
Multiculturalism and the Canadian Constitution



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Edited by Stephen Tierney

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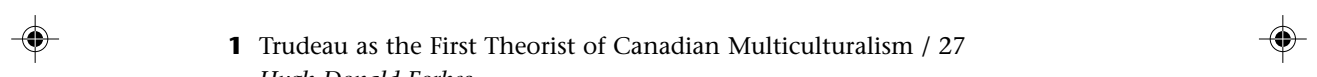


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Multiculturalism and the Canadian Constitution





Introduction: Constitution Building in a Multicultural State


Stephen Tierney



Canada has long been the focus of international attention for its success as a multicultural society and, in particular, for its ability to manage its cultural diversity through a federal constitution. Constitutional provisions across a range of areas, including the relationship between English and French Canada; federalism more generally, including the status of Quebec; language rights; the status of Aboriginal peoples; Canada's immigration and integration strategies; constitutional guarantees for religious schools; affirmative action; and a general guarantee of equal protection to men and women all tell a complex story of diversity, embracing First Nations, settler communities, and new immigrants, and consolidated through a long and incremental period of constitution building.

This book brings together eleven essays by leading scholars of cultural diversity from backgrounds in law, political science, and sociology, and in doing so addresses several key components of the evolving Canadian story: the evolution over time of multicultural law and policy in Canada; the territorial dimension of Canadian federalism, which also embraces Canada's language policy; and the role of constitutional interpretation by the courts in the development and enhancement of Canada as a self-consciously multicultural state.

Multiculturalism and the Canadian Constitution is divided into two parts. The first addresses the historical evolution of multiculturalism and federalism in the development of the Canadian constitution. It comprises five retrospective accounts that identify key factors in the development of Canada's unique approach to managing cultural diversity. Together these chapters help build a picture of why Canada has adopted such a constitutional commitment to the accommodation of diversity, what its successes have been, and what challenges remain in reconciling different visions of the Canadian state. Several themes emerge from these chapters, which raise key questions for the further exploration of the Canadian experience. First, how



might we attempt to explain in ideological terms the Canadian commitment to both cultural and territorial diversity? From contributions by Forbes, Temelini, and Chevrier, we can see that different approaches to, or understandings of, liberalism have been at work throughout the evolution of Canadian multiculturalism and that ideological tensions remain today regarding how the state should move forward. Second, what explanations can we find for the successes of Canadian constitutional law and policy in this area? Has Canada found a particularly successful approach or has it, as Will Kymlicka argues, simply been lucky in a variety of ways? Third, a related question is whether the experience of Canada can correctly be termed a distinctive “Canadian model” that differs from approaches taken elsewhere or whether it has adopted a similar approach to that taken in other countries but is unique simply because Canadian constitutional policy has played out in different circumstances. And last, the book examines the tensions that emerge between the accommodation of territorially based identities through federalism and a multicultural policy that accentuates the identities of non-territorial groups and thereby undermines, in the eyes of certain provinces (particularly Quebec), provincial prerogatives. Part 2 of *Multiculturalism and the Canadian Constitution* is concerned with the accommodation of diversity in constitutional law and practice. Taking the form of a series of case studies, these chapters illustrate the extent to which multiculturalism has become embedded in the Canadian Constitution and, indeed, within Canadian constitutional identity. Studies of language policy, federalism, the role of the courts, and the problematic issues raised by the concept of equality all serve to highlight the ongoing challenges Canada faces not only in responding to such a range of often competing political agendas but also in finding a model of liberalism that can allow it to meet these challenges consistently.

Part 1 opens with three reflective chapters by Hugh Donald Forbes, Michael Temelini, and Will Kymlicka respectively, each of whom, in different ways, addresses the patterns of Canada’s constitutional evolution over the past four decades. Forbes discusses the influence of Pierre Trudeau on this process; Temelini focuses upon the pathways of political mobilization from which Canada has developed its multicultural policy; and Kymlicka analyzes the structural conditions within which this policy emerged. Forbes’ chapter is a short intellectual biography of the person who, perhaps more than any other, influenced contemporary Canadian attitudes to federalism and cultural diversity: Pierre Trudeau (prime minister from 1968 to 1979 and from 1980 to 1984). His role in developing Canada’s multicultural policy is of course well-recognized, but Forbes’ argument is that Trudeau’s commitment to this policy was not simply a transient flirtation reflecting the strategic opportunism of a skilful political actor; rather, it was based upon a deep, philosophically developed and enduring set of political principles. As

such, contemporary multiculturalism in Canada today is in many respects the progeny of Trudeau's self-conscious, long-term planning.

Forbes contends that, before the management of cultural pluralism in Canada can be properly understood, attention must be given to its underlying principles. Although the task of theorizing political principles is normally left in the hands of academics, Forbes argues that Trudeau, himself an intellectual as well as a practising politician, developed a sophisticated vision of Canada as a multicultural state. His role, therefore, became even more pivotal in that, by bridging the gap between theory and political practice, he was able to give constitutional effect to the normative theory he developed. Such was his role that Forbes describes him as "the first and ... most authoritative theorist of Canadian multiculturalism"; hence, any attempt to understand the phenomenon of Canadian multiculturalism requires an appreciation of Trudeau's thought and actions.

In ideological terms, Trudeau's model of liberalism exerted a strong influence over constitutional development. Forbes explains that Trudeau's ambitions extended beyond accommodating diversity in Canada to a wider vision of a cosmopolitan world in which culture should belong to the private realm, with state and society playing a neutral role. Ideally, culture would become a matter of individual choice, which a policy of multiculturalism would be designed to facilitate. One highly controversial aspect of Trudeau's approach was his firm opposition to Quebec nationalism and his consequent eschewal of any sense of Canada as bicultural or binational. Canada should develop a strong bilingual policy, encapsulated in the *Official Languages Act*, 1969, and reinforced with further constitutional protection for the French and English languages within the *Charter of Rights and Freedoms*, 1982, but it would remain a uninational federation of one demos, within which cultural diversity would be encouraged mainly as an aspect of private life rather than as a constitutionally fostered identity. As such, Canada could also become an example, and perhaps a template, for the wider transition across the world towards global governance and the weakening of national attachments that should attend such a process. It was essential that, as a possible model for postnationalism, Canada should not present itself as a binational or multinational state; such a concession would be a serious impediment to its destiny as a haven beyond the divisiveness of national particularities. Fatally, according to Trudeau, a recognition by Canada of its own national pluralism would simply see the old antagonisms of the age of the nation-state fought out in different ways, not only between states but now also within them; and instead of Canada's offering a remedy for the plague of nationalism, it would instead provide a conducive environment for a new mutation of the virus.

Trudeau's cosmopolitan aspiration has, of course, come under challenge from Quebec nationalists for decades, but it has also recently been attacked

by liberal theorists of cultural pluralism (most prominently Will Kymlicka), who present an alternative model of liberalism suitable for a deeply diverse state. They argue that the cosmopolitan model misses the fact that liberalism can – and, indeed, in the interests of liberal justice, must – recognize deep cultural diversity and the importance of the political institutionalization of this diversity for individual members of cultural groups and substate national societies. Kymlicka has also criticized the idea that the state can be neutral with regard to culture: “I think this common view is not only mistaken, but actually incoherent. The idea of responding to cultural differences with ‘benign neglect’ makes no sense. Government decisions on languages, internal boundaries, public holidays, and state symbols unavoidably involve recognizing, accommodating, and supporting the needs and identities of particular ethnic and national groups.”¹ This critique rests on the fact that national societies, or “societal cultures,” are universal phenomena within which people live out their cultural lives, rather than sites of collective identity that can or should be wished away.

Forbes recognizes the deep paradox in Trudeau’s endeavours. In his efforts to turn Canada into the first postnational state, Trudeau employed a strategy that was itself a nation-building one: “an experiment in creating a nation designed to show the world how to overcome nationalism,” in Forbes’ words. But of course fostering nationalism, even an open, civic, tolerant, and multicultural nationalism, in the very endeavour to overcome nationalism, is by definition self-defeating. Indeed, Quebec nationalists, and many Aboriginal people, would argue that Trudeau’s vision simply led to a new model of nation building in English Canada, from which they were excluded and through which they felt further marginalized. Therefore, for Forbes, Trudeau’s appeal to national feeling is ultimately a valuable reminder that, when trying to decide how applicable the Canadian model may be for other states, in which the conditions for a cosmopolitan displacement of nationalism are even less favourable, such a grand vision should be embraced only with caution.

Like Forbes, Michael Temelini considers the ideological underpinnings that have served to shape the Canadian approach to diversity, and, in doing so, he suggests that, in its early manifestations, the dominant ideological position promoted a much more participatory model of citizen engagement than did the heavily legalistic and remedy-driven model that we find in the post-Trudeau era. In other words, he identifies within postwar Canadian history a largely forgotten approach to multiculturalism (what we might call liberal republicanism), which did then, and might yet, offer a rival vision to the liberal individualist model that remains dominant today. His historical overview focuses particularly upon the Canadian parliamentary debates establishing the Royal Commission on Bilingualism and Biculturalism (the B and B Commission) in 1963 and the political movement for

multiculturalism that emerged from this process. His principal thesis is that Canadian multiculturalism as it has developed in recent years tends to be addressed as a heavily juridified concept; in other words, it is conceived in rights-based terms as a principle of procedural justice and is expressed in juridical terms as a liberal theory of minority rights. In fact, he argues, multiculturalism in Canada has far deeper roots than the *Charter of Rights and Freedoms* through which the juridified model has now been crystallized, and, therefore, we should reinvestigate the alternative political model that was so influential in the early 1960s.

Temelini's task is not to deny either the existence or the normative value of multicultural rights (in fact, he argues that these rights have made a considerable contribution to the development of Canadian civilization); rather, it is to retrieve from its state of neglect the political and deliberative tradition of multiculturalism from which the principle initially developed through the language of civic humanism and political virtue. The value in recalling this alternative tradition is not only historical accuracy with regard to the rediscovery of an important political process that has been largely written out of contemporary historiography, but also the possibility of resuscitating the values that this process inspired. The idea of multiculturalism as expressed at the time of the B and B Commission was driven not only by political or judicial elites but also by citizens, who did so in an organic way, through public deliberation. Thus the principle was expressed through the mode of civic virtue and was entrenched within the political mind-set of citizens as an essential component of the Canadian democratic state decades before its official adoption by the state through the *Charter*.

For Temelini, a crucial lesson that emerged from Canada's 25th and 26th Parliaments (1962-65) was that a multicultural state cannot be built only by elite-driven institutions or by constitutional engineering; rather, the citizenry must be fully engaged with an issue that pervades all aspects of daily life and that requires the day-to-day support and practice of citizens. These parliaments recognized that citizen engagement was essential, in Temelini's words, to "strengthen the bonds of civic solidarity, build allegiance to Canada, and bolster citizenship." For Temelini, there is considerable value in articulating multiculturalism as a good rather than merely as a right since the former construction gives all citizens, not only those making rights claims, a sense of ownership over the policy and a sense of responsibility for its success. In this context, he cites Charles Taylor's view that this sense of civic ownership also formed the essential groundwork upon which multicultural rights could be entrenched through the *Charter* because people now understood the values that these juridical rights were designed to embody.² In short, Temelini's chapter argues that the success of multiculturalism depends upon its organic development and acceptance within the body politic. It is arguably a more republican model than that presented by Trudeau, and it asks

the fundamental question of whether an individualistic, juridical model can ultimately be sustained without popular commitment and participation. Without such a developed level of civic acceptance, efforts to establish multiculturalism through elite-led institutions and juridical social-engineering become much more difficult, if not impossible, to achieve, a point that seems to resonate in Peach's chapter (discussed below).

These first two chapters highlight a tension between different liberal ideologies in the development of postwar Canadian multiculturalism. They also demonstrate that the Canadian model of multiculturalism was, in many ways, the result of self-conscious policy decisions by elites rather than a mere accident of history. At this point, the book turns to two related questions: whether the Canadian model is unique and whether its success is the result of wise decision making rather than the felicitous circumstances within which it has developed. Will Kymlicka's chapter responds to these questions in an iconoclastic way. He begins by observing that Canada has been perceived abroad, and presented by the Canadian government and others at home, as a global model for the accommodation of ethnocultural diversity. Although agreeing that the Canadian model has been an undoubted success, Kymlicka sets out to dispel certain myths about Canada's approach to multiculturalism, arguing that the Canadian experience is not unique but is, in fact, broadly similar to the models adopted by many other Western democracies over the past thirty years. Focusing upon immigrant multiculturalism and also, to some extent, upon bilingual federalism, he argues that, although these policies have been most successful in Canada, this success can be explained more by fortunate circumstances than by the more generally assumed explanation: namely, the combined political will of elites and citizens to make it happen.

Kymlicka explains how the conventional story of Canada's success in this area tells of the country's tradition for openness and tolerance and of a multicultural vision promoted by enlightened political leaders and received by citizens sufficiently mature and tolerant to assimilate it. Kymlicka, however, in a more incremental account of how and when Canada's immigration policy developed, paints a more complex picture, suggesting that various less dramatic factors, such as timing, geography, and luck, made multiculturalism a less risky business for Canada than it otherwise might have been (and than it has been elsewhere). Kymlicka's conclusion – that, in light of these fortunate circumstances, Canada's record in accommodating diversity is in fact fairly modest – acts as a thought-provoking riposte to those more self-satisfied accounts that often eulogize the unmitigated success of Canadian multiculturalism.

The next two chapters focus upon the issue of federalism and highlight some of the tensions that exist both between (1) a federal conception of the state and a cosmopolitan approach to individual rights (which were

strengthened in the Trudeau era) and (2) varying conceptions of federalism itself, which are to be found in the different cultural traditions of anglophone and francophone Canada and in the contrasting approaches to the scholarship of federalism that emerge within these respective traditions.

Ian Peach's chapter addresses the failed processes of constitutional change in the post-patriation period of the 1980s and 1990s³ – in particular, the unsuccessful attempts to amend the federal Constitution at Meech Lake and Charlottetown, processes that culminated in 1987 and 1992, respectively. By this time, the influence of Trudeau was fully cemented in the minds of many elite actors and ordinary citizens and, as such, Peach argues in a strongly polemical way that the patriation process, completed in 1982, marked a fundamental shift in the attitudes of ordinary Canadians towards the Constitution. Peach explores the events that led to the adoption of the *Charter* in particular and argues that the influence of equity groups participating in the Parliamentary Committee on the Constitution in the winter of 1980-81 was crucial in shaping its substance; this fact gave these groups, and Canada's citizens more widely, a sense of ownership over the 1982 *Constitution Act* in general and the *Charter* more specifically. Therefore, Peach contends, the elite-controlled negotiations leading to the draft Meech Lake Accord set up a process from which ordinary citizens felt excluded; this top-down approach defied the expectations citizens had built up during patriation of a direct involvement in processes of constitutional change; and, in consequence, by the late 1980s deference to government was close to death in Canada.

Peach identifies two separate critiques of the Meech Lake style of inter-governmental decision making – one concerning method and the other membership – that finally combined, he argues, to kill any lingering deference among Canadians towards their political elites. The former critique concerns the lack of openness in the Meech Lake process and the absence of full republican deliberation. The latter addresses exclusion and, in particular, the lack of involvement in the negotiations of territorial governments and Aboriginal peoples as well as other interest group representatives. His account reflects Forbes' discussion of Trudeau's role in building a new Canadian nationalism. Peach identifies Trudeau's vision as a liberal democratic one that invited the participation of citizens, whereas Prime Minister Mulroney was wedded to an older Tory vision of elite accommodation; as such, Mulroney misread the popular mood, and the extent to which Canadians had adopted a new participatory model of Canadian democracy with its eschewal of deference to political elites.

Peach identifies the aftermath of the failed Meech Lake Accord as an opportunity for possible renewal of public faith in constitutional process; but, ultimately, the pre-Charlottetown efforts at finding a breakthrough in the impasse between Quebec and the rest of Canada – given the deep

unhappiness within Quebec concerning the patriation process from which many felt Quebec had been excluded – was to prove to be an opportunity lost. This was a period of radical experimentation in public engagement. The “Renewal of Canada” conferences were for him “truly remarkable events” in terms of the extent to which people both engaged in discussion and had their views taken seriously. But Peach argues that, despite the seeming realization by elites that full public engagement was now essential to any process of constitutional renewal, in the intergovernmental negotiations leading to the draft Charlottetown Accord, the people once again found themselves as passive observers watching from the outside as elites determined the direction of constitutional change.

Peach draws two main lessons from this troubled period in modern Canadian history. The first is that the methodology of Meech Lake and Charlottetown has left a sour taste and a deep distrust of political elites. Second, Peach offers an optimistic message concerning the management of cultural difference in Canada. Greater public scepticism with elite-led constitutional deliberations does not equal scepticism with attempts to accommodate it through constitutional processes; instead, the discussions wherein the public has been involved have shown that Canadians are well able to reach decisions about the accommodation of difference if they are only given the chance to participate and to debate these issues. In focusing upon the role of ordinary citizens in these processes, Peach’s account recalls Temelini’s discussion of democratic deliberation and the way in which Canadian citizens at different times have developed an expectation of high levels of participation. Referring to Temelini’s chapter, it may be that much of the discomfort felt by many Canadians over the elite-driven machinations of both Meech Lake and, to a lesser extent, Charlottetown finds its provenance not only in citizen debates over the constitutional changes of 1980-82 but also through earlier engagement with processes such as the B and B Commission. Temelini’s account may also help explain why disaffection with elites has not resulted in popular distaste for the policies of multiculturalism that these elites pursued at Meech Lake and Charlottetown. Temelini describes Canada’s receptiveness to its multicultural reality as a grassroots phenomenon, arising among the people through public deliberation and through an ensuing sense of popular ownership of the Constitution and of the multicultural pattern it represented. Therefore, it should perhaps not be surprising that, even if disaffection with intergovernmental negotiation methods has been a consequence of Meech Lake and Charlottetown, there has not been a concomitant backlash against the ongoing substantive efforts by Canadians, elite and ordinary, to manage diversity more successfully within the state.

It might be noted that Peach’s account of citizen dissatisfaction is largely the story of English Canada’s reaction to the events of the 1980s and 1990s,

and that the reaction in francophone Canada, and especially in Quebec, was very different, with disaffection expressed not so much with the elite-driven process of constitutional negotiations as with the failure of these negotiations, in substantive terms, to alleviate Quebec's dissatisfaction with the Constitution as patriated from the UK in 1982. In this context, Marc Chevrier addresses the nature of Canadian federalism from a very different perspective than that adopted by Peach. As a starting point, it is important to note that the federal nature of Canada predates contemporary debates about multiculturalism by a century, and, indeed, the federal system itself embodies a constitutional commitment to diversity – diversity based upon territorial identities. Indeed, it is the territorial control offered by federalism that has facilitated the development of Quebec's distinct national identity around a set of governmental and other institutions within a discrete territorial space. And, in addition, distinctive identities of a regional rather than a national type have also developed in other provinces.

Whereas Peach's account seems to presuppose a unicultural, or certainly uninational, conception of the Canadian demos, Chevrier addresses the differences in understandings over the nature of the Canadian Constitution that arise between anglophone and francophone Canada. He argues that this is pronounced not only among ordinary citizens but also among political scientists and legal scholars, with each of these groups tending to adopt very different views about the nature of the Canadian federation and of federalism more generally, depending upon the linguistic community from which they come. Chevrier notes that Canadian federalism developed in a fairly ad hoc fashion, without a grand vision or the accompaniment of a rich theoretical tradition similar to the American Federalist Papers to explain, and thus normatively underpin, the union of three colonies in 1867. Also, he observes that, despite the vast literature that exists on the topic of Canadian federalism, there is no common set of criteria used by Canada's two linguistic communities to define the federal system or to locate it within wider and more general theories of federalism. According to Chevrier, the story tends to vary between anglophone and francophone commentators. By his account, French-speaking authors are more likely to focus upon the history of the federal system, arguing that unitary or imperial aspects enshrined in its early development remain intact. Furthermore, francophones are less interested than are anglophone political scientists in the workings of the federal system in terms of economic efficiency; rather, they concentrate more on the distribution of powers between the two levels of government, with frequent reference to what is seen as the centralizing tendencies of the Canadian system and federal control over intergovernmental relations. This contrasts sharply with many anglophone political scientists, who tend to present Canada as heavily decentralized, certainly in comparative perspective. Chevrier's work, therefore, highlights that one of the ongoing

challenges facing constitutional responses to deep diversity is that these responses must be able to accommodate very different understandings of the purpose of the Canadian state and of its federal model.

Chevrier observes that, since 1982, it has become common for the nationalist movement in Quebec to be seen as the main force of resistance to federalism. This again highlights the prevalence of a story of the post-1982 Canadian experience in anglophone Canada, which contrasts with that advanced by francophone scholars. For example, although, as Donald Forbes has pointed out, the *Charter* is in many ways popular in Quebec, it has also been seen there as a device that endangers territorial diversity by uniting minorities around the idea of one national Canadian community. The strategic alliance in the 1960s between cultural minorities and the federal government in the building of a multicultural vision of the Canadian state (as also discussed by Forbes and Temelini) is often identified in Quebec as a strategy to weaken Quebec nationalism. Indeed, Chevrier argues that the demands for recognition advanced by non-territorial cultural groups since 1982 have created a process that promises to undermine even federalism itself. This became apparent in the constitutional reforms attempted at Meech Lake and Charlottetown, with Chevrier offering a very different picture of these processes from that given by Peach. According to Chevrier, there was a major clash between those seeking to strengthen the federal powers of the provinces and those who increasingly challenged federalism itself in the name of their diverse and deterritorialized cultural and other interests. Charlottetown, he suggests, tried to square the circle by meeting both sets of demands. Although the failure of this process can, in part, be explained by the complexity of the amending formula contained in the *Constitution Act, 1982*, and in general by political differences in a diverse state, he offers a further hypothesis that, since 1982, the relationship between federalism and federation has changed in Canada. In particular, the tension between those seeking a further territorial division of powers and those seeking to undermine federalism in the name of deterritorialized interests was too great to accommodate. As he puts it: "In this sense, the societies in Canada can be viewed as torn by a double process of federalization and defederalization."

Chevrier's chapter therefore highlights the deep tension that can exist between accommodating territorial diversity through federalism and the aspirations of non-territorial groups for recognition. This has become tied to the related divide between Quebec and the rest of the country over the former's status. Exacerbating this, a unitary nationalism has developed around the *Charter* and a vision of rights, as alluded to by Temelini and Peach, that has reshaped perceptions of the nature of the Canadian political community in an increasingly monistic way and that, in many ways, sees federalism as an unwelcome constraint upon this nation-building exercise.

Chevrier also notes that, although the *Charter* seeks closer Canadian integration with respect to identity and citizenship, it is important not to ignore that the Aboriginal challenge to the Canadian state, when advanced by way of claims for self-government, is federalist in texture since it seeks to establish autonomous governments on a clearly territorial basis. In a sense, this has added a further dynamic to claims that Canada is a multinational state, a claim traditionally advanced by Quebec but now also finding a new impetus in the discourse of Aboriginal peoples. In light of these tensions, Chevrier does not envisage a finalized agreement on the nature of Canadian federalism in the near future.

Part 2 of *Multiculturalism and the Canadian Constitution* addresses the ways in which multiculturalism has become embedded in the constitutional practice of the Canadian state. Here a series of case studies demonstrates the all-pervasive reach of multiculturalism in terms of language policy, the role of the courts, and the ongoing struggle to define adequately and to implement the deeply contested concept of equality. This part of the book begins with a topic that is tied closely to federalism; namely, the management of Canada's linguistic diversity. This issue is also linked to the search for stronger national unity, as Daniel Bourgeois and Andrew F. Johnson explore in their account of the 2003 *Action Plan for Official Languages*. They view this plan as one of several major policy initiatives designed to strengthen the authority of the Canadian state, which is under challenge not only from within in terms of Quebec nationalism but also from without as a consequence of globalization. They assess the plan in this light and also with reference to the accountability issues, relating to federalism and moral choice, which it raises. The plan seems to offer strength to arguments that the constitutional accommodation of Canada's diversity is the result of self-conscious policy making and also that the Canadian approach to language rights is in many ways unique in terms of creating a level of officially protected and promoted bilingualism that is unrivalled in almost any other state (Belgium being one of the few feasible comparators).

Bourgeois and Johnson begin by discussing the *Action Plan* in terms of its strategic role as a bulwark against forces of globalization and nationalism. As part of a coordinated response by the federal government to Quebec nationalism, it was the "carrot" of an official "carrot and stick" policy, balanced against measures such as the *Clarity Act*, 2000, which followed the Quebec referendum on sovereignty in 1995 and the Supreme Court of Canada's opinion in the *Secession Reference* of 1998. Next, the authors discuss the implications of the plan in terms of the accountability of federal political institutions. They observe that the plan presents twenty-five goals and sixty-four specific means to attain them, with the goals themselves being divided into eleven priority sectors. Of these, Bourgeois and Johnson focus

on education and health since these have traditionally been policy areas that the provinces have sought to protect from the interference of the federal government's spending power. They note widespread criticism, particularly in the area of education, that much of the money allocated for French-language (mother tongue) education has not been spent by the federal government and, more especially, by provincial governments.

In the view of Bourgeois and Johnson, the Canadian state is not less interventionist than it was prior to 1995; rather, it is repositioning itself in the context of globalization. Although the process is a quiet one, it has a "discrete centralizing tendency" that also requires "complacent federalism" and provincial acceptance of this type of investment. Furthermore, a related problem is moral accountability. Although the policy of national integration via the *Action Plan* appears to be effective in dealing with the challenges posed by globalization, this could all collapse if a crisis of legitimization occurs, whereby the federal government neglects its obligations to transfer funds to the provinces to promote social equality. If such a scenario occurs, the authors offer the stark warning that "the Canadian state may well wither in the face of the moral accountability challenges posed by globalization."

Hugh Kindred addresses another complex issue within the Canadian federal system: the legal implementation of international instruments. This issue is always difficult, but it has, in recent years, been the focus of attention before the courts following a landmark case. Kindred notes that, in the area of foreign affairs, the federal government has the prerogative power to bind Canada to international agreements but that it does not have the unilateral authority to implement these treaties by legislation. Depending upon the subject matter of the agreement, the power to implement may lie with the federal parliament or, alternatively, with provincial legislatures. This, of course, allows the provinces the option of refusing to implement treaties negotiated by the federal government, leaving the latter with no constitutional authority to force the issue and, thereby, potentially in breach of international undertakings it has given to implement the agreements to which it has adhered. This is now a particularly prominent issue since, in light of mass immigration, international relations with states that many Canadians view as their "home countries" are important in the maintenance of cultural links.

The fact that transnational relations now increasingly embrace cultural links between Canada and other countries to which Canadian citizens have ties, leads Kindred to observe that the issue of respective federal/provincial competences in this area is an ever more complex one; the reason being that treaty commitments undertaken by the Canadian government regarding culture and related matters increasingly cover subject areas that are within provincial competence. Furthermore, matters are made more complex yet

by the recent development of a more activist approach on the part of the courts to the status of unimplemented international obligations. Kindred identifies this as part of the fall-out of a broader culture of judicial activism that arrived with the *Charter of Rights and Freedoms*, following which the Supreme Court of Canada determined that, in interpreting the *Charter*, it should have regard to international laws and conventions on human rights; a position taken even though the *Charter* makes no reference to such international instruments. In other words, there is now a general requirement on courts to interpret the meaning of statutory language in the broadest possible context. As Jameson Doig also notes (discussed below), this new activism marked a move away from a traditional deference to Parliament. One aspect of this deference involved the principle that an unimplemented treaty would have no domestic consequences; indeed, the courts would not even take cognizance of such a treaty until it had been implemented through the relevant legislature.

Although with the *Charter* came the new principle that Canada's international human rights obligations should assist in the interpretation of this document, Kindred observes that the courts have not drawn a distinction between incorporated and unincorporated treaties. Instead, the Supreme Court has, in his view, generally been "quite circumspect" in the way it has been prepared to invoke international legal sources. This is not to go so far as to say that judges are in effect "applying" unimplemented treaties as though they were sources of law, but they are using them as part of the legislative context of the statute under interpretation. Here his focus moves to the important case of *Baker*,⁴ which he suggests clarifies the approach of the Court somewhat. In this case, Justice L'Heureux-Dubé expressed the view that "the values reflected in international human rights law may help inform the contextual approach to statutory interpretation and judicial review."⁵ In Kindred's view, this case shows the preparedness of the Court to refer, and perhaps even to defer, to binding but unimplemented international agreements as a positive aid to statutory interpretation. It seems to require, rather than merely permit, courts to make use of international law in interpreting domestic legislation.

But there must surely be a concern here that this endangers provincial prerogatives. It is traditionally understood that provinces have the power to choose whether, and if so how, to implement international agreements in the area of provincial jurisdiction. It now appears that courts are being mandated to give some degree of weight, if not quite legal effect, to such measures even if the province had expressly chosen not to implement. It would seem that only when legislation to the contrary exists, and where that is, in Kindred's words, "insurmountably in conflict" with the international obligation in question, that the international agreement will not be

used to inform the application of Canadian law. But Kindred's point that many international agreements that cover cultural and other matters, the implementation of which are very important to cultural minorities in Canada, in fact fall within the area of provincial jurisdiction, adds further complexity to this whole issue. And so once again we see the potential for a clash between the interests of territorial diversity embodied in provincial constitutional jurisdiction, on the one hand, and the non-territorial interests of other cultural minorities, on the other. The story from *Baker* is, therefore, certainly far from complete, creating as it does another difficult area for the courts in the management of Canadian cultural and territorial diversity.

The role of the courts in the development of the multicultural tenor of the Canadian Constitution has, of course, grown in recent times, as Temelini also observed, and the issue of judicial activism, seen in the context of the *Baker* case, is a point of more general importance in the post-*Charter* era. In the next two chapters, Jameson Doig considers the growing assertiveness of the Supreme Court of Canada under the chief justiceship of Brian Dickson, while Robert Currie analyzes how the issue of culture raises the difficult question of whether traditional assumptions about the objectivity of adjudication must be opened to further scrutiny and critique in light of new research highlighting the extent to which culturally informed attitudes and presuppositions affect judges in their decision-making processes.

As has been discussed, perhaps the most significant institutional legacy left by Pierre Trudeau in the area of cultural pluralism is the *Charter of Rights and Freedoms*. Jameson Doig explores how Canada's multicultural identity developed in the post-*Charter* era and, in particular, the role played in this process by Brian Dickson, chief justice of Canada from 1984 to 1990, who, by authoring many of the leading judgments in this era, served to advance the rights of Aboriginal peoples, members of particular religious and ethnic groups, and other vulnerable groups. In addition to exploring these substantive developments, Doig also assesses deeper cultural developments undergone by the Court itself in the very methodology of adjudication. He observes how, on the one hand, Canadian judges brought into being a new culture of judicial activism in application of the *Charter*, which was alien to Canada's constitutional tradition of parliamentary sovereignty, and, on the other, resisted the adoption of a strongly individualist approach to civil liberties as practised in the United States of America. That position, if adopted, would have offered a set of precedents, in particular in the area of free speech, that might have stifled a more collectivist approach to the cultural rights of groups that, as Kymlicka has shown, are so central to the Canadian multicultural experience. Certainly, the *Charter* itself contains a body of group rights that is not to be found in the American Bill of Rights; nonetheless, the way in which the judiciary would apply these remained, in 1982, a largely unknown quantity, and the convenient reference point of American

precedents may have proved tempting to Canadian judges. It is in this dual context, Doig argues, that the leadership of Chief Justice Dickson became crucial.

Doig observes that Dickson's commitment to a bilingual and multicultural Canada was evident from his time as a trial judge in Manitoba in the 1960s and later on the Manitoba Court of Appeal. When appointed to the Supreme Court of Canada, and in time to the post of chief justice, his leadership was evident when, in the early case of *Hunter*,⁶ he applied a broad, purposive approach to the interpretation of the *Charter*. This was an acknowledgment that, as a constitutional document, the *Charter* could not be approached with the same interpretative tools as an ordinary statute but, rather, would need a more expansive reading – one that would take full account of the normative commitments within the *Charter*. And this approach was reinforced in subsequent cases, establishing itself as a leitmotif of *Charter* adjudication to the present day.

Chief Justice Dickson also took the lead in developing discrete areas of case law that enhanced the management of cultural diversity in Canada. One such area involved Aboriginal rights, where, most notably in the *Sparrow* case,⁷ the Supreme Court set out basic principles for the weighing of Aboriginal rights against the legislative prerogatives of the federal Parliament and the provincial legislatures. Here, Dickson's judgment was central in holding that existing Aboriginal rights must be "interpreted flexibly so as to permit their evolution over time."⁸ A liberal interpretation was to be given to section 35 of the *Constitution Act*, 1982, and in general government interference with existing Aboriginal rights was to be closely scrutinized, with such interference required to clear a high hurdle.

Doig also discusses how Dickson showed sensitivity to the issue of language rights, bringing a creative interpretation to the constitutional guarantees for linguistic minorities in Canada. This involved a recognition that the purpose of language rights is not simply to facilitate communication but also to allow the culture and identity of linguistic communities to thrive. In this sense, Chief Justice Dickson and the Supreme Court as a whole showed themselves alive to the advancement of group as well as individual rights, even in the face of criticism that the Court was being excessively activist.

A third area of importance during Dickson's chief justiceship was hate speech. In *Regina v. Keegstra*,⁹ the Supreme Court, led by Dickson, found that, although section 319 of the *Criminal Code* (which outlawed the promotion of hatred) was prima facie contrary to the *Charter*, the Court should be guided by the values and principles essential to a free and democratic society, which include respect for cultural and group identity. Unlike in the United States, where hate speech is most often protected, in Canada, regard has to be given to the special character of equality and multiculturalism in the Constitution. As such, section 319 was a reasonable limit on free speech.

Therefore, Doig, in conclusion, argues that, through both his expansive approach to *Charter* interpretation and his application of this approach in several important areas of substantive law, Dickson helped establish a methodology and a judicial ideology that continue to be used to advance the cause of vulnerable individuals and groups and, hence, to boost their sense of inclusion within Canadian civil society. In this we see a more nuanced approach to liberalism – one that moves away from a rigid, individualist approach towards greater recognition of the importance of group identities and group membership for the diverse communities that constitute Canadian society.

It has been observed that Temelini's chapter highlights the extent to which the agenda of multiculturalism has crystallized into a narrative of rights and how, in many ways, the focus of attention has shifted from broader political participation by citizens towards a juridical understanding of cultural rights, remediable before the courts. While it would certainly be very unfortunate were the former tradition of civic virtue to be forgotten, when we reflect on Doig's chapter, there is nonetheless something of the inevitable about the growth of litigation in the development of any multicultural policy, in particular with the creation of legally enforceable *Charter* rights and the passage of specific legislation designed to protect minorities. Nor is this necessarily inconsistent with republican democracy; the opportunity to litigate was itself intended by the deliberative commitment of Canadians as a whole when such laws were adopted, either as constitutional principles or through legislation enacted by their representatives in Parliament. It is an inescapable fact that, in a democracy, legislation turns political claims into legal rights. Besides the *Charter*, it is also notable that Trudeau advanced a strong anti-discrimination strategy, an affirmative action policy, and a law outlawing hate speech; and that each of these measures either invited individual applicants to bring cases or threatened with court action those citizens or institutions that breached the relevant provisions.

Robert Currie focuses on the issue of equality and, in particular, upon the way in which equality of citizenship is encapsulated in the notion of the rule of law as embodied in the *Charter*. But the issue of equality, although almost universally accepted as a key principle underpinning so many other human rights, is, when explored a little more thoroughly, in fact deeply contested. There are profound disagreements about whether equality can be conceptualized simply in formalistic terms without reference to a wider context, or whether it is necessary to look behind equality, in the narrow sense, at structural factors that favour certain groups and prejudice others. In this context, Currie asks whether Canadian courts and judges are indeed prepared to move beyond conceptions of formal equality, and, if so, whether they have the tools they need to take into account complex social and cultural realities, which, as commentators such as Kymlicka have shown in

appeals for a more sophisticated understanding of liberalism, highlight deeper inequalities.

Currie concentrates upon the law of evidence to explain how legal principles do not always adapt to the need for contextualization. He suggests that an analysis of what evidence is admitted and the way it is treated will help explain the impact that culture has upon adjudication and jury deliberation, offering pointers as to which aspects of the judicial process might be reformed and how. In light of this, he devotes much of his chapter to the important 1997 case of *R. v. S. (R.D.)*,¹⁰ where the Supreme Court of Canada articulated the view that the proper accommodation of diversity and multiculturalism required judges to take account of social and cultural contexts in embracing the principle of equality. As well as the principle of equality, the *Charter* of course also contains a commitment to multiculturalism in section 27, and it is against the backdrop of the interaction of these two principles that this case should be considered.

The case of *RDS* arose from the arrest of a black teenager by a white police officer in Nova Scotia. Currie discusses how the broader cultural context was considered in this case by the trial judge who, unusually, took into account interracial conflict within the relevant community, particularly the poor relations between white police officers and black community members. The trial judge therefore adopted a contextual approach and, on appeal, this was supported by the Supreme Court. Currie commends the approach taken, and in a wider sense he argues for a differentiation to be made between what he calls “adjudicative neutrality,” which is necessary for non-biased decision making, and “fact neutrality,” which is an excessively formalistic approach that doesn’t properly take context into account. He contends that it is wrong to begin from the assumption that everyone is “equal” and “neutral” until the facts prove otherwise because such a formal equality analysis may fail to take into account social forces that may have had a strong bearing upon the factual circumstances that, in the end, come before the court. In this sense, the *Charter* is very significant since the constitutionalization of multiculturalism forces courts to address this debate when developing the law of evidence, and also encourages a new “cultural discourse” within the judicial system concerning the very meaning of terms such as “neutrality,” “fairness,” and “equity.”

The final two chapters of *Multiculturalism and the Canadian Constitution*, written by Joan Small and Katherine Eddy, respectively, also address the issue of equality. Small’s chapter, like Currie’s, identifies a possible strain between equality and the principle of multiculturalism. She argues that the effect of Canada’s policy of multiculturalism upon the law of the *Charter*, and in particular upon the principle of equality, remains in many respects to be worked through. However, what is clear is that there are considerable tensions between these principles since multiculturalism as a legal principle

challenges substantive equality law both for individuals and for the collective protection of groups.

Within the principle of multiculturalism itself, Small argues, there is a possible paradox between, on the one hand, fostering social cohesion, integrating immigrants into Canadian society, combating discrimination, and the like (all of which have the principle of equality as their basis) and, on the other hand, policies to promote diversity for the distinctive cultures within Canada, including the provision of public assistance to maintain this diversity, which of itself is a move away from formal equality. She suggests that, since the *Charter* came into force, the former dynamic has been the real driving force, aimed at ethnic participation in employment and combating racism, all in the name of promoting equality. Small's contention is that this vision of equality should not come to dominate the Canadian approach to multiculturalism. According to her, this drive towards equality must be set in the context of section 27, which expresses multiculturalism as a Canadian constitutional value that is relevant to subsequent constitutional decision making. As was seen in Jameson Doig's account of the Dickson court, interpretative obligations arising from the *Charter* are of a different kind from ordinary principles of statutory interpretation, and, in particular, they lead the courts to scrutinize measures closely when they conflict with *Charter* provisions. On this basis, Small argues, the constitutional commitment to multiculturalism in section 27 must be taken very seriously, despite other and possibly rival commitments to formal equality. Small's approach highlights again the different approaches to liberalism that attend the accommodation of cultural diversity: the formal equality of a traditional liberal model on the one hand, and the more contextualized account that promotes the value of diversity (perhaps at the expense of formal equality), on the other. However, despite so much jurisprudence on the issue of equality in the context of Canada's multicultural framework, Small finds that, in general, the courts' consideration of these issues lacks theoretical depth.

One way in which the Canadian Constitution compromises formal equality is in accrediting special protections to certain groups and territories: Aboriginal peoples, Quebec, denominational communities, and English and French linguistic minorities. They each have separate institutional and legal rights, and, Small argues, despite the Supreme Court's assertion to the contrary,¹¹ the special status accorded to these groups creates a hierarchy within the Canadian constitutional settlement that privileges them. All of this raises for Small a series of questions vis-à-vis section 15 of the *Charter*. How does, or should, Canada's constitutional commitment to a multicultural society affect judicial understanding of equality law? And what sorts of claims for cultural protection or promotion can persons or groups who are not given special constitutional status make, if any? In fact, there has been little

jurisprudence on the relationship between sections 15 and 27, despite the wide use of section 27. One difficult area involves the concept of “dignity.” Here she argues that a whole range of questions have not yet been answered by the Supreme Court, such as how a group, rather than an individual, can be said to feel self-respect or self-worth; whether the Court is concerned with the feelings of the totality of the members, on the one hand, or of the group as a group, on the other; and how to determine who speaks for the group, or how group sentiment is to be measured. She concludes that section 15 is capable of promoting a positive interpretation of section 27 by embracing a contextualized approach that recognizes cultural diversity as an important aspect of human dignity. The Supreme Court has not yet developed this as it might, but, in Small’s view, it is obliged by the *Charter* to give full effect to section 27, taking seriously the concept of dignity as well as that of equality.

Katherine Eddy also addresses the interface between the important values of equality and dignity in any multicultural society, with a focus upon welfare rights as equality rights. Although her chapter is not about culture directly, clearly the concept of equality in general has important implications for all minorities. Her principal questions concern whether individuals are morally entitled to social assistance to help them meet their basic subsistence needs and, in particular, whether they have a constitutional “welfare right” to such provision. She begins by observing that the Canadian Constitution does not contain any commitment to the alleviation of severe poverty or the meeting of basic subsistence needs; and it certainly does not create rights to these things. Although according to section 36(1) of the *Constitution Act, 1982*, Canada is committed to providing “essential public services of reasonable quality to all Canadians” and the promotion of “equal opportunities for the well-being of Canadians,” there are no specific provisions in this regard to be found in the *Charter of Rights and Freedoms*. However, the issue is open to some debate because the *Charter* does contain an equality guarantee and does entrench the rights to life, liberty, and security of the person.

The role of the courts is central to Eddy’s analysis, as it is for Small and Currie. Eddy focuses upon the important case of *Gosselin v. Quebec*,¹² where the Supreme Court of Canada addressed the question of whether the right to social assistance payments at the subsistence level could be derived from either of the *Charter* protections contained in section 36(1). Eddy’s analysis of this case is a normative critique from the perspective of political theory rather than an assessment of the legal merits of the decision. Her question is whether Canadians *should* have constitutional welfare rights and not whether they are in fact provided for by the *Charter* as it stands. She addresses two arguments for welfare rights as they arose in the *Gosselin* case: one that contends that they can be derived from considerations of *equality*

and one that points to the state's responsibility to alleviate *unmet need* as part of its duty to provide for its citizens.

In her discussion of *Gosselin*, she points out that one problem with the equality approach is that it makes the argument for welfare rights precarious. The risk is that all people might be equally mistreated without the principle of equality being offended; in other words, there is no breach of constitutional rights when the dignity and physical empowerment of all welfare recipients comes under threat in the same way. Like Currie and Small, Eddy focuses upon the poverty of an approach that is wedded too much to a thin version of formal equality. To avoid this, she advocates a more contextualized rendition of the equality argument, by which welfare rights are grounded in the state's overarching duty to respect the equal worth of its citizens and their human dignity, something that cannot be met simply by formal equality. For her, in order for the principle of equality to be meaningful, a substantive level of dignity must accompany equality.

The Canadian effort to establish a state that takes full account of, and that in fact seeks to define itself in terms of, its cultural diversity has been a long and difficult journey. As this collection demonstrates, it is a journey that can never be completed. The accommodation of difference leads to new claims from minority groups for further accommodation, and in this changing climate claims presented by one group will often clash with those posited by other groups seeking alternative models of constitutional change or reinterpretation. In Canada, the multicultural model of the state can only become more complex as more demands are articulated and as the nature of these claims mutate in light of the evolving Constitution, changing global conditions, and shifting ideological patterns. The Canadian experience of multicultural policy and the embodiment of a commitment to diversity in so many areas of the Constitution highlight several important questions. For example: in historical perspective, how and why has Canada adopted the approach it has taken? To what extent has the success of Canadian multiculturalism been the consequence of a fortuitous environment rather than deliberate policy choices? Has a suitable balance been arrived at between multiculturalism and Canada's federal heritage? And which version of liberal democracy best suits a country with such a deep cultural mix as Canada: is it one that tries to leave culture to the private sphere, guaranteeing only formal equality within the public space, or is it one that must look beyond formalism to engage with the aspirations of groups for official recognition of their distinctiveness? Attempts to answer these and related questions will remain central to the ongoing engagement, on the part of policy makers and scholars, with the country's complex demotic composition. It is hoped that the contributions contained in this book offer us fresh perspectives with which to address these complex issues.

Notes

- 1 Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), 108.
- 2 Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, MA: Harvard University Press, 1989), 89.
- 3 Patriation was the process culminating in the passage of the *Canada Act, 1982*, by the Parliament of the United Kingdom, which severed all remaining constitutional and legislative ties between the two countries.
- 4 *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817.
- 5 *Ibid.*, 861.
- 6 *Hunter v. Southam*, [1984] 2 S.C.R. 145.
- 7 *R. v. Sparrow*, [1990] 1 S.C.R. 1075.
- 8 *Ibid.*, 1093.
- 9 *R. v. Keegstra*, [1990] 3 S.C.R. 697.
- 10 *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484 (hereinafter *RDS*).
- 11 *Mahe v. Alberta*, [1990] 1 S.C.R. 342.
- 12 *Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429.



Part 1
The Evolution of Multiculturalism
and Federalism in the Canadian
Constitution





1

Trudeau as the First Theorist of Canadian Multiculturalism

Hugh Donald Forbes

My thesis is the simple one that the most illustrious and influential proponent of multiculturalism as a Canadian identity, Pierre Elliott Trudeau, took multiculturalism seriously and knew what he was doing. For him, contrary to what some have suggested, multiculturalism was not just a political expedient to be used for a few years to fend off attacks on official bilingualism and then to be forgotten. Nor was it, as others have suggested, something incompatible with basic liberal principles and therefore something that a principled liberal like Trudeau could never really have endorsed. I shall try to show, instead, that Trudeau had a broad understanding of multiculturalism, that he saw clearly what it meant, that he explained it as clearly as necessary, and, therefore, that Canada's current multicultural identity is not just an accidental effect of his policies but, rather, the intended result of his actions. I confine myself to a quick review of what Trudeau said and did up to the time of his retirement from office in 1984, but I think the conclusions I draw could be supported by a more extensive analysis of events and developments up to the present day.

Official Multiculturalism

Canada's official multiculturalism began with a statement that Trudeau made in the House of Commons on October 8, 1971. "A policy of multiculturalism within a bilingual framework commends itself to the government as the most suitable means of assuring the cultural freedom of Canadians," Trudeau declared.¹ I shall say something presently about the occasion for this statement and Trudeau's explanation of what multiculturalism would require in practice, but let me begin by focusing on "cultural freedom." What does this expression mean?

The aim of the new policy, Trudeau explained, was "to break down discriminatory attitudes and cultural jealousies." Such divisive attitudes and jealousies are rooted in cultural insecurity, he said, and they can be reduced

by ensuring that individuals are free to be whoever they choose to be culturally. Only when everyone is given this freedom, it seems, will they all have the confidence they need to respect the identities of others and to share “ideas, attitudes, and assumptions” with them on a footing of equality. This social-psychological theory or conjecture, sometimes called “the multiculturalism hypothesis,” was put forward as the basic justification for a “vigorous policy of multiculturalism” designed to create the confidence necessary for a meaningful and secure national unity. By increasing cultural freedom – that is, by affirming or recognizing the equal legitimacy of all cultures in Canada – prejudice would be reduced. There might be two official *languages* in Canada, Trudeau conceded, but there was no official *culture*, nor did any ethnic group take precedence over any other. In a supplementary document, he went further: “Indeed, we believe that cultural pluralism is the very essence of Canadian identity. Every ethnic group has the right to preserve and develop its own culture and values within the Canadian context. To say that we have two official languages is not to say we have two official cultures, and no particular culture is more ‘official’ than another.”²

Trudeau was evidently endorsing the goal of creating a state or society that would strive to be as neutral with respect to all traditional national or ethnic cultures as the modern liberal state tries to be with respect to particular religions. Such a state or society would not deliberately impose any particular culture on its members: it would not favour the culture of its majority group (or groups) or of any of its ethnocultural minorities. Nor would it try, directly or indirectly (by deliberate action or by apparently benign neglect), to disrupt and destroy the cultures of any of its smaller, less powerful groups. Instead it would try to deal fairly or equally with all cultures. But this is not to say that it would be a divided society or an anarchic one, suffering from what is sometimes called cultural relativism. Despite its lack of any favoured or official culture, the state or society Trudeau envisioned would have laws, customs, conventions, purposes, and ways of educating its young: it would just not favour any *particular* culture.

Here as often elsewhere, the word “particular” carries a lot of weight. It seems to mean traditional as opposed to modern and partial as opposed to universal. Trudeau’s aim, one could say, was to give every individual the freedom to adopt a modern outlook and the modern practices that had emerged from the interaction of many traditional cultures, if that was their choice, as well as the freedom to adhere to older ways of life, if that was what they were more comfortable doing. He wanted to ensure that individuals in a modern society could remain reasonably faithful to the old and familiar ways of their ancestors. They should be free to consume the mass-produced culture and entertainment of modern mass scientific societies, if they wished, and to participate in the large impersonal institutions of such societies, if necessary; but those who found living on the cutting edge of

progress unsettling and unsatisfying should also be free to retreat to a more protected life within smaller and more traditional groupings that were better able to satisfy their need for a sense of belonging and distinct identity. As Trudeau said, "Ethnic pluralism can help us overcome or prevent the homogenization and depersonalization of mass society. Vibrant ethnic groups can give Canadians of the second, third, and subsequent generations a feeling that they are connected with tradition and with human experience in various parts of the world and different periods of time."³ In short, then, no one should be compelled to make any particular choices among the cultural options available. Individuals should be free to practise their traditional ways, or those of others, or to shift to the new ways, or to mix and match as they pleased. Culture, often thought to be a matter of fate, should ideally be something chosen and tailored to fit the individual.

Trudeau concluded his short statement by emphasizing "the view of the government that a policy of multiculturalism within a bilingual framework is basically the conscious support of individual freedom of choice."⁴ Needless to say, he knew that there had to be some limits on this freedom. He had no illusions about the possibility of absolutely unfettered freedom of choice – with respect to the side of the road that people would drive on, for example, or the units they would use when weighing or measuring. (They would drive on the right and measure their speed and progress in kilometres.) Moreover, he surely recognized that free choices get their meaning from the purposes they serve and the standards by which they are judged. But these purposes and standards can be questioned, and there are many areas of life where uniformity is unnecessary. Many different customs or conventions could easily coexist, were it not for the intolerance of cultural zealots. As Thomas Jefferson pointed out long ago, "it does me no injury for my neighbour to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg."⁵ The real problem is the zealots. As John Stuart Mill explained in *On Liberty*, their intolerance can make a mockery of a merely formal or legal freedom of individual choice. So a state or society trying to empty itself of any particular cultural content – one aspiring to give its members as much freedom as possible to create their own individual cultures – would have to take some responsibility for neutralizing the private social pressures that might compel some of its members to conform to the demands of others, contrary to their real preferences. "We are free to be ourselves," Trudeau said. "But this cannot be left to chance. It must be fostered and pursued actively. If freedom of choice is in danger for some ethnic groups, it is in danger for all. It is the policy of this government to eliminate any such danger and to 'safeguard' this freedom."⁶

The practical meaning of these broad generalizations was spelled out in four points. First, Trudeau promised that there would be some new subsidies for the cultural activities of all groups, the small and weak as well as the

large and highly organized, provided they were able to demonstrate their need for assistance in order to contribute to the development of Canada. The idea was not to put dying cultures on life-support systems but, rather, to recognize the vitality of the larger and more demanding ones with some modest subsidies. Second, the government would provide assistance to “members of all cultural groups to overcome cultural barriers to full participation in Canadian society.” Third, there would be official promotion of “creative encounters and interchange among all Canadian cultural groups in the interest of national unity.” Finally, financial assistance would be provided for “immigrants seeking to acquire at least one of Canada’s official languages in order to become full participants in Canadian society.”⁷⁷ Thus, from a practical standpoint, official multiculturalism was to have both preservative and assimilative elements: individuals and groups were to be helped to preserve their distinctive identities, but they were also to be helped to blend into the larger Canadian whole, or at least into one or the other of its two linguistic halves.

In Trudeau’s historic statement, preservation was put before assimilation for reasons best understood by considering the background to it. The occasion for the statement was the publication almost two years earlier of some recommendations from the Royal Commission on Bilingualism and Biculturalism, which had been appointed in 1963 by Trudeau’s predecessor, Lester Pearson, “to inquire into and report upon the existing state of bilingualism and biculturalism in Canada and to recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races.” The commission’s main task had been to work out a practical response to the growing threat of separatist nationalism in Quebec, but it was also directed, when doing so, to take into account “the contributions made by the other ethnic groups to the cultural enrichment of Canada and the measures that should be taken to safeguard that contribution.” Book IV of its final report dealt with these “other cultural groups” and how their contributions should be safeguarded.

Formally, Trudeau’s statement was the official endorsement by his government of the commission’s sixteen specific recommendations in Book IV of its report. But it was also, in effect, a rewriting of the commission’s terms of reference. Bilingualism should no longer be paired with biculturalism, Trudeau was saying. Language and culture were to be decoupled, so to speak, and, in the future, bilingualism would provide the “framework” for multiculturalism because, as Trudeau said, “biculturalism does not properly describe our society; multiculturalism is more accurate.”⁷⁸

Trudeau’s immediate practical problem was to strike a workable, defensible balance between the conflicting demands for recognition of Canada’s “two founding races,” British and French, and its other ethnocultural groups,

not just its various “ethnic” minorities, particularly in the West, but also its Inuit and Indian communities, or “First Nations.” Two years earlier, in accord with the Royal Commission on Bilingualism and Biculturalism’s major recommendations about bilingualism, Trudeau had taken a big step towards blunting the appeal of the separatist movement in Quebec by responding to the linguistic grievances of French-speaking Canadians in Quebec and elsewhere. His government had passed an extremely controversial “Official Languages Act” designed to put English and French on a footing of equality in the federal government and public service. Most of the opposition to it came, not surprisingly, from English-speaking Canadians, whose privileges were being revoked and whose sense of special status, and indeed whose conception of the country as essentially an English-speaking British dominion, was being attacked. Many resented these changes but hesitated to complain because of the gravity of the separatist threat. Many felt that they could reasonably object only to the *dualistic* definition of Canada that the *Act* seemed to embody. Canada, it seemed to be saying, was leaving behind its British colonial identity only to become a country of only *two* “races,” or nationalities, with all its other races and nationalities subordinated to them, and this was unacceptable.⁹

Also in 1969, Trudeau’s minister of Indian affairs and northern development, Jean Chrétien, had issued a White Paper proposing a basic change in the government’s relation to Aboriginal communities. The old *Indian Act*, 1874, still largely in force, had started from the assumption that Aboriginal Canadians were dependent peoples, like children, in need of parental care and supervision. It was openly Eurocentric and paternalistic: it made “Indians” and “Eskimos” wards of the Canadian state. The White Paper proposed a radical break from this old pattern. In the near future, it said, Aboriginals should become full citizens, with the same rights and privileges as all other Canadians. This proposal, too, was extremely controversial, perhaps not surprisingly, but in this case the immediate outcry was from the supposed beneficiaries of the new approach, Aboriginal peoples, and not from those who were in theory losing status, non-Aboriginal Canadians. Aboriginal opposition was intense and widespread, however, so the White Paper was soon withdrawn. But the negative reaction to it showed the limitations of equal citizenship and non-discrimination as a formula for resolving conflicts of culture and identity. Aboriginal peoples were being offered a promotion to full and equal citizenship, it seemed, but they were rejecting it, even though their guardians had been careful to acknowledge their distinct identities and the value of their cultural contributions.¹⁰ Still, it seemed they preferred to remain wards of the state! In the future, it would be necessary to solve the Aboriginal “problem” by somehow making them “citizens plus.”¹¹

The more immediate challenge, however, was to overcome the objection to bilingualism based on the claim that it made second-class citizens of all but the English and the French. A “plus” had to be added to the citizenship of “ethnic” Canadians, particularly Ukrainian Canadians, to balance the “plus” of bilingualism for the French. This was the immediate challenge Trudeau met in 1971, with his statement on multiculturalism.

Theoretical Clarification

Trudeau was indisputably the founder of Canadian multiculturalism in the limited “official” sense just explained, but this is not to say that his 1971 statement provides a clear explanation of the principles of multiculturalism or gives them a solid philosophical justification. Of course, he could reasonably have left these tasks to the theory professionals – political theorists, legal theorists, critical cultural theorists, and the like. But in fact, Trudeau was an unusually thoughtful and articulate politician, so perhaps it should not be a surprise that he did his own theorizing. He gave Canada’s new multicultural identity as clear an explanation and justification as anyone has up to the present, even though it is not to be found in his 1971 statement on multiculturalism.

The only theory in that short statement is the rather rudimentary and contestable psychological theory or hypothesis already outlined. To paraphrase Trudeau, only if people are confident in their own identities will they be able to deal generously and respectfully with others. This confidence will exist only if governments stop favouring some identities. They must affirm all identities equally and try to get their citizens to do the same. People must be told that they are all free to be themselves. If this freedom is in danger for some, it is in danger for all. None can really be recognized unless all are. All must be affirmed or all will be oppressed.

These edifying generalizations were a first line of defence against the widespread suspicion that official multiculturalism was really just low electoral politics, nothing more than “a sop to the ethnics,” just the squandering of public money to win votes for the Liberal party. By invoking a vague but familiar theory about something obscure but apparently deep and important – psychological identity – Trudeau shrouded his very practical new policy in a hazy glow of theoretical bafflegab. We all need secure identities, he seemed to be saying, and we will all have these only if the federal government officially recognizes all cultures.

Anyone unsatisfied with this explanation of the new policy and seeking a more persuasive justification of it has to look elsewhere in Trudeau’s speeches and writings. In fact, some articles about nationalism that Trudeau published in the early 1960s, when he was still just a law professor and the editor of a small monthly magazine, are the best sources for something

relevant.¹² These articles aimed to discredit the separatist nationalism that was gathering force in Quebec at the time, and they consolidated Trudeau's reputation as a sophisticated political thinker, both in English Canada and Quebec. Indirectly, they also provide a justification for multiculturalism and they suggest a revealing way of describing it.

Nationalism is a notoriously ambiguous term. It can refer to intense or extreme loyalty or patriotism, and nationalists in this sense are vulnerable to the criticism that collective egoism – dedication to the interests of one's own state or nation without regard to the interests of others – is little better fundamentally, despite its potentially self-sacrificing element, than simple selfishness and self-absorption. But nationalism can also refer to a principle or theory about political life, an *ism*, like federalism or egalitarianism. Nationalists in this sense – advocates of the so-called principle of nationalities – maintain that the boundaries of sovereign states should be aligned with the boundaries of ethnic or cultural nations. Such nationalists assume that a distinction can be made between nations as cultures and nations as states, or, in other words, that cultural nations (distinguished by language, religion, history, etc.) can exist “pre-politically,” or apart from any organized political life, and not just as political groups formed or “constructed” politically. Depending on circumstances, such nationalists may be separatists, or irredentists, or partisans of a national unification movement, or just defenders of an existing nation-state. They are united only in their belief that political life is best organized on a national scale, with each cultural nation having the status of a separate sovereign state.

Trudeau objected to nationalism in both these senses. He was scathingly critical of the extreme patriots among the French Canadians in Quebec, but he also had hard words for English Canada's cultural chauvinists. The French had legitimate grievances against their English-speaking compatriots, Trudeau conceded. Indeed, he thought that French-Canadian nationalism was best understood as a defensive reaction against the aggressive nationalism of British-oriented Canadians. But the solution Quebec's newest nationalists favoured, political independence for the province, would be costly, regressive, and inherently unjust. These nationalists, or separatists, talked bravely about their openness to the world and their commitment to progressive causes, but Trudeau described them as fearful and reactionary, and he rejected the principle of nationalities to which they appealed.¹³ He did not contend, as many do now, that the familiar nation-state distinction cannot be sustained because ethnic nations are “constructed,” like political states; instead, he attacked the arguments advanced by nationalists in defence of their theory of peaceful diversity and republican politics – essentially that conflicts can be reduced (since good fences make good neighbours) and dedication to the common good increased (since blood is thicker than water)

by creating sovereign states that are also ethnic nations. The principle can never be applied without difficulty, Trudeau pointed out, since "national" territories are always somewhat mixed ethnically and the boundaries between them are fuzzy at best. Hence, any attempt to apply the principle generates new, unnecessary conflicts and injustices. And even if it could be applied without difficulty, it would, because of the way it would link military power and the interests of the military class to the ethnic passions and prejudices of ordinary citizens, still just produce a world dangerously disposed to war.

Trudeau suggested that the solution to the problem of national differences and national rivalries must lie in a different direction altogether. The aim should not be to create a world of homogeneous nation-states, their differences carefully preserved or even augmented by governments disposed to foster a sense of opposition to the alien "Others" beyond their boundaries; rather, the aim should be to mix the populations of existing states even further, with a view to ultimately separating state and nation altogether, thus undermining the psychological basis for an intense and exclusive state patriotism and preparing the way for the necessary transition to a world of semi-sovereign states (or provinces) under some form of global governance. Only in this way could the terrible destructive potential of modern scientific warfare ultimately be brought under control.

What role could Canada play in promoting this long-term political transformation? As a large, wealthy country with a small but deeply divided population emerging from a colonial past, Trudeau thought that it could show other countries the way to create a society based, not on nationality, but on what he called "polyethnic pluralism." He dismissed the old "British North America" dream of making Canada a purely English or British country: French Canada was simply too large and too stubbornly united in defence of its language and culture to be assimilated. Moreover, "Britishness" no longer had much appeal as an identity, even to the English in Canada. To be sure, the English and the French could separate, as Quebec's *indépendantistes* proposed, and each linguistic nation would then be free to rid itself of the remnants of the other that remained within its boundaries, but Trudeau condemned this option as regressive and unjust. Even national unity based on a dualistic conception of Canada, such as the Royal Commission on Bilingualism and Biculturalism had been established to promote, while admittedly a more defensible option, was not, in itself, a very exciting one. It would be no great achievement, late in the twentieth century, merely to overcome the historic rivalry between anglophones and francophones and Protestants and Catholics. A two-nations Canada would be at best a simplified Switzerland, peaceful but boring and of no great interest to others. The aim of both English and French Canadians should rather be to make Canada as a whole neither English nor French, nor even

a peaceful combination of the two, but a truly pluralist and polyethnic state. As Trudeau said:

The die is cast in Canada: there are two main ethnic and linguistic groups; each is too strong and too deeply rooted in the past, too firmly bound to a mother-culture, to be able to engulf the other. But if the two will collaborate at the hub of a truly pluralistic state, Canada could become the envied seat of a form of federalism that belongs to tomorrow's world. Better than the American melting-pot, Canada could offer an example to all those new Asian and African states ... who must discover how to govern their polyethnic populations with proper regard for justice and liberty. What better reason for cold-shouldering the lure of annexation to the United States? Canadian federalism is an experiment of major proportions; it could become a brilliant prototype for the moulding of tomorrow's civilization.¹⁴

Indeed, Canada could provide a model not just for backward Asian and African states with their feverish ethnic hatreds but also for sophisticated Europeans dismayed by their atavistic tendency to plunge into murderous violence, and even for the world as a whole, facing the prospect of a nuclear holocaust because of its untamed imperial rivalries. Canadians should think big, Trudeau was suggesting. If English and French could put aside their old suspicions and animosities, overcoming the temptation of trying to regress to a simpler past, they (or their leaders) could make their country the "brilliant prototype" for creating a new and safer global order.

As a critic of nationalism, then, Trudeau gave Canadian multiculturalism a deeper and more persuasive theoretical justification than the one he had outlined in his 1971 statement. He offered Canadians an exciting vision of their future. He advised them to embark on a big political experiment, on the same scale as the American experiment in liberal democracy or the Russian experiment in egalitarian social planning, but one with even greater contemporary relevance. The aim of the experiment would be to test and refine a theory about how to overcome national or ethnic conflict. Canadians were much better suited than were most other countries for such an experiment. Trudeau put multiculturalism on a solid psychological foundation by treating it as a new, distinctively Canadian national identity.

Practical Implementation

If the basic aim of multiculturalism is cultural freedom with a view to the incorporation of diverse nationalities under a common political authority of a classless or democratic character (to demonstrate the possibility of a global order that would not be just the imperial domination of some nations over others), then the most important practical measures to be adopted in pursuit of this goal would seem to be:

- 1 measures to increase immigration from parts of the world not adequately represented in the base population of the multicultural society;
- 2 measures to suppress the negative or discriminatory reactions of the dominant or majority group to the increasing presence of Others; and to this end,
- 3 measures to reduce the political power and discretion of elected representatives, combined with other measures to increase the responsibilities of judges and other independent authorities.

A country does not become a welcoming home for representatives of all the world's peoples simply by proclaiming its intention to have this status. Good intentions must be matched by appropriate actions, that is, by the development of policies and institutions to effect the desired change from the exclusive practices and ethnocentric assumptions of the past to the openness and enlightenment of the future. This is a long and complicated process, which Trudeau began but which he obviously did not complete. Nor did he say much about the necessary measures in his historic statement on multiculturalism.

If the "multiculturalism hypothesis" from that statement were simply true, nothing would need to be done to overcome the prejudices of the dominant group (or groups) in Canada beyond providing them with as much public recognition and approval as the most sensitive among them thought was their due. This would increase their confidence in their own identity, and out of this increased confidence would grow greater respect for the identities of others. Simply by nurturing the pride of the larger groups, one could undermine their tendency to deal unfairly with the smaller ones. There may of course be a grain of truth in this hypothesis, as I suggested above, but neither Trudeau nor anyone else with a serious interest in promoting diversity has ever been willing to rely very heavily on this strategy for fighting prejudice and discrimination. Canadians are often praised for their remarkable tolerance, but they also need to be reminded from time to time of their shameful past and threatened with fines or imprisonment if they do not mend their discriminatory ways.

In his 1971 statement in the House of Commons, Trudeau spoke rather vaguely about "overcoming cultural barriers to full participation in Canadian society." In the accompanying document, he explained more clearly what he had in mind. He acknowledged that some reliance could be placed on anti-discrimination law to overcome discrimination – "the law can and will protect individuals from overt discrimination" – but "there are more subtle barriers to entry into our society" that cannot simply be outlawed. This makes it necessary, he said, for "every Canadian" to take responsibility for helping to eliminate these barriers, that is, their own and their compatriots'

tendency to favour their own. "Every Canadian must contribute to the sense of national acceptance and belonging."¹⁵

Anti-discrimination legislation tries to penalize the most egregious breaches of this norm. Under the *Constitution Act*, 1867, it appears to be a provincial responsibility, under Property and Civil Rights. By 1971, several provinces had adopted more or less stringent human rights codes. The first recommendation of the Royal Commission to which Trudeau was responding was that "any provinces that have not yet enacted fair employment practices, fair accommodation practices, or housing legislation prohibiting discrimination because of race, creed, colour, nationality, ancestry, or place of origin, do so."¹⁶ But the federal government could also legislate in this area, at least with respect to its own agencies, and Trudeau reported that his government "had the whole question of human rights under consideration."¹⁷ This consideration ultimately produced two significant pieces of federal legislation, the *Human Rights Act*, 1977, and the *Employment Equity Act*, 1986. Even though this second *Act* was passed after Trudeau had retired and Brian Mulroney had become prime minister, Trudeau must be given some of the credit for it since it was under his direction that the process of developing an affirmative action strategy for Canada began.¹⁸

An earlier and in some ways clearer indication of Trudeau's commitment to human rights and the fight against prejudice and discrimination were the reforms of the Criminal Code that he sponsored as minister of justice in 1967 and that became law in 1969, after he had become prime minister. These reforms included the rarely remarked addition of a provision (section 319) outlawing the expression of hatred against identifiable groups. This addition implemented the principal recommendation of an earlier advisory committee of which Trudeau himself had been a member. It had suggested that the Criminal Code be amended to make "every one who by communicating statements, wilfully promotes hatred or contempt against any identifiable group" guilty of an indictable offence and liable to imprisonment for two years. To justify this novel and controversial new legislated limit on freedom of expression, the committee's members had reasoned that there existed "a clear and present danger" that "in times of social stress" individuals and groups promoting hatred "could mushroom into a real and monstrous threat to our way of life." In short, the advisory committee had seen the possibility, in a country like Canada, that sometime in the indefinite future "hate promoters" might have such an effect on "uncritical and receptive minds" that they would require forceful suppression.¹⁹ Very little use has been made of this legislation since 1969, but it has helped to popularize the new concept of a hate crime, and it remains on the books as a reminder of every citizen's obligation to promote a positive sense of national acceptance and belonging.

The application of legislation employing very broad, ill-defined concepts such as “hatred” and “identifiable groups” requires delicate political judgment, not unlike the judgment required when applying legislation against “blasphemy” or “obscenity” or when deciding whether a particular violation of individual rights is reasonable in a free and democratic society. Thus any prosecution under section 319 requires the approval of a provincial attorney general before it can go before a court, and it must, of course, ultimately be decided in a court of law. This reliance on legal as well as political reasoning to settle difficult political questions is in accord with the basic trend of the past generation – the shift in the responsibility for defining the equal rights of all citizens from elected politicians and their officials to lawyers and judges more or less independent of government. This trend began more than forty years ago, with the passage of John Diefenbaker’s largely symbolic “Canadian Bill of Rights” legislation in 1960. By far the most important step was taken twenty-one years later, with the acceptance (apart from Quebec) of Trudeau’s immensely popular (even in Quebec) *Charter of Rights and Freedoms*. Trudeau’s constitutionally entrenched bill of rights gave the judiciary a firm legal basis for resisting any actions by governments that might encroach on the rights of Canadians in an unreasonable way. The power to decide whether any particular encroachment was a reasonable one, consistent with the basic values of a free and democratic society, or an unacceptable one that should be struck down, was taken out of the hands of elected politicians and put in those of highly trained legal experts appointed by the politicians. Not only are these experts much better educated than are most ordinary politicians, but they are also better insulated from popular pressures and presumably more capable of understanding the long-term needs of a society striving to become genuinely multicultural.

Finally, such a society – a future home for all the world’s peoples – must evidently have a door through which those peoples can enter. A discriminatory immigration policy, or even one that blocked all immigration, regardless of race or nationality, would clearly contradict whatever formal commitment to multiculturalism such a country professed. In the not-so-distant past, Canada openly tried to prevent the entrance of non-white migrants from Asia, Africa, and the Caribbean. The basic decision to reform this policy was taken in the early 1960s, before Trudeau entered federal politics, but the “points system” for selecting immigrants on a non-discriminatory basis was worked out after 1965, when responsibility for immigration policy was in the hands of Trudeau’s friend and political mentor, Jean Marchand. The new immigration policy of which it was a crucial element was finally put into the form of a new immigration law in 1976. During this period, Canadian immigration offices were opened in various Third World countries to facilitate the processing of applications, and the number of immigrants coming from these “non-traditional sources” increased dramatically. Thus, in

recent years, as many as 60 percent of Canada's new immigrants have come from Asian countries. (This compares with 58 percent from continental European countries other than France in the period between 1946 and 1959, and another 38 percent from the British Isles and the United States during the same period.)²⁰ Official multiculturalism obviously depends on this deliberate diversification of the Canadian population for much of its substance. Had the policy been limited by Canada's pre-1971 demography to making minor adjustments in the status relations of European nationalities in Canada – the vision of multiculturalism that some of its most vocal proponents seem to have entertained, forty years ago – then it would obviously have been much less relevant to the problems of the world as a whole than it is today. It is surely because Canadian multiculturalism now promises a way of incorporating the Third World into the First World without domination or oppression that it is attracting the kind of favourable international attention that Trudeau promised.

Conclusions

Before any lessons can be drawn from Canada's management of cultural pluralism, that is, its practice of multiculturalism, the principles inherent in that practice must be clarified. The intention guiding the development of the Canadian model of diversity must be put into words. In short, Canada's official multiculturalism must be theorized, and this may seem to be the exclusive responsibility of the professional theorists who spend their time theorizing things or deconstructing the theorizations of others. The practitioners of other arts, such as politicians, may seem to be too distracted by their practical obligations to think very clearly about what they are doing and to "articulate it theoretically." My contention, however, is that the politician who initiated Canada's official multiculturalism, Pierre Elliott Trudeau, also provided the clearest explanation so far of its fundamental principles. He was the first and remains the most authoritative theorist of Canadian multiculturalism, so if we wish to understand what it is, we should turn our attention to his thought and actions, keeping in mind the difference between a narrower and a broader understanding of multiculturalism.

Narrowly defined, official multiculturalism has to do with the activities of a few dozen civil servants in Ottawa and a few regional centres who spend a budget of \$50 to \$100 million a year. Multiculturalism in this narrow sense began with a mandate usually described as "cultural preservation"; then in the early 1980s, it became, to the dismay of many of its early enthusiasts, a program that gave priority to fighting racism. More recently, after the Liberals returned to power in 1993, its budget was cut (apparently because of its unpopularity with native-born Canadians) and its mandate changed to emphasize the promotion of good citizenship.²¹ Multiculturalism in this narrow sense derives directly from Trudeau's 1971 statement. It

was probably never of great interest to him, however, as those have seen who say that he used it for a short while and then forgot about it.

Multiculturalism more broadly understood (understood as I have been suggesting it should be) began before 1971 and underwent no fundamental change when it became “official.” It has never had a serious “preservative” purpose, despite what has often been said by people who should have known better; rather, it was designed from the start to promote “integration” (sharply distinguished from “assimilation,” despite their similarity) by fighting prejudice and discrimination (or racism), thus making it possible for new and old Canadians to meet and mingle (and intermarry) on a footing of equality. An essential element of this design has been the promotion of the public acceptance of certain markers of distinct identities, such as distinctive cuisine or religious headgear; but there was never any intention of reinforcing the structures of authority, independent of the Canadian state, that might exist within immigrant communities and that might try to impose traditional practices on their members. The distant goal of multiculturalism in this broader sense is the creation of a new relation between ethnic nationalities and our ever-expanding systems of governance, national and international. The ideal citizen, from its perspective, is not the zealous patriot ready to fight and die for his nation but, rather, the rational voter and dutiful taxpayer with a “cooler” relation to the political authorities over him, not completely alienated from them (because they are oppressing his nation) but not too identified with them either (since their nation is not really *his* nation).

Theorists trying to theorize multiculturalism invariably draw back from the cultural bureaucrat’s narrow practical understanding of it, but they typically leave out of their accounts two crucial elements that seem to me to be part of the broader picture; namely, immigration policy and, for lack of a better term, foreign policy. They treat multiculturalism as a domestic policy designed to deal directly with the conflicts and tensions of a given population rather than as a long-term policy for transforming that population with a view to overcoming problems in international relations. They deal with it as though the alternative to multiculturalism were best described as liberalism, individualism, or monoculturalism rather than as nationalism or the principle of nationalities. Consequently, their accounts often strike me as rather unrevealing compared to the broader understanding suggested by considering the thought and actions of Trudeau. This is true even of the theory that seems to me to be closest to Trudeau’s in its underlying assumptions and basic understanding of multiculturalism; that is, Will Kymlicka’s well known theory about multicultural citizenship.²² It features a distinction between internal restrictions and external protections that clarifies what Trudeau meant when he said that multiculturalism was “basically the conscious support for individual freedom of choice.” Liberal multiculturalism

requires group rights of a limited kind, as Kymlicka explains, but it does not diverge from the basic principles of the liberalism Trudeau represents. Similarly, Kymlicka makes a basic distinction between national and immigrant minorities that throws some light (perhaps too much light for practical purposes) on what Trudeau meant when he said that the formula for Canada should be “multiculturalism within a bilingual framework”: all are equal but not all are the same. Nonetheless, Kymlicka, despite his interest in nationalism and its relation to liberalism, does not address the alternatives to the principle of nationalities as clearly and straightforwardly as did Trudeau.

Charles Taylor’s justly famous reflections on “The Politics of Recognition” offer, among other things, a very erudite examination of the intellectual roots and conceptual puzzles of the psychological hypothesis that Trudeau invoked in his 1971 statement.²³ Why do we think that it is important for personal identities to be publicly recognized or affirmed? And how can everyone be affirmed without some being untrue to themselves in the very act of affirming others? Doesn’t the so-called “ethic of authenticity” make impossible demands? What about authentic bigots and authentic thugs? These are intriguing puzzles, and they draw one’s attention away from immigration policy and foreign policy.

The full reality of Canada’s official multicultural identity will be seen, I have been arguing, only when it is seen from the perspective of its founder, as an experiment in creating a nation designed to show the world how to overcome nationalism and war. The confusing difficulty Trudeau faced was the need to foster a certain nationalism in the very act of trying to overcome it. Given the prevailing national organization of political life, any appeal to Canadians to embark on the experiment he favoured had to be cast as an appeal to their national pride and ambition. For a variety of reasons, many Canadians have obviously been receptive to his challenge, but perhaps others elsewhere, pondering the lessons to be learned from the Canadian experience with multiculturalism, should keep Trudeau’s appeal to national feeling in mind when trying to decide how applicable the Canadian model may be in other, less favourable, circumstances.

Notes

- 1 Canada, *House of Commons Debates* (October 8, 1971), VIII, 8545.
- 2 *Ibid.*, 8580-81.
- 3 *Ibid.*, 8580.
- 4 *Ibid.*, 8546.
- 5 Thomas Jefferson, *Notes on the State of Virginia*, Query XVII, in *Writings*, ed. Merrill D. Peterson (New York: Library of America, 1984), 285.
- 6 *House of Commons Debates*, 8546.
- 7 *Ibid.*, 8546.
- 8 *Ibid.*, 8581.
- 9 The classic statement of this objection is a speech by a senator of Ukrainian ancestry, Paul Yuzyk, in the Senate of Canada, *House of Commons Debates* (March 3, 1964), 50-58. The

- descendants of the Ukrainian and other Eastern European pioneers who settled the Prairie provinces before the First World War tended to think that they, too, like the British and the French, were "founding races" who had brought civilization to an empty or savage land.
- 10 The White Paper had begun with the following declaration: "To be an Indian is to be a man, with all man's needs and abilities. To be an Indian is also to be different. It is to speak different languages, draw different pictures, tell different tales and to rely on a set of values developed in a different world ... To be an Indian must be to be free – free to develop Indian cultures in an environment of legal, social and economic equality with other Canadians." *Statement of the Government of Canada on Indian Policy, 1969* (Ottawa, 1969), 4.
 - 11 See Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State* (Vancouver: UBC Press, 2000), for a detailed analysis of the background to the White Paper and subsequent developments.
 - 12 Most of these writings have been reprinted in English in Pierre Elliott Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan, 1968).
 - 13 See, in particular, Trudeau's "La Province de Québec au moment de la grève," in *La grève de l'amiante*, ed. Pierre Elliott Trudeau, 1-91 (Montreal: Editions du Jour, 1956); and Pierre Elliott Trudeau, "Nationalist Alienation," in *Canadian Political Thought*, ed. H.D. Forbes, 333-37 (Toronto: Oxford University Press, 1985).
 - 14 Pierre Elliott Trudeau, "New Treason of the Intellectuals," in *Federalism and the French Canadians*, 178-79. "Brilliant prototype" is *outil génial* in the original.
 - 15 *House of Commons Debates* (October 8, 1971), 8581.
 - 16 Royal Commission on Bilingualism and Biculturalism, *Final Report*, Book IV: *The Cultural Contributions of the Other Ethnic Groups* (Ottawa, 1970), 64-65.
 - 17 *House of Commons Debates*, 8584.
 - 18 For an illuminating account of the long and complicated process of policy development that eventually produced the *Employment Equity Act*, see Annis May Timpson, *Driven Apart: Women's Employment Equality and Child Care in Canadian Public Policy* (Vancouver: UBC Press, 2001), chaps. 5-7. Timpson makes clear the crucial roles played by Trudeau's minister of employment and immigration, Lloyd Axworthy, and the person he chose to head the Royal Commission on Equality in Employment, Judge Rosalie Abella. The commission was appointed in June 1983 and submitted its report in October 1984.
 - 19 *Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada* (Ottawa, 1966), 24-25, 69-70. The committee endorsed the following broad principle: "The Canadian community has a duty, not merely the right, to protect itself from the corrosive effects of propaganda that tends to undermine the confidence that various groups in a multicultural society must have in each other."
 - 20 These figures are drawn from Royal Commission on Bilingualism and Biculturalism, *Final Report*, Book IV, table A1. Of the remaining 4 percent of the total, half came from France.
 - 21 For a brief account of these changes, see Yasmeen Abu-Laban and Christina Gabriel, *Selling Diversity* (Peterborough: Broadview, 2002), chap. 4.
 - 22 Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995); Will Kymlicka, *Liberalism, Community, and Culture* (Oxford: Clarendon Press, 1989).
 - 23 Charles Taylor, "The Politics of Recognition," in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann, 25-73 (Princeton: Princeton University Press, 1994).