); *A Québec Free to Choose: Report of the Constitutional Committee of the Québec Liberal Party* (Quebec: Quebec Liberal Party, 1991) (Chairman: J. Allaire).

<sup>36</sup> See e.g. A.-G. Gagnon & F. Rocher, eds., *Répliques aux détracteurs de la souveraineté du Québec* (Montreal: VLB Éditeur, 1992).

<sup>37</sup> See R. Handler, *Nationalism and the Politics of Culture in Quebec* (Madison: University of Wisconsin Press, 1988).

<sup>38</sup> Popularized by G. Gibson in *Plan B: The Future of the Rest of Canada* (Vancouver: Fraser Institute, 1994). See also more recent sources listed *infra* note 44.

<sup>39</sup> See Draft of Open Letter, *supra* note 28; Reform Party of Canada, *supra* note 29. See also P. Manning, "Awakening the Sleeping Giant" (Address to the London Canadian Club, 2 November 1995) [unpublished].

tutional introspection outside Quebec has been federalist in nature and aimed specifically at renewing Canada's constitutional existence: Pepin-Robarts,<sup>40</sup> the process leading to the *Constitution Act, 1982*, the Meech Lake debate,<sup>41</sup> the Spicer commission<sup>42</sup> and the Charlottetown Accord.<sup>43</sup>

Only recently, in the post-referendum climate, has the silence of the Rest-of-Canada begun to attract attention. Jeffrey Simpson is not alone in seeing a need to get ready for what had previously been unthinkable, namely, the breakup of Canada. In a language now shared by many commentators, he argues that

[o]nly the stupid, the politically blind or those given to believe in hope over experience would say that Canada should enter the next referendum as completely ill-prepared to articulate and defend its own self-interest as it was in the October referendum ... What we might call civic society outside Quebec is not willing the next time to let itself be unprepared.<sup>44</sup>

The official response to Simpson's plea has been and will likely continue to be selective. True, the preparation outside Quebec for its possible exit is already superior to the policy void that existed before the 1995 referendum. There seems to be more in-house preparation than in the past, but that will do little to condition the citizenry of the Rest-of-Canada for a future without Quebec. The overwhelming concentration will be on the fairness of the process for determining the will of Quebecers, the terms of secession, and the process of bargaining following a "Yes" that is considered legitimate.<sup>45</sup> However, should such an event occur, several basic questions confronting Canada-without-Quebec will not have been sufficiently examined. Will Canada, geographically riven by Quebec's departure, survive as a single country? If so, with what constitutional structure? Think tanks and individual academics will scratch the surface of these issues, but no more. Governments will leave the question of the future of Canada-without-Quebec and the possibilities of partnership unexamined until the last minute. They are too embedded in the existing system to devote significant attention

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<sup>40</sup> Canada, Task Force on Canadian Unity, *A Future Together: Observations and Recommendations* (Ottawa: Canadian Government Publishing Center, 1979) (Co-chairs: J.L. Pepin & J.P. Robarts).

<sup>41</sup> See J. Webber, *Reimagining Canada: Language, Culture, Community, and the Canadian Constitution* (Montreal: McGill-Queen's University Press, 1994) at 125-62.

<sup>42</sup> *Citizens' Forum on Canada's Future: Report to the People and Government of Canada* (Ottawa: Canadian Government Publishing Center, 1991) (Chairman: K. Spicer).

<sup>43</sup> Canada, *Consensus Report on the Constitution: Charlottetown* (Final Text, 28 August 1992) (Ottawa: Minister of Supply and Services, 1992) [hereinafter *Consensus Report*].

<sup>44</sup> J. Simpson, "The Liberals Wobble With Non-Answers to Reform's Clear Questions" *The [Toronto] Globe and Mail* (14 December 1995) A22. This extremely important development became a new conventional wisdom almost overnight: see R. Gwyn, "The Old Canada is Gone Forever" *The [Toronto] Star* (31 October 1995) A23; C. Black, "Abandon the National Effort to Accommodate Quebec" *The [Toronto] Globe and Mail* (7 November 1995) A21; J. Simpson, "With No Clear Thinking, Canada Was Ill Prepared for its Dismemberment" *The [Toronto] Globe and Mail* (8 November 1995) A14. See also P.J. Monahan, M.J. Bryant & N.C. Coté, *Coming to Terms with Plan B: Ten Principles Governing Secession* (Toronto: C.D. Howe Institute, 1996) for an elaborate and detailed attempt to fill the gap identified by Simpson and others following Canada's "near-death experience" on October 30, 1995.

<sup>45</sup> See e.g. *Reference Re Secession of Quebec from Canada*, [1996] C.S.C.R. No. 421 (QL).

to a future they do not seek, especially when they fear that public attention to the possibility of such a future might speed its arrival.

The focus on the terms of secession and on the immediate post-Yes bargaining process, rather than on the reconstitution of Canada without Quebec, will be given priority for two major reasons: (1) it would be the first task after a Yes victory, and (2) establishing terms and a bargaining process can be seen as a deterrent to the momentum of the sovereigntists, emphasizing that the road to sovereignty-partnership will not be an easy one. By contrast, preparing for the reconstitution of Canada-without-Quebec is not only a more challenging task, but its undertaking — in contrast to setting terms of secession — offers encouragement to the sovereigntists, an acceptance of the historically inevitable.

Further, governing parties and their bureaucracies find it extremely difficult to prepare simultaneously for such diametrically opposed outcomes as renewed federalism and a reconstituted Canada-without-Quebec. The same inability to prepare for antithetical futures weakened the P.Q. government's role in the renewal of Canadian federalism after the 1980 referendum, when its representatives confronted the victorious Pierre Trudeau at the bargaining table. Their preparation was limited to the victory they did not achieve. Demoralized and unprepared for the renewal of federalism after their hopes for sovereignty-association had been dashed, their limited goals were either to engineer a stalemate by blocking Trudeau's constitutional amendments, or to agree to only a minimal package that was non-threatening to Quebec.

Outside Quebec, in the twilight period when the old order still enjoys a formal existence, official thinking is dictated by the existing constitutional structure of official authorities — provinces, territories and a Canadian government. The Rest-of-Canada has no official existence, no institutional centre, no organized bureaucracy to work for it, and as yet no citizenry outside Quebec that sees itself as belonging to any country other than Canada.

Thus the discussion of alternative futures is frustrated. The conversation that does take place, and particularly the official conversation, avoids one of the central questions — the survival and constitutional nature of what is left behind by a departing Quebec and its relations with Quebec. As a consequence, Canadians outside Quebec will be lamentably unprepared for a future that may be visited on them, rather than chosen. In this scenario, the sovereigntist Quebec victors will also be unprepared, for the predictability of their future hinges on knowledge of their putative partner's identity and behaviour, and this is unknowable. Hence, the possibility of the partnership they seek will also remain a question mark.

Should Canada break up, future historians will no doubt comment on the surprising paradox of how a wealthy, mature democracy with a plethora of governments and a highly educated citizenry was almost completely unable to prepare for a shrunken future that everyone knew was a serious possibility. The inability of the Rest-of-Canada to speak to itself results in a simultaneous inability of Canadians outside Quebec to speak to Quebec. Thus the two partners that are supposed to coexist in some form of partnership following a Yes vote are either almost completely incapable of preparing for the future (Canada-outside-Quebec) or seriously limited in their capac-

ity to do so because of factors outside their control (Quebec). This is not a trivial matter.

## 2. The Quebec Referendum Process: A Biased Conversation

Superficially, Quebec's referendum process can be portrayed as a model of democracy. It was the site of an intense debate which aimed to inform Quebecers about the choices confronting them when they cast their referendum ballots. From a Canadian perspective, however, the process was fundamentally flawed. Its fairness and the quality of the debates it fostered depended not on the particulars of the referendum machinery, but on the larger assumptions that lay behind it and that dictated the manner of its use.

One of the most crucial considerations is who controls the wording of the question. The construction of the recent referendum question in Quebec (and to a lesser extent its 1980 predecessor) — the electorate's answer to which was to determine the survival of a historic country — was the product of intensive polling and of what one can only describe as shameless public discussion of the search for a perfect question.<sup>46</sup> The 1995 referendum question was researched, framed and employed as an instrument of partisan, nationalist political mobilization aimed to strengthen the bargaining position of the Quebec government.<sup>47</sup> Once the strategic construction of the question was completed, the Quebec government publicly proclaimed the referendum exercise to be an example of consultative democracy in action. It was argued that the open, democratic nature of the referendum obligated Canada to accept a "fifty-percent-plus-one" outcome as definitive.

The law and politics of the Quebec referendum process take for granted that Canadians outside Quebec — whose future, according to the sovereignists, is to be determined by the Quebec electorate's response to a question carefully crafted by sov-

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<sup>46</sup> In September 1994, Bouchard stated "[t]here is no way sovereignists will engage in a losing referendum" (E. Stewart, "Quebec Gone in 'Next' Vote — Bouchard" *The [Toronto] Star* (31 October 1995) A8). Later, he claimed that "the referendum question must be altered to find a winning formula" (A. Picard, "A Chronology of Events Leading to Yesterday's Vote" *The [Toronto] Globe and Mail* (31 October 1995) A4). The next referendum, according to Bouchard, would be held "at the opportune moment, and one of the factors that will constitute the opportunity for a referendum will be that it will carry" (H. Bauch, "I'll Be Premier: Bouchard" *The [Montreal] Gazette* (22 November 1995) A1 at A10).

<sup>47</sup> See Monahan, Bryant & Coté, *supra* note 44, for criticism of the 1995 question: "The question referred to a political and economic partnership with Canada, which was actually an extremely remote possibility, so the wording was misleading in that it gave a false view of the conditions that were likely to prevail following the achievement of sovereignty" (*ibid.* at 27). Further, eight months prior to the referendum, 26 percent of Quebecers thought a sovereign Quebec would still be a province of Canada, and 27 percent thought it would still have M.P.'s in the House of Commons (see *ibid.* at 53, n. 57). Only a few weeks prior to the referendum, nearly 30 percent of Yes voters believed a sovereign Quebec would still elect members to Ottawa, and another 20 percent of Yes supporters were unsure (R. Mackie, "No Side Keeps Lead in Referendum Poll" *The [Toronto] Globe and Mail* (6 October 1995) A1).

ereignists — should have no influence on the wording of the question.<sup>48</sup> The vehemently negative reaction of sovereignists to any suggestion that the federal government might hold its own referendum in Quebec — one that might try to tap the Canadian dimension of Quebecers' identity — clearly betrays a recognition of the bias that results from a one-sided determination of the question. According to Guy Laforest, the distinguished Laval University political scientist, “[a] referendum run by the federal government in Quebec [would be] ... an illegitimate act, and I for one suggest it would bring massive civil disobedience.”<sup>49</sup> It appears, however, that a referendum held by the Quebec government should be seen as legitimate and accepted without question outside Quebec. The asymmetry in the logic is clear.

A related point, or bias, has received insufficient attention. The structuring of referendum debates in Quebec — with the “No” (federalist) forces under the control of provincial federalists and the Yes forces under the control of provincial sovereignists — provincializes the debate on the options facing Quebec. Two competing visions appealing to the self-interest of the Quebec community — within or without Canada — vie for support. In this competition, the Canadian dimension of federalism — participation in a pan-Canadian community — is underplayed and underweighted.<sup>50</sup>

In the 1995 referendum, the fact that the leader of the No forces was a provincial politician with ambitions to be the next premier of Quebec ensured that the issue of Quebec's future was viewed through a provincial lens. Daniel Johnson, leader of the Quebec Liberal Party, confirmed this bias when responding to critics of his failure to promote a Canadian vision: “[M]y preoccupation is the interests of Quebecers. My mandate is not the same as someone in the House of Commons. I work from and for

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<sup>48</sup> The words of Monahan, Bryant & Coté are appropriate: “In both 1980 and 1995, the Quebec government asserted that the wording of the referendum question was the exclusive responsibility of the pro-sovereignist forces ... No constitution anywhere in the world today provides for the referendum question to be formulated in this fashion” (*ibid.* at 9). Later they state: “This unilateral and undemocratic method of setting the referendum question is quite extraordinary in comparison to the manner in which other constitutions deal with this matter. We believe that it is inappropriate for the Quebec premier, who represents only one side in the debate, to have exclusive authority to set the referendum question” (*ibid.* at 27).

<sup>49</sup> Cited in S. Reid, *Canada Remapped: How the Partition of Quebec Will Reshape the Nation* (Vancouver: Pulp Press, 1992) at 74. Lucien Bouchard also responded strongly to the possibility of a federal referendum in Quebec: “When it comes to deciding the *political* future of Quebecers, it's done by Quebecers, under the rules of the National Assembly” (T. Thanh Ha & R. Séguin, “Slim Yes Win Won't Do, Federalists Say” *The [Toronto] Globe and Mail* (20 September 1995) A4). It may well be, of course, that it would be impolitic and impractical for the federal government to hold its own counter-referendum in Quebec, asking its own question. Faced with a choice, Quebecers would probably accord more legitimacy to a referendum question determined by the Quebec government (see Monahan, Bryant & Coté, *ibid.* at 40-42).

<sup>50</sup> See A.A. Borovoy, “Shared Vision of Canada Lost in Referendum Debate” *The [Toronto] Star* (8 November 1995) A21. See also D. Macpherson, “Waving the Flag” *The [Montreal] Gazette* (26 October 1995) B3.

Quebec ... My role is to defend the interests of Quebecers and if that doesn't suit some people [in Ottawa], too bad."<sup>51</sup>

The referendum process therefore structures the debate so that Quebecers decide on their future largely from an inward-looking Quebec perspective. The Quebec voter is accordingly relatively-deprived of cues, information and analysis relevant to one of the two civic identities that are natural to a federal system. This provincial bias is exacerbated if the federalist elite in Ottawa of Quebec origin can be portrayed as illegitimate or as traitors.<sup>52</sup>

The provincialization of the referendum has generally been accepted by elites outside Quebec, especially provincial premiers. Their brief forays into Quebec to give carefully scripted speeches before select audiences have a furtive air about them. It is as if they fear to be called "intruder" or "interloper". The weakening of the Canadian presence during Quebec referenda is a strategic triumph for the sovereignists. It reduces the likelihood that the referendum process fairly reflects the Canadian, as well as the Quebec, identity of the voter. In addition to offending basic fairness, the weakening of the Canadian presence increases the probability that the Quebec voter is poorly informed of sovereignty's consequences.

In the 1995 referendum, provincialization of the debate was strengthened by the silence "imposed" by the federal government on Canadian citizens outside Quebec and even to some extent on provincial governments.<sup>53</sup> They were told to stay out of the debate — a debate of fundamental importance to their future — because they were not part of the referendum electorate and because their vocal participation might damage the cause of the federalist forces in Quebec.<sup>54</sup>

While the reasoning behind this silencing may have been strategically sound — an attempt to avoid any provocative remark or action that could have been manipulated by the Yes forces — the silencing did have negative consequences. First, it was humiliating to be told that one's civic involvement in a public discussion was unwanted when the survival of one's country was at stake. Second, minimizing public discussion outside Quebec reinforced the ignorance of Canadians living beyond its borders by weakening their incentive and opportunity to become informed. Third, reducing the majority of Canadians to spectators impoverished the very idea of pan-Canadian citizenship; precluding citizens inside and outside Quebec from talking to

<sup>51</sup> Quoted in A. Picard, "Johnson Comes Out Swinging at Ouellet" *The [Toronto] Globe and Mail* (6 January 1996) A5.

<sup>52</sup> The label "traitor" was applied to Prime Minister Jean Chrétien by the separatist forces in 1995. See text below, accompanying note 98.

<sup>53</sup> For discussions of the orchestrated silence outside Quebec, not counting the voices of federal cabinet ministers, see A. Wilson-Smith, "The Struggle Begins" *Macleans* (18 September 1995) 18; R. Howard, "P.M. Lauds Rest of Canada for Keeping Cool Despite Separatists' Efforts" *The [Toronto] Globe and Mail* (11 October 1995) A4.

<sup>54</sup> This strategy was reversed in the final days of the referendum campaign. The change in policy resulted in a massive rally of Canadians from across Canada in Place du Canada, Montreal (see e.g. S. Delacourt, "Emotional Rally Bolsters No Forces" *The [Toronto] Globe and Mail* (28 October 1995) A1).

each other implied that they shared nothing relevant to the decision over Quebec's future. In particular, silencing Canadians outside Quebec weakened the idea of Canadian citizenship within Quebec, and thus reinforced the provincialism through which Quebecers were directed to decide their future. Silencing therefore weakened the Canadian dimension in the referendum debate; as a result, the Canadian pride of an overwhelming majority of Quebecers was systematically downplayed to the advantage of the sovereignists.<sup>55</sup>

### 3. Summary of the Quebec-Canada Debate

The peacefulness with which Canadians have debated and continue to debate their future is a tribute to the constitutional maturity of Canada. The achievement, however, is threatened by several factors. First, as we realize that we may not survive as one people, our language becomes increasingly bellicose. Second, Canada-without-Quebec is virtually voiceless and thus incapable of speaking, in advance of its own possible emergence, to the Quebecers who see it as their future partner. It is also incapable of the profound introspection that would prepare it for a future it might reluctantly inherit. Finally, the Quebec referendum process is clearly a flawed and biased policy instrument, designed to stress the provincial dimension of the Quebec community responding to a carefully crafted question.

## II. Aboriginal Peoples

### A. A New Narrative

Since the defeat of the federal government's 1969 white paper on Indian policy, the groups that vie publicly for living space and constitutional affirmation in Canada have included the Aboriginal peoples. Canadian sources of Aboriginal emergence have been reinforced by changes in the international environment. In a seminal article entitled "Ethnography as Narrative", the American anthropologist Edward Bruner argued that the dominant narrative concerning American-Indian history and culture had changed abruptly, indeed had virtually been stood on its head: "[I]n the 1930s and 1940s the dominant story constructed about Native American culture change saw the present as disorganization, the past as glorious, and the future as assimilation."<sup>56</sup> Now, by contrast, "[w]e have a new narrative: the present is viewed as a resistance movement, the past as exploitation, and the future as ethnic resurgence."<sup>57</sup> Not surprisingly, in light of global decolonization, the Canadian narrative concerning Aboriginal peo-

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<sup>55</sup> According to a poll taken two months before the referendum, 79 percent of Quebecers agreed with the statement "Quebeckers have contributed to building Canada, a country which I am proud to belong to" (R. Mackie, "Financial Reality Bringing Change, Johnson Says" *The [Toronto] Globe and Mail* (20 October 1995) A4).

<sup>56</sup> E.M. Bruner, "Ethnography as Narrative" in V.W. Turner & E.M. Bruner, eds., *The Anthropology of Experience* (Chicago: University of Illinois Press, 1986) 139 at 139.

<sup>57</sup> *Ibid.*

ples has experienced a similar transformation. In political and constitutional terms, the Aboriginal peoples of Canada have moved from the audience onto the stage.

This change has had extraordinary repercussions in a variety of fields. Joe Clark, as federal minister responsible for constitutional affairs, informed Canadians in 1991 that Louis Riel was now "a Canadian hero".<sup>58</sup> In the following year, in parallel resolutions in the House of Commons and in the Senate, yesterday's "traitor" was recognized for his "unique and historic role ... as a founder of Manitoba and [for] his contribution in the development of Confederation."<sup>59</sup> More generally, Aboriginal and non-Aboriginal writers now reinterpret the past to challenge negative portrayals of Aboriginal peoples and to provide a more positive, balanced and prominent place for them.<sup>60</sup> Museums are challenged to be more sensitive to the wishes of contemporary Aboriginal peoples, which in some cases requires the return of artifacts.<sup>61</sup> Whether Emily Carr is guilty of cultural appropriation engenders debate in art journals.<sup>62</sup> A recent biography demolishes the formerly positive reputation of well-known anthropologist Marius Barbeau by highlighting his pejorative attitudes to Aboriginal peoples and the unscrupulous methods he employed in his research.<sup>63</sup> Churches issue public apologies for the abuse of Aboriginal children in residential schools.<sup>64</sup> The Royal Commission on Aboriginal Peoples, whose very establishment testified to the new Aboriginal prominence in Canadian politics, has consolidated these intellectual and political trends in its comprehensive report.<sup>65</sup>

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<sup>58</sup> J. Clark, (Notes for a speech at a luncheon hosted by the Saskatchewan Métis Assembly, 28 September 1991) at 5 [unpublished].

<sup>59</sup> *House of Commons Debates* (10 March 1992) at 7879; *Debates of the Senate* (17 March 1992) at 1043.

<sup>60</sup> See, e.g. B.G. Trigger, *Natives and Newcomers: Canada's 'Heroic Age' Reconsidered* (Montreal: McGill-Queen's University Press, 1985); D.N. Paul, *We Were not the Savages: A Micmac Perspective on the Collision of European and Aboriginal Civilizations* (Halifax: Nimbus Publishing, 1993); G.E. Sioui, *For an Amerindian Autohistory: An Essay on the Foundation of a Social Ethic*, trans. S. Fischman (Montreal: McGill-Queen's University Press, 1992). First Nations Circle on the Constitution, *To the Source: Commissioners Report* (Ottawa: Assembly of First Nations, 1992) is a passionately positive evocation of the past of the First Nations, contrasted with the vices and failings of the intruding white society. The sources and nature of group-driven historical revisionism are lucidly explored in P. Novick, ed., *That Noble Dream: The "Objectivity Question" and the American Historical Profession* (Cambridge: Cambridge University Press, 1994).

<sup>61</sup> See M.M. Ames, *Cannibal Tours and Glass Boxes: The Anthropology of Museums* (Vancouver: U.B.C. Press, 1992) at 13-14.

<sup>62</sup> See M. Crosby, "Construction of the Imaginary Indian" in S. Douglas, ed., *Vancouver Anthology: The Institutional Politics of Art* (Vancouver: Talon Books, 1991) 267; R. Fulford, "The Trouble with Emily" (1993) 10 *Canadian Art* 32.

<sup>63</sup> See L. Nowry, *Man of Mana: Marius Barbeau* (Toronto: NC Press, 1995). See also H. Robertson, Book Review of *Man of Mana: Marius Barbeau* ("Totem Poles and Tall Tales"), *The Canadian Forum* (July/August 1996) 36.

<sup>64</sup> See J.R. Miller, *Shingwauk's Vision: A History of Native Residential Schools* (Toronto: University of Toronto Press, 1996) at 340.

<sup>65</sup> Canada, *Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Canada Communication Group, 1996) (Co-chairs: R. Dussault & G. Erasmus) [hereinafter *R.C.A.P. Report*].

These changes in the moral and intellectual climate inform political and academic judgments about past and future relations between Aboriginal and non-Aboriginal peoples. Inevitably, and appropriately, this new environment shapes constitutional politics. Indeed, the high profile of Ovide Mercredi in the prelude to the Charlottetown Accord, the diffusion of the status-enhancing label "First Nations",<sup>66</sup> and the pressures for constitutional recognition of a third order of government<sup>67</sup> are all manifestations of this larger cultural and intellectual transformation. It is generally recognized that the status quo is unacceptable and that past policies have failed. Aboriginal leaders now occupy the moral high ground, and they have become skilled in employing what anthropologist Noel Dyck terms "the politics of embarrassment":<sup>68</sup> they contrast their past and present treatment against the ideals of Canadian society and the ideals embodied in various rights instruments emanating from the United Nations.<sup>69</sup>

Unquestionably, the general direction of change symbolized by these examples is to be applauded. It holds out the possibility of a dignity in future Aboriginal—non-Aboriginal relations that has been absent in the past. Admittedly, some of the advances are tenuous. For example, the pan-Canadian voice of the Assembly of First Nations is muted by the preference of the Liberal federal government and its ministers to deal directly with regional Aboriginal leaders and local communities.<sup>70</sup> In addition, these advances are so recent that they have had little impact on the depressing array of social ills that afflict so many Aboriginal communities.<sup>71</sup> The overall trend towards greater recognition of Aboriginal aspirations and the promotion of Aboriginal self-government is, however, unlikely to change.

### ***B. The Contemporary Reticence of Non-Aboriginals***

The contemporary emergence of Aboriginal voices contrasts dramatically with the extended period in which non-Aboriginal politicians, administrators, missionaries and anthropologists dominated the Aboriginal-policy agenda. Until the mid-sixties, the policy discussion was almost completely one-sided due to limited Aboriginal participation. More recently, in a remarkable albeit only partial role reversal, it is non-Aboriginals whose contribution to the discussion of Aboriginal—non-Aboriginal relations is constrained. This is due to a combination of Aboriginal nationalism, a diffuse guilt complex among some of the non-Aboriginal majority, and the salience of

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<sup>66</sup> A key concept in *ibid.*

<sup>67</sup> See *ibid.*, vol. 2, part I at 240-44.

<sup>68</sup> N. Dyck, "Aboriginal Peoples and Nation-States: An Introduction to the Analytical Issues" in N. Dyck, ed., *Indigenous Peoples and the Nation-State: Fourth World Politics in Canada, Australia and Norway* (St. John's, Nfld.: Institute of Social and Economic Research, Memorial University of Newfoundland, 1985) I at 15.

<sup>69</sup> See e.g. *International Covenant on Civil and Political Rights*, 19 December 1966, Can. T.S. 1976 No. 47, 999 U.N.T.S. 171; *International Covenant on Economic, Social and Cultural Rights*, 19 December 1966, Can. T.S. 1976 No. 46, 993 U.N.T.S. 3.

<sup>70</sup> A. McLroy, "Mercredi Unveils Last-Ditch Plan" *The [Toronto] Globe and Mail* (9 July 1996) A1.

<sup>71</sup> The entire *R.C.A.P. Report*, *supra* note 65, exhaustively analyzes the widespread malaise and social breakdown in Aboriginal communities (see especially *ibid.*, vol. 3).

the contemporary voice appropriation thesis.<sup>72</sup> These inner constraints and taboos are not ubiquitous. Once again, they do not seem to bind the Reform Party nor a handful of authors.<sup>73</sup> They do not silence critics of the land claim process in British Columbia, nor do they silence critics of Aboriginals' resort to blockades and violence (whether real or threatened). I argue only that many would-be commentators and analysts realize that this area is a "minefield". They consequently speak and write guardedly or remain silent. This is particularly true of those who are broadly supportive of Aboriginal peoples. Those who do speak out are often those who are least sympathetic to Aboriginal claims. As a result, the Aboriginal—non-Aboriginal debate appears much more polarized than it actually is.<sup>74</sup>

These muffling constraints apply equally to academics and to politicians. Constraints on the former are frequently noted. Dyck recently wrote of the great difficulty anthropologists now have in "telling it like it is" and accurately representing the conditions they observe in Aboriginal communities.<sup>75</sup> They fear that honest reporting will undermine Aboriginal peoples' political objectives, which they generally support. Other scholars have expressed a similar reluctance to formulate conclusions that could cast doubt on the feasibility or desirability of Aboriginal goals. They fear that their motivations could be misinterpreted.<sup>76</sup> Gibbins and Jhappan note that the "few scholars who have dared to express doubts about the appropriateness, and indeed authenticity, of aboriginal claims have been attacked and even ridiculed, regardless of the substance of their concerns."<sup>77</sup> The non-Aboriginal author of a recent book written to advance Indian interests still felt obliged to defend himself against the view that he

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<sup>72</sup> See the following for a discussion of the voice appropriation thesis: L. Alcoff, "The Problem of Speaking for Others" (1991-92) 20 *Cultural Critique* 5; M. Fee, "Why C.K. Stead Didn't Like Keri Hulme's *The Bone People*: Who Can Write as Other?" (1989) 1 *Aust. & N.Z. Stud. Can.* 11; A. Pask, "Cultural Appropriation and the Law: An Analysis of the Legal Regimes Concerning Culture" (1994) 8 *I.P.J.* 57.

<sup>73</sup> See e.g. Reform Party of Canada, *Aboriginal Affairs Task Force Report* (mimeo., 15 September 1995) [unpublished]; M.H. Smith, *Our Home or Native Land?* (Victoria: Crown Western, 1995). In the preface, Smith anticipates that "[t]he national native leadership will incorrectly brand the author as a racist" (*ibid.* at vi).

<sup>74</sup> The tendency for extreme views to drive out moderate views in polarized, highly charged policy areas is pervasive. "[Those] ... with extreme views," argues G.C. Loury, "can drive moderates, who want to avoid the reputational devaluation of being mistaken as zealots, out of a conversation. In effect, the moderates 'hoard' their opinions; hence, the public discourse on some issues (perhaps abortion, for example) can be more polarized than is the actual distribution of public opinion" (*One by One from the Inside Out: Essays and Reviews on Race and Responsibility in America* (New York: Free Press, 1995) at 154).

<sup>75</sup> See N. Dyck, "Telling it like it is: Some Dilemmas of Fourth World Ethnography and Advocacy" in N. Dyck & J.B. Waldram, eds., *Anthropology, Public Policy, and Native Peoples in Canada* (Montreal: McGill-Queen's University Press, 1993) 192.

<sup>76</sup> See R. Gibbins, "Citizenship, Political, and Intergovernmental Problems with Indian Self-Government" in J.R. Ponting, ed., *Arduous Journey: Canadian Indians and Decolonization* (Toronto: McClelland & Stewart, 1986) 369 at 376.

<sup>77</sup> R. Gibbins & R. Jhappan, "The State of the Art in Native Studies in Political Science" (Paper presented to the Tenth Biennial Canadian Ethnic Studies Association Conference, 1989) at 24 [unpublished].

was entering forbidden territory. He resisted possible allegations of paternalism, denied the “insider thesis” (*i.e.*, that his identity as a non-Aboriginal would preclude understanding), and concluded that his writing on Aboriginal issues was justified because the “principle of a common humanity requires scholars to transcend the boundaries of their identity to find common human ground.”<sup>78</sup>

Similar constraints apply to politicians who fear that speaking frankly will be politically damaging. One participant in the constitutional conferences on Aboriginal matters (1983-1987), who detected a lack of candour in the comments of non-Aboriginal politicians, stated that “[n]o politician wants to appear reactionary: sincere and sometimes reasonable concerns about enhancing the various rights of aboriginal peoples tend to be left unvoiced.”<sup>79</sup>

None of the above is surprising. We are all responding to the changed narrative identified by Bruner at the beginning of this section. At least it is clear that the new narrative is an improvement over the one that it has replaced. Also, there is a certain justice in the current prominence enjoyed by the voices of the formerly silenced and marginalized peoples as we seek to establish a new relationship. Further, the trust that is necessary for candid exchanges is a scarce commodity.<sup>80</sup> Aboriginal peoples know that the candour of the past by the majority society, including governing elites, when they themselves had little voice, was often stigmatizing and pejorative, as well as being paternalist. These psychological and cultural impediments do not make our task of working out a positive future relationship an easy one.

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<sup>78</sup> M. Boldt, *Surviving as Indians: The Challenge of Self-Government* (Toronto: University of Toronto Press, 1993) at xviii. (A few years ago, in a speech to an academic audience, I referred to some concerns that I thought should be considered on the road to Aboriginal self-government. To my surprise I was subsequently congratulated by several people, not for the cogency of my remarks, but for my courage in making them.) Boldt's defensive posture, one that is frequent in contemporary non-Aboriginal scholarship on Aboriginal issues, contrasts remarkably — in fact, almost totally — with Gunnar Myrdal's preface to his *An American Dilemma*, one of the most brilliant applied social-science analyses of the twentieth century. He noted approvingly that it was his very status as an outsider, as a foreigner, that led to his invitation from the Carnegie Corporation to undertake the daunting study of the condition of the American “Negro” in the United States, culminating in his massive two volume publication (see “Author's Preface” in G. Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy*, vol. 1 (New York: Harper, 1944) ix). Myrdal, of course, wrote in the imperial era. The contemporary period, which goes under various labels, is usefully summed up by the title of a volume dealing with the post-colonial counter-attack: *The Empire Writes Back*, by B. Ashcroft, G. Griffiths & H. Tiffin (London: Routledge, 1989).

<sup>79</sup> B. Schwartz, *First Principles, Second Thoughts: Aboriginal Peoples, Constitutional Reform and Canadian Statecraft* (Montreal: Institute for Research on Public Policy, 1986) at 325.

<sup>80</sup> See J.R. Ponting, “Internationalization: Perspectives on an Emerging Direction in Aboriginal Affairs” (1990) 22:3 *Can. Ethnic Stud.* 85. According to Ponting, the foremost theme in Indian discourse is “the ‘untrustworthiness of government.’ The federal government ... was repeatedly portrayed as betraying trust, being deceitful, lying, not dealing in good faith, and being insincere or hypocritical” (*ibid.* at 93).

### C. Towards a Shared Discourse

Nevertheless, if our constitutional and civic task is to create an enduring rapprochement between internal nationalisms, constraints on discussion may prove counterproductive. As Menno Boldt has observed, discussion of the future of Aboriginal peoples in Canada has thus far taken place in parallel discourses, Aboriginal and Canadian. These are “conducted in isolation and [each] is insulated from the other, and the participants in each seem to be imprisoned in the concepts and logic of their particular discourse.”<sup>81</sup> The laudable goal to which his book was directed was to have “members of these two communities entering into a shared discourse for the purpose of learning from each other, about each other, and about themselves as part of the human community.”<sup>82</sup> A shared discourse will not be easily achieved. The memories and suspicions history has bequeathed us impede the mutually informative discussions that might help us overcome the burdens of the past.

## III. The Crisis of Representation

Federalism presupposes the existence of divided civic identities and dual representation of citizens in provincial and federal legislatures. It is presumed, in a functioning federal state, that each government, federal or provincial, is a legitimate spokesperson for half of the divided identity of a federal people. In Quebec-Canada relations, this assumption is no longer valid. Further, Aboriginal leaders rarely promote the federalist goal of divided identities. The competition between internal nationalisms poses a fundamental challenge to the Canadian system of divided representation: Who has the right to speak for whom?

### A. Who Speaks for Whom?

In a healthy federal state, the splitting of the civic self is a virtue. It allows citizens not only to have multiple allegiances and opportunities for participation, but also to shift allegiances and vary the intensity of their participation based on which government appears most sensitive to their interests. Competition to satisfy citizens' concerns and to strengthen their identification with a particular government works to enhance governments' sensitivity. When federalism is routinized, the system of dual representation that reflects and reinforces a dualism of identity threatens neither personal identity nor civic wholeness. Rather, it allows our federal and provincial “selves” to speak simultaneously to each other, and allows all of us to address each other from coast to coast as Canadians.

Both the theory and the practice of divided identities and dual representation in Canadian federalism have become a key target of nationalist, and especially Quebec sovereignist, elites seeking to monopolize the voice of their people. From the nationalist, especially sovereignist, perspective, the “external” civic identity of the

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<sup>81</sup> Boldt, *supra* note 78 at xiii.

<sup>82</sup> *Ibid.* at xvii.

country as a whole is a threat and a rival.<sup>83</sup> For example, Claude Morin described the federal system as a threat because it “divides Quebecers against themselves”, and René Lévesque remarked in 1979 that federalist Quebecers are “foreigners”.<sup>84</sup> There is a pervasive *indépendantiste* thesis that

the federal citizen with her divided allegiances and divided civic identities has an unhealthy, fractured personality. Such a person, tugged in contradictory directions, is the psychic counterpart of an unhealthy body immobilized by physical ailments. Federalism, it is argued, inhibits the flourishing of the healthy, single-dimensional identity Québécois could enjoy as citizens of an independent state.<sup>85</sup>

The election of federalists from Quebec to Parliament in Ottawa, according to Lucien Bouchard, has systematically distorted and concealed Quebec’s “true reality from English-speaking Canadians.”<sup>86</sup> This persuasion discredits the support of Pierre Trudeau, and of his seventy-two Liberal caucus members from Quebec, for the patriation package that became the *Constitution Act, 1982*. The implicit claim is that Quebec’s authentic political voice is heard in Quebec’s National Assembly: federal members of Parliament from Quebec, caught up in Canada-wide concerns, are not truly representative. The singularity of Quebec, it is argued, is muffled.<sup>87</sup>

While many status Indians do not think of themselves as Canadian citizens,<sup>88</sup> and view provincial involvement in their affairs as a threat to their unique constitutional status, they know that various political and economic necessities preclude their exit from Canada. Nevertheless, their leaders accord a clear priority to Aboriginal identities and show little enthusiasm for the federalist goal of divided identities.

Charles Taylor’s “deep diversity” thesis, applied to Quebec and to Aboriginal peoples, assumes that only one deeply felt civic identity is possible. In these cases, therefore, a Canadian identity will not have an autonomous existence. It will only be an instrumental extension of the Quebec and Aboriginal identities that are (or will be) primarily linked to subnational governments over which they have (or will have) majority control. “For Quebecers, and for most French Canadians,” Taylor argues, “the way of being a Canadian (for those who still want to be) is by their belonging to

<sup>83</sup> Hence the hostility of the Tremblay Report to the thesis that the federal government could use its powers to stimulate a Canadian identity (Quebec, *Report of the Royal Commission of Inquiry on Constitutional Problems* (Quebec: Province of Quebec, 1956) (Chairman: T. Tremblay)); the post-1982 Quebec nationalist criticism of the *Charter*, seen as an instrument to strengthen a pan-Canadian identity, derives from the same assumption of the unchallengeable priority of the Quebec civic identity (see *Reconfigurations*, *supra* note 3 at 204-209).

<sup>84</sup> Cited in *Disruptions*, *supra* note 19 at 45.

<sup>85</sup> *Reconfigurations*, *supra* note 3 at 323.

<sup>86</sup> L. Bouchard, “The French-Speaking Community and Québec” (Notes for a speech to the 45th Annual General Assembly of the Association canadienne-française de l’Ontario, 3 June 1994) at 13 [unpublished].

<sup>87</sup> See A. Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1995) for a complex and relevant discussion of representation roles around the theme of presence.

<sup>88</sup> See Boldt, *supra* note 78 at xvi; M. Boldt & J.A. Long, eds., *The Quest for Justice: Aboriginal Peoples and Aboriginal Rights* (Toronto: University of Toronto Press, 1985) at 177.

a constituent element of Canada, *la nation québécoise*, or *canadienne-française*. Something analogous holds for aboriginal communities in this country.”<sup>89</sup>

When the leaders of Aboriginal organizations sit at the bargaining table with first ministers from the federal, provincial and territorial governments (as they did in the 1983-1987 Aboriginal constitutional conferences, and again in the meetings that produced the Charlottetown Accord), their representative role presumes that they possess the sole authority and right to be the voice of the Aboriginal peoples. This, however, directly challenges the political and constitutional reality that the Aboriginal peoples are also Canadian citizens who vote for the members of federal, provincial and territorial legislatures. Given the practice of responsible government, Aboriginal voters help to determine the composition of the political executives who sit on the other side of the bargaining table. From the Aboriginal nationalist perspective, however, this does not give those politicians — except for those who are Aboriginal themselves — authority to speak for their Aboriginal constituents.

This Aboriginal position has deep historical roots: status Indians did not get the vote until 1960.<sup>90</sup> In addition, Aboriginal voters are a small minority of the total electorate, and their geographic dispersal marginalizes their influence in most constituencies. Further, their historical experience gives them little reason to be confident that governments and legislators will be sensitive to their concerns.<sup>91</sup> George Erasmus, co-chair of the Royal Commission on Aboriginal Peoples, formerly grand chief of the Assembly of First Nations, bluntly denied that first ministers did or even could represent Aboriginal interests: “This bland assertion that First Nations and their governments are represented by non-aboriginal politicians who have no interest, demonstrated or latent, in advocating our rights is bogus and is without foundation in fact or action.”<sup>92</sup> In the closing days of the Meech Lake odyssey, the suggestion that Prime Minister Brian Mulroney and other elected white leaders should be trusted to respond to Aboriginal peoples’ constitutional objectives in a post-Meech era prompted Patricia Monture, an Aboriginal law professor, to respond with the comment: “‘Trust us’. I mean what do you think we are, forgetful or just plain crazy?”<sup>93</sup>

In our attempts to escape from unsatisfactory representative mechanisms for Aboriginal peoples, we have stumbled, in constitutional matters, into ad hoc arrange-

<sup>89</sup> C. Taylor, *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism*, G. Laforest, ed. (Montreal: McGill-Queen’s University Press, 1993) at 182.

<sup>90</sup> *An Act to Amend the Canada Elections Act*, S.C. 1960, c. 7, amending R.S.C. 1952, c. 23.

<sup>91</sup> A. Bear Robe, after noting that First Nations had no voice in the constitutional settlements of 1867 or 1982, continued: “We have no sense of ownership regarding the federal and provincial laws that apply to us simply because those laws were forced upon us without our consent, consultation or input, especially the much despised federal *Indian Act*” (“Treaty Federalism” (1992) 4 Const. F. 4 at 6).

<sup>92</sup> *Debates of the Senate* (18 November 1987) at 2201. See also *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord* [hereinafter *Minutes*], No. 9 (19 August 1987) at 61 (G. Erasmus); *Minutes, ibid.*, No. 12 (25 August 1987) at 101 (M.L. Bruyère).

<sup>93</sup> M.E. Turpel & P.A. Monture, “Ode to Elijah: Reflections of Two First Nations Women on the Rekindling of Spirit at the Wake for the Meech Lake Accord” (1990) 15 Queen’s L.J. 345 at 350.

ments that are theoretically incoherent. Is there an implicit assumption of a division of labour, whereby Aboriginal organizations speak for the aboriginality of indigenous peoples and the federal and provincial governments speak for their Canadian and provincial identities? If so, the theory has not been articulated, and practice belies its existence. However explicable its origins, the existing confusion is not sustainable in the long term.

When Robert Bourassa, Jacques Parizeau or Lucien Bouchard have said that they would only bargain with the federal government on a one-on-one, equal-to-equal, nation-to-nation basis, they have contributed to a similar confusion, for the federal government does not speak for a polity that excludes Quebec. Their deliberate misrepresentation of the federal government's role is a denial of its constitutional obligations to all Canadians, and an attempt to force the federal government into an illegitimate role — as government and spokesperson for the Rest-of-Canada.

Quebec has its own problems of political representation. Pre-referendum votes by the Inuit, Cree and Montagnais — with overwhelmingly federalist results<sup>94</sup> — directly challenge the legitimacy of Quebec's majority deciding about the future of the whole of Quebec's territory. They challenge the legitimacy of the Quebec government claiming a mandate for sovereignty that would automatically include their peoples. The underlying premise for the Aboriginal peoples is clear: neither a Quebec majority, nor a Quebec government that speaks for the majority on such fundamental issues, speaks for them; notwithstanding their *de jure* membership in the Quebec territorial community, on such matters they speak for themselves.

### **B. Nationalist Rhetoric**

The hostility to divided identities and to dual systems of representation is the source of appeals to national pride, to loyalty and to the need for "*un rapport de force*", a phrase Bouchard used repeatedly in the 1995 referendum campaign. He also used "solidarity" — "the key word, if ever there was one," he subsequently stated when announcing his candidacy for the P.Q. leadership, "for the needs of our future action."<sup>95</sup> The rhetoric of the Yes side returned again and again to this theme: "equal to equal", "nation to nation", "people to people", "standing tall", "not being on one's knees". In Parizeau's words, the federalist message was that "[t]he smaller you make yourselves, the more you stay on your knees, the more beautiful you are."<sup>96</sup> "Quebec rose to its feet" was Bouchard's interpretation of the strong Yes vote in the 1995 ref-

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<sup>94</sup> The Cree voted 96 percent No, the Inuit 95 percent No, and the French-speaking Montagnais an astonishing 99 percent No (see A. Derfel, "The Message is Clear: We Won't Go": Coon Come Has Warning After Vast Majority of Crees Reject Quebec Independence" *The [Montreal] Gazette* (26 October 1995) A15; T. Harper, "Indian Leaders Vow to Fight Separation: 95% of Inuit Reject Yes Victory" *The [Toronto] Star* (27 October 1995) A14; A. Derfel, "Montagnais Reject Quebec Independence: French-Speaking Aboriginals Vote 99% Against in Own Referendum" *The [Montreal] Gazette* (28 October 1995) A9).

<sup>95</sup> "Quebec is Split in Two" *The [Montreal] Gazette* (22 November 1995) B3.

<sup>96</sup> Quoted in R. McKenzie, "Break Inevitable, Parizeau Claims" *The [Toronto] Star* (24 October 1995) A10.

erendum.<sup>97</sup> The search for nationalist solidarity, so that a united Quebec can bargain from a position of strength, and for the affirmation of a single identity in the struggle against the “other”, generates criticisms of opponents who appear to identify with the other side. They are accused of not being on-side with “the people”. Patriation is labelled the “betrayal of 1982”, and its architects, especially Pierre Trudeau and Jean Chrétien, are deemed “traitors”.<sup>98</sup>

Similar motivations underlie the warning within the Aboriginal community to “beware of the traitors in our midst”, defined as those who advocate the Canadian way as “the only way”: “our greatest enemies are within our own ranks.”<sup>99</sup> A number of First Nations women who appeared before the Royal Commission on Aboriginal Peoples, apprehensive that their loyalty might be questioned, requested that they be heard *in camera*. The Commission speculated that this was either “because they feared community disapproval if they spoke out in public, or because they did not wish to talk about social dysfunction in their communities in a public forum.”<sup>100</sup> Aboriginal women who advocated the *Charter*’s applicability in the context of Aboriginal self-government were criticized for letting women’s concerns obscure the larger issue of Aboriginal self-government. They were told by the Assembly of First Nations that the *Charter* was a “foreign” document, and that “Aboriginal women will have more power, more status, more respect than their feminist white sisters” if Aboriginal tradition is restored.<sup>101</sup> Women’s criticism of abuse in Aboriginal communities was dismissed as not being “authentically Aboriginal”. According to one Aboriginal woman who supports the *Charter*, persistence in speaking about women’s problems led to the pain of being “labelled as a dupe of the colonizing society.”<sup>102</sup>

### C. Summary of the Crisis of Representation

The pressures for solidarity within communities deepen the differences between them, and impede the discovery and stimulation of commonalities that would strengthen citizenship ties across the country.<sup>103</sup> Solidarity is a natural strategy for

<sup>97</sup> R. McKenzie, “Parizeau Quits: Bloc Québécois’ Bouchard Seen as Most Likely Successor” *The [Toronto] Star* (1 November 1995) A1 at A28.

<sup>98</sup> See G. Fraser, “Long Knives Hone Bouchard’s Message: Vision of Betrayal by Other Provinces in 1981 Constitutional Deal Underpins Nationalist Narrative” *The [Toronto] Globe and Mail* (27 October 1995) A8. See also D. Vienneau, “Separatist Vitriol Influenced Attacker, P.M. Says” *The [Toronto] Star* (13 November 1995) A1, A20, for a catalogue of the vituperative language directed at Chrétien by Bouchard and Parizeau, including “traitor”, “cretin”, “toady” and “*Uncle Tom*”.

<sup>99</sup> M. Smallface Marule, “Traditional Indian Government: Of the People, by the People, for the People” in L. Little Bear, M. Boldt & J.A. Long, eds., *Pathways to Self-Determination: Canadian Indians and the Canadian State* (Toronto: University of Toronto Press, 1984) 36 at 45.

<sup>100</sup> Royal Commission on Aboriginal Peoples, *Public Hearings, Exploring the Options: Overview of the Third Round* (Ottawa: Canada Communication Group, 1993) at 4.

<sup>101</sup> First Nations Circle on the Constitution, *supra* note 60 at 64.

<sup>102</sup> J. Green, “Constitutionalizing the Patriarchy: Aboriginal Women and Aboriginal Government” (1993) 4 Const. F. 110 at 118.

<sup>103</sup> As George M. Fredrickson recently observed of the American situation, “[t]he emphasis on black ethnic solidarity and the disavowal of integration as a primary goal of African Americans that have,

elites whose goal for “their people” is a partial (or complete) exit via self-government from the constraints of the surrounding political community — described in Bouchard’s rhetorical language as a “prison”.<sup>104</sup> But bitter internal conflicts are almost inevitable consequences because at least some members of the community that seeks exit resist the weakening or sundering of their ties with a country they do not wish to leave. Any proposed exit is seen as a threat to their Canadian identity.

The tensions between Quebec, Canada and Aboriginal peoples challenge our conceptions of community and the existence of divided civic identities, and consequently undermine the current systems of representation in Canada and Quebec. These tensions are about anticipated futures: Quebec and the Rest-of-Canada meeting as sovereign nations; Aboriginal peoples constituting a third order of government; or particular Aboriginal peoples in Quebec pressing their claim to stay in Canada should Quebec become a sovereign state.<sup>105</sup> In each case, the powerful symbolic message is the same: “We are not part of you. You do not represent us. We meet as equals.” Officially, however, none of these claims is constitutionally valid. The resultant discrepancy between official and assumed representative roles complicates and confuses whatever encounters take place between officeholders and spokespersons. They cannot agree on who they are and whom they represent.

## IV. Conclusion

### A. *The Quality of Our Constitutional Conversation*

When future historians look back on the constitutional introspection of Canadians in recent years, they will not be lacking for questions. The key question, undoubtedly, will be how events in the 1970s to the 1990s led to the survival or dissolution of Canada. A question they might neglect to ask is how good — how fair, comprehensive, informed, democratic, free from constraint — was the public discussion in the crisis decades?

This is a complex question, and I have provided little more than a crude descriptive answer, if that, in this paper. I have not tried to judge the quality of the hearings held and reports produced by so many constitutional committees. That would be a valuable exercise, but it was not the one guiding this paper. My approach has been indirect. I have tried to reveal some of the constraints, inhibitions, silences, ambiguities, and words not spoken, on the premise that these are no less informative about our constitutional introspection than is the public record of what has been said and writ-

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since the late 1960s, characterized much black political thought and leadership have made it more difficult to find allies in the white community. Most recently, it has inhibited efforts to defend affirmative action in a politically effective way” (“Demonizing the American Dilemma” *New York Review of Books* (19 October 1995) 10 at 14).

<sup>104</sup> L. Gagnon, “The Political Mood Swings of Bouchard” *The [Toronto] Globe and Mail* (15 June 1996) D3.

<sup>105</sup> See e.g. “Quebec Inuit Plan to Hold Own Ballot” *The [Toronto] Globe and Mail* (15 September 1995) A4.

ten. I have tried to go beyond the standard question of the respective roles of leaders and citizens in constitutional politics. That is only the starting point if we wish to evaluate the quality of our constitutional discourse in terms of its openness, its fairness and the integrity of the speakers.

We have, to our credit, employed words and silences, rather than fists and bullets, in our constitutional exchanges on the Quebec-Canada front. Although there have been several serious localized incidents of violence involving Aboriginal peoples, of which Oka stands as the leading example, their emergence as serious constitutional participants has been a markedly positive development. Issues have been raised that had been kept dormant by the relegation of Aboriginal peoples to the sidelines for so long.

These triumphs, however, tell only part of the story. We have been too quick, I believe, to praise the civility of our constitutional debates. We also need to appraise the damage we have inflicted on our civic selves, and the quality of our efforts to talk our way to a different set of constitutional arrangements. Unless the tendencies examined in this paper are denied, or are considered to be seriously exaggerated, it appears that our public constitutional introspection has had major shortcomings. There are high barriers to open and candid discussion. As discussion is the only vehicle we have for mutual education in a time of existential crisis, these shortcomings are profoundly worrying. We speak to each other through distorting and distorted channels. Our constitutional talk emerges out of a context of pervasive bias, silencing, fears, taboos and ambiguity.

Ideally, we would recognize that our identities are shaped by our interactions and actual dialogues with others.

It then follows that public recognition of our identity requires a politics that leaves room for us to deliberate publicly about those aspects of our identities that we share, or potentially share, with other citizens. A society that recognizes individual identity will be a deliberative, democratic society because individual identity is partly constituted by collective dialogues.<sup>106</sup>

Our identities, by contrast, are disproportionately shaped by our relative inability, as fellow citizens, to talk across the internal national divides that weaken a pan-Canadian sense of self.

The difficulties we have in speaking across the barriers that divide us impoverish our public constitutional discourse, impede the possibility of an informed citizenry, and enhance the possibility that our policy decisions will be based more on myth and rhetoric than on reasoned analysis. We should therefore refrain from giving more than a faint half-cheer for the quality of our constitutional discourse.

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<sup>106</sup> A. Gutmann, ed., *Multiculturalism and "The Politics of Recognition"* (Princeton: Princeton University Press, 1994) at 7.

### ***B. Why Is It So Difficult to Talk to Each Other?***

I return to the query of my title: Why is it so difficult to talk to each other? Nationalism, in my view, is the principal explanation. When the stakes are as high as the breaking up of one civic nation, confronted with the sovereignty ambitions of Quebecers caught between their own ethnic and civic nationalism, and with the arrival of a challenging Aboriginal nationalism emerging from the sidelines of Canadian history, the possibility of civil conversation among citizen colleagues or between friendly governments sharing an agreed constitutional order is eroded. Nationalist movements, convinced of their rectitude and their historic destinies, do not make easy discussion partners. The rueful conclusion of this paper is that overcoming or accommodating our divisions is impeded by the barriers that those very divisions put in the way of civil dialogue.

If it is difficult to talk to each other because we are divided by nationalism, it begs the question "Why are we divided?" We are divided by distrust and suspicion that feed on past politics of failed recognition or misrecognition of Aboriginal peoples and francophone Quebecers as valued members of the Canadian community by their fellow citizens. The disrespect historically accorded Aboriginal peoples, especially status Indians, and the inability of governments and citizens outside Quebec to recognize Quebec constitutionally as a distinct society, have reduced the allegiance of these communities to the country as a whole — a country which their aggrieved rhetoric confirms is not fully theirs. The resultant resentment and anger engenders and sustains Aboriginal and Quebec nationalisms, through which their adherents seek dignity and recognition. Nationalist movements, however, have great difficulty talking to each other; hence, our ability to learn from and about each other is severely constrained. Whatever else we are, or were, we are not now a community of discussion.

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