

## **Deep Diversity and Multinational Federalism in Canada**

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Modern Canada was founded in 1867, which makes it one of the oldest and most enduring federations. The persistence of the Canadian state is somewhat surprising, not to say impressive, given its high level of ethnic, linguistic, cultural and religious diversity. It has been the locus of numerous and vibrant debates about the rights of aboriginal peoples and about the accommodation of immigrants and ethnic minorities. In addition, and this will be the focus of this paper, it has been (and is still) faced with deep nationalist divisions which give rise to many constitutional battles over the status of the French-speaking national minority concentrated in the province of Québec, and has survived two referendums on the independence of this internal national group—the first was held in 1980 when approximately 40% of the Québécois supported secession, the second was held in 1995 when Québec almost gave its government a mandate to negotiate the terms of separation with Canada by voting for 49.42% in favour of secession. Although Québec's nationalist affirmation has almost torn the country apart, it has not been accompanied by a wave of ethnic violence and has been handled relatively peacefully.

What has enabled this persistence of the Canadian federation as well as the peaceful cohabitation of antagonistic nationalist groups? In what follows, I will argue that the answer lies in the multinational character of the Canadian federation which has been able to accommodate its 'deep diversity'<sup>1</sup> (i.e. its multinational diversity) by allowing Québécois to exercise some degree of autonomy. To explain the dynamics of multinational federalism in Canada, I will start drawing a picture of ethnocultural diversity in Canada in which I distinguish between different sources of diversity. This will help me to highlight the specific situation and claims of Québécois as a national minority by contrasting it with other sources of ethnocultural diversity. In the second section, I will explain what a multinational federation is and I will hold that it is an appropriate form of institutional arrangement to accommodate territorially concentrated national minorities. Thirdly, I will assess the extent to which Canada can be said to be a multinational federation. It will appear that although many aspects of the political structure and of the political processes in Canada allow us to view it as a multinational federation, there are currently many features of the Canadian political system which do not embody the idea of multinational federalism. In the fourth and final part, I will briefly examine some of the main obstacles to the adoption a multinational form of federalism and I will argue that none of them are insurmountable.

### ***1 Mapping ethnocultural diversity in Canada***

Ethnocultural diversity in Canada is not a single phenomenon; it follows different patterns and has multiple sources. Will Kymlicka thus presents the Canadian policies of diversity accommodation as being fragmented in three different and parallel 'silos', each silo answering the specific needs and identity claims of a certain kind of ethnocultural

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<sup>1</sup> Taylor, 1991, 75. I will explain this term in more detail later, in the first section.

minority group.<sup>2</sup> These three kinds of ethnocultural minorities are 1) ethnic and immigrant groups; 2) aboriginal peoples; and 3) a national minority, that is, the Québécois who form a French-speaking society of approximately 7.5 million people. My concern in this paper is restricted to the way federal institutions can accommodate the latter group, but I will now say a word about the two others in order to contrast the different natures of these kinds of ethnocultural minorities.

Canada has been a land of immigration since its very beginning. Whereas until the second half of the XXth century immigrants and ethnic groups were mainly Christians of European descent (Scottish, Irish, German), immigrant groups have become more and more diversified in their provenance and religious allegiance ever since. This greater diversification combined with the liberal commitment to the equal treatment of every citizens regardless of their ethnicity, race, and religion have pushed Canadians to adopt a multiculturalist policy which emphasizes anti-discrimination measures, the promotion of cultural diversity in school curricula, the funding of ethnic organizations, grants some exemptions from public holidays, dress codes (eg. allowing Sikhs, Muslims or Jews to wear religious symbols in public institutions), etc. This set of measures aims at making members of ethnic and immigrant groups full and equal participants in Canadian society without requiring them to abandon important aspects of their cultural identity; its objective is the fair integration of members of immigrant communities to the larger society.<sup>3</sup>

I will follow Charles Taylor and call the kind of diversity involved with ethnic and immigrant groups “first-level diversity”<sup>4</sup>. What is at stake here is the accommodation of cultural, ethnic and religious pluralism within a single political community. As I highlighted, the rights and policies associated with this kind of diversity aim at promoting the integration of members of traditionally marginalized and vulnerable ethnocultural minorities to a community of equal citizens in a way that is sensible to the value that members of these minorities accord to their distinct identities. However, as Taylor puts it, the kind of diversity involved with the two other types of ethnocultural groups (aboriginals and Québécois) plays at another level; it is a second-level diversity, or “deep diversity”.<sup>5</sup> What is at stake at this level is not the integration of members of ethnocultural groups to a single political community, but the accommodation of certain groups whose members conceive of themselves as forming a distinct community and share a desire to control their destiny together and act collectively as a political actor, as a people, free from external rule. These groups understand themselves as nations within a multinational state, that is, as peoples entitled to self-determination.<sup>6</sup> Accommodating these groups does not aim at offering them fair terms of integration to a larger society, but rather requires allowing them to enjoy a certain degree of self-government.

Although the claims of the indigenous peoples of Canada and those of the Québécois are located at the level of deep diversity, since both want to be recognized

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<sup>2</sup> Kymlicka, 2007.

<sup>3</sup> For a deeper analysis of the justifications of such multiculturalist policies and of the rights they entail, see Kymlicka, 1995; 2007.

<sup>4</sup> Taylor, 1991, 75.

<sup>5</sup> *Ibid.*, 75-76.

<sup>6</sup> Tully, 2001.

as distinct society, or as nations, and want to exercise a significant degree of territorial autonomy and self-government, they do represent two different sources of diversity in Canada. Whereas Québécois form a single French speaking and populous national minority concentrated in a given territory (Québec is the second most populous province after Ontario), there are over 600 aboriginal bands in Canada and they differ significantly amongst themselves; some are very small and isolated, while others are located in urban areas and are intermingled with non-aboriginals, etc. In addition, aboriginal peoples stand in a very distinct relation with the Canadian state, even when compared to the Québécois. Whereas French-Canadians were a founding people of the 1867 Canadian confederation and have since then actively taken part in the decision-making process at both the federal and provincial level, indigenous peoples have been, until the mid-1970s, largely excluded from exercising power and subjected to paternalistic administrations. Because of their different dispersion on the territory and historical relationship with the Canadian state and larger society, the claims for self-government of Québécois and indigenous peoples cannot be met by the same institutional arrangements. As I will explain in the next section, because Québécois form a majority within a federal subunit, their nationalist aspirations can be answered by a genuinely multinational federalism. This is not the case of most groups of indigenous peoples<sup>7</sup>; moreover some commentators point out that many aboriginals want to achieve autonomy by negotiating a special political status that would be external to the current federation and based on treaties anterior to the 1867 Confederation.<sup>8</sup> This is why, from now on, I will focus on the multinational federalism primarily as a way to accommodate Québec's aspirations.

Before moving to the next section where I focus on the kind of institutional mechanisms that are best suited to accommodate the claim of the national group of Québécois, some remarks on the nature of national identity are needed. There are countless definitions of a nation, each pointing out some important elements of nationhood that held in common by a large number of nations: a sense of shared memories and history, a shared public culture, a common language and homeland, etc. Although I do not deny that these objective elements are central to most nations, I would like to suggest that the core or essence of national identity lies more in the subjective features of nationhood, that is, a nation is a community of people who represent themselves as a political community and who share a common will to live together in society.<sup>9</sup>

It thus seems to me that some confusion in discussions about the rights of national minorities are attributable to a certain view that assimilates nationalism to the defence of a particular culture and reduces national identity to a set of cultural traits shared by a group. For example, it is often argued that the *raison d'être* of Québec's nationalism is the preservation of a distinct national culture, one that is presumably based on French language and on social values that distinguish themselves from those

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<sup>7</sup> The Inuits of Nunavut, in the North of Canada, are however an exception. Indeed, since the creation of the territory of Nunavut in 1999, they form a majority in this regional subunit.

<sup>8</sup> Kymlicka, 2001, 110-111.

<sup>9</sup> I believe that Benedict Anderson's captures this very when he put that nations are 'imagined communities'. Anderson,

held by Anglophone Canadians by being more collectivist.<sup>10</sup> However, rather than being based on objective shared cultural traits, like language, religion and so on, national identity is based on a group's common will to live together and to organize collectively its social life. In other words, national identity relies on the individuals' identification to a certain political community whose members share a representation of themselves as a collective agent. Consequently, nationalism is not so much concerned with the preservation of the character of a particular culture, but rather with the *capacity* of the national group to control its own cultural development. Nationalism is thus closely related to the idea of self-determination; it is the assertion of a group's willingness to be the master of its own destiny, not a conservative commitment to maintain a certain traditional culture.<sup>11</sup>

Once we have grasped this important dimension of nationalism, we can see why some policies adopted by the state to respect the first-level of cultural diversity are unfit to adequately cater to the concerns of the members of national minorities and are thus doomed to fail. Indeed, as we have seen, the goal of these measures for accommodating first-level diversity is to treat members of minorities as equal participants in a single political community. To the eyes of the members of a national minority such policies, when applied to them, will be perceived as part of a state-driven nation-building project that attempts to incorporate them as individual members to the national majority's political community. These policies fail to recognize them as member of a distinct political community. Members of national minorities do not want to be granted individual rights that enable them to keep their cultural specificities while they participate as equal citizens in a state-wide political community; they want to be collectively enabled to function as a distinct political community within a multinational state (a state comprising more than one nation, or more than one political community). This is why, for instance, while the Canadian policy of multiculturalism recognizes a myriad of cultural, religious and ethnic groups, many Québécois perceive it as an attempt to deny their status of members of a distinct Francophone *nation*, one of the two founding nations of Canada, by treating them like members of any ethnic or immigrant community in Canada.<sup>12</sup> It treats them like members of a pan-Canadian multi-cultural society, rather than as members of one of the founding nation of Canada as a multi-national country.<sup>13</sup> The same thing could be said about the Canadian policy of Bilingualism, which affirms the bilingual character of Canada as a single nation (it defines English and French as its two official languages and forces federal institutions to provide services in both languages); its goal is to promote Francophones' participation within a coast to coast pan-Canadian political community rather than enabling an internal nation to enjoy territorial autonomy.

States that are characterized by what Taylor has coined 'deep diversity' must therefore take different measures to accommodate national minorities than those they usually take to accommodate ethnic and immigrant groups.<sup>14</sup> Since national minorities

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<sup>10</sup> For instance, Taylor, 1994, seems to hold this view in some passages.

<sup>11</sup> This point is emphasized by Margaret Moore, 2001, 73.

<sup>12</sup> Gagnon and Iacovino, 2007, 148-149.

<sup>13</sup> McRobbets, 2003; Weinstock, 2007, 20-21.

<sup>14</sup> For the distinction between the claims of immigrant groups and national minorities, see Kymlicka, 1995.

conceive of themselves as distinct political communities, they usually seek to be recognized as nations by the state and they also seek to exercise some degree of self-government by achieving territorial autonomy.<sup>15</sup>

### ***II Multinational federalism and the accommodation of national minorities***

In this section, I argue that a multinational federation can best accommodate the claims of a national minority such as Québec. I will first define what I understand by a multinational federation and I shall then hold that this political structure is better suited to accommodate the claims of Québécois than other institutional arrangements such as a territorial federation, a confederation or two independent states.

I follow Ronald Watts who defines federalism as “a normative term [that] refers to the advocacy of multi-tiered government combining elements of shared rule and regional self-rule. It is based on the presumed value and validity of combining unity and diversity and of accommodating, preserving and promoting distinct identities within a larger political union.”<sup>16</sup> Many political systems can embody the normative principle of federalism. Federations are among such political systems; they “represent a particular species in which neither the federal nor the constituent units of government are constitutionally subordinated to the other, i.e. each has sovereign powers derived from the constitution rather than another level of government, each is empowered to deal directly with its citizens in the exercise of its legislative, executive and taxing powers and each is directly elected by its citizens.”<sup>17</sup>

Federations are thus not equivalent to political systems of administrative decentralization, where central state delegates administrative powers over some areas of competency to regional subunits but retains the legislative authority in those areas as well as the right to revoke these administrative powers. In a federation, sovereignty is divided between different layers of government, with some jurisdictions shared and others exclusive to one of the different orders of government.<sup>18</sup> Therefore, a federation is also distinct from a confederation. Whereas in federations, sovereignty is shared by different orders of governments (in Canada: the federal and the provincial), confederations are an association of constituent units who agree to delegate some powers to a common government while they ultimately retain sovereignty (i.e. they can legally revoke the powers they delegate to the common government). Moreover, a confederation is purely an association of nations in which citizens only directly participate in their own national communities without also participating with the members of other constituent units in a wider pan-confederal society. A federation is by contrast a multilayered society in which citizens “participate concurrently in different societies”<sup>19</sup>; there is thus a greater degree of overlap of jurisdictions, modes of representation, participation and identification in federations.

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<sup>15</sup> McRobbets, 2003.

<sup>16</sup> Watts, 1999, 6.

<sup>17</sup> *Ibid.*, 7.

<sup>18</sup> Kymlicka, 2001, 94.

<sup>19</sup> Supreme Court of Canada, *Reference re Secession of Quebec*, para. 66, quoted in Tully, 2001, 10.

I will adopt Philip Resnick's terminology and draw a distinction between 'territorial federations' and 'multinational federations'.<sup>20</sup> Only the second type of federations is designed so as to accommodate national minorities. Territorial federations, indeed, are designed to diffuse the power within a single national community and do not draw the boundaries of their regional subunits with the aim of enabling some minorities to exercise self-government (for instance, the United States and Germany are territorial federations). On the contrary, multinational federations are political systems which grant a capacity of self-government to internal nations 1) by drawing boundaries so that national minorities form a majority within one or more federal subunits, thus enabling them to make democratic collective decisions without being outvoted by the national majority; and 2) by dividing the powers so that a 'nationality-based subunit' has exclusive or shared jurisdiction over crucial areas such as culture, language, immigration, education and so on.<sup>21</sup> We might add that a truly multinational federation formally recognizes its national minorities as such in the constitution and treat all its internal nations as equal partners.

Moreover, multinational federations are asymmetrical federations in which the status and powers of different federal units are not the same.<sup>22</sup> Indeed, if we acknowledge that some federal subunits are carved in order to accommodate the needs of national minorities and that their regional/provincial government forms the government of a national group, rather than being a mere regional division within a larger nation, then we have to accept the inevitable consequence that the status of those federal units through which national minorities can achieve self-government will not be the same as those units which merely represent territorial and administrative divisions within the larger society. Resnick clearly expresses this need for asymmetry: "if Québec is more than a province, i.e. the national homeland of French Canadians rebaptized Québécois, then its relationship to the larger Canada ensemble must be different from that of the English-speaking provinces."<sup>23</sup> There are indeed good reasons to think that the needs of a provincial government that act in the name of a national community are not the same as those of a provincial government which does not represent a nation but an administrative region within a nation.

Since such an institutional model (an asymmetrical multinational federation) would give Québec society a significant capacity of being self-governing and would recognize it as a distinct national community, I think that it is superior to other proposed alternatives designed to accommodate the French Canadian national minority. Some would like to view Canada as a territorial federation that accommodates Francophones through the official policies of bilingualism and multiculturalism. According to them, this would allow everyone in Canada to maintain their favoured linguistic and cultural identity and be given equal consideration. However, as I have mentioned earlier, these policies are designed to make members of different ethnocultural communities equal participants to a pan-Canadian uninational society. It thus fails to recognize the strong attachment that many individuals have to the nation of Québec understood as a political

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<sup>20</sup> Resnick, 1994, 71. See also Kymlicka, 2001, 97-101.

<sup>21</sup> Kymlicka, 2001, 95.

<sup>22</sup> Resnick, 1994; Kymlicka, 1998, 212, 226-230.

<sup>23</sup> Resnick, 1994, 75.

community and does not show equal concern for the value they place in their membership in such a community.

Would a symmetrically decentralized federation do better? Although this solution would be to a certain extent satisfying for Québécois because it would provide them provincial autonomy over certain matters, it would still fail to recognize Québec as a nation because it would affirm that it is only a province like all the others. However, the only association with the rest of Canada that Québécois could reasonably accept is one which does not deny this important aspect of their identity.<sup>24</sup> Furthermore, should the level of devolution required by Québec be uniformly applied to all provinces, this could undermine the federal power and prevent it from playing the role that many Anglophones, favouring a centralist conception of federalism, think it should play.<sup>25</sup>

An asymmetrical and multinational federation would provide national recognition and a self-government capacity to Québec, but so would a confederal association or the creation of two independent states. So why should we prefer multinational federalism over these two alternatives? I think that the answer lies in the fact that many Québécois experience what David Miller calls a 'nested identity'<sup>26</sup>, that is, they have a dual identity. Although many might give priority to their identity as Québécois, they still feel they belong to Canada and they value membership in this state; this was in fact twice confirmed when a majority voted to stay in Canada in the 1980 and 1995 referendums.<sup>27</sup> A multinational federation, in which different layers of jurisdiction and modes of participation and representation overlap, better reflects these dual identifications than confederal and fully separate institutional arrangements.<sup>28</sup>

### ***III How multinational is the Canadian federation?***

I will now assess the extent to which Canada can be said to correspond to the model of multinational federalism that I presented in the previous section.

To begin with, we have to notice that the boundaries of the federal units that were created by the 1867 Confederation were drawn in a way that allowed French-Canadians to form a majority in the province of Québec and therefore allowed them to exercise some degree of self-government. For many French-Canadian intellectuals, this original association was one between two co-founding nations, or peoples: the Anglophone Canadians and the French Canadians.<sup>29</sup> Under this interpretation, the Canadian federation was originally created as a multinational federation. Moreover, one

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<sup>24</sup> Taylor, 1991; Resnick, 1994; Kymlicka, 1998.

<sup>25</sup> I will come back on this point in section IV.

<sup>26</sup> Miller, 1998, 66.

<sup>27</sup> Note that there are of course some instrumental reasons which might explain why some Québécois chose to stay in. They might for example have voted against secession not so much because they felt deeply attached to Canada, but simply to protect their economic and military interest. Yet, in the present context of globalization, which would offer Québécois the opportunity to be part of an important free trade zone (NAFTA) and of a strong military alliance (NATO), these kinds of instrumental reasons are less and less strong.

<sup>28</sup> For more detailed discussions about the kind of institutional arrangements that Canada should adopt in order to accommodate its national minority, see Kymlicka, 1998; Taylor, 1991; Resnick, 1994.

<sup>29</sup> Gagnon and Iacovino, 2007, 31. This interpretation of the Confederation is often called 'dualism'.

could argue that it was an asymmetrical multinational federation since it allowed Québec to maintain its civil code inherited from the French regime, whereas civil law in all the other provinces was based on British common law.

As we have seen, multinational federalism is not only based on the division of subunits along national lines, in order to enable internal nations to be self-governing, but powers and jurisdictions must be divided to provide federal subunits with a significant degree of control over important matters. This condition is now met in Canada where provinces have powers, for instance, in the realms of property and civil rights, education, social policy, culture, telecommunications, language<sup>30</sup> and have direct taxation powers for provincial purposes.<sup>31</sup> Moreover, and this is crucial for Québécois's survival and flourishing as a distinct national community within Canada, Québec exercises a shared jurisdiction over immigration, it has significant input in decisions concerning the number and selection of immigrants and has developed its own policy of immigrant integration labelled 'interculturalism'.<sup>32</sup> Note that Québec is the only province to have powers in the realm of immigration, which confers some degree of asymmetry to the Canadian federation.

It is, however, interesting to note that at its very beginning, the constitutional division of powers made the Canadian federation a very centralized one. Indeed, all residual powers were to be granted to the federal government. In addition, the federal government had the powers of reservation and disallowance. The former (reservation) entailed that the lieutenant governor of each province (appointed by the federal government) had the power to "reserve a provincial legislation for Ottawa's approval or rejection"; the later (disallowance) "permitted Ottawa on its own initiative simply to disallow provincial legislation".<sup>33</sup> These centralizing powers make Canada's original constitution a merely quasi-federal one. However, following Watts, we can distinguish between the 'constitutional form' of a political system and its 'operational form'.<sup>34</sup> Thus, although in its original constitutional form Canada was *de jure* only a quasi-federation, it is now *de facto* federation in its operational form, since these centralizing powers have fallen into disuse.<sup>35</sup>

All this seems to suggest that Canada is an authentic multinational federation. However, a closer outlook on the dynamics of federalism in Canada will lead us to recognize some limits to its multinational character. As I will show, these limits are expressed in pressures for centralization and a federal driven process of pan-Canadian nation-building which both prevents the recognition of Québec as a nation, denies

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<sup>30</sup> Québec's language policy is defined in the *Charter of French Language* or the Bill 101, which was adopted in 1977. Since it limits the expression of English language in public signs and does not allow immigrants and Francophones to send their children to publicly funded English schools, it has been highly controversial and its range has been reduced several times by rulings of the Canadian Supreme Court (which is often perceived in Quebec as a sign of centralization and intrusion of the federal government in an area that is crucial for Québec's national identity). For an assessment of Québec's linguistic policy, see: Carens, 1995, pp. 56-65; Maclure, 2006.

<sup>31</sup> Knopff and Sayers.

<sup>32</sup> The guidelines of this policy are provided in the 1990 document *Au Québec pour bâtir ensemble. Énoncé de politique en matière d'immigration et d'intégration*. For interesting assessment of this policy, see Carens, 1995.

<sup>33</sup> Knopff and Sayers.

<sup>34</sup> Watts, 1999, 14.

<sup>35</sup> Knopff and Sayers.

asymmetrical federalism and limit Quebec's capacity to be self-governing within Canada.

First, in 1982, following the efforts of Prime Minister Pierre Elliot Trudeau, the Canadian government with the provincial governments (with the exception of Québec) agreed to the adoption of the Charter of Rights and Freedoms and to the patriation of the constitution.<sup>36</sup> The Charter has been seen as a pan-Canadian nation-building tool since it promotes the view that Canada is a single national community based on universal citizenship and individual rights. Its adoption results in the homogenization of provincial legislations by setting pan-Canadian standards that ought to be respected by the provinces. Moreover, with the creation of the Supreme Court, a central hierarchical institution, issues are de-regionalized and are treated as (Canadian) national issues in accordance to the standards set by the Charter. The Charter therefore favours a certain mode of belonging to Canada as a single national community to detriment of the multinational understanding of belonging preferred by Québécois. The homogenizing effects of the Charter also reduce the degree to which federal subunits are self-governing since provincial courts and legislations can be overridden by the Supreme Court's ruling.<sup>37</sup>

Second, the Charter had, and still has, an incredible popularity amongst Anglophone Canadians; this has given rise to a form of 'Charter patriotism'.<sup>38</sup> Soon after its adoption, the Charter became a pan-Canadian national symbol. It was understood by many Anglophones as embodying the liberal and democratic values that were shared by all Canadians, regardless of their region of provenance. It was perceived as the Charter of a *people*, of a single political community extended from coast to coast (i.e. from the Atlantic Provinces to British Columbia): "for its Anglophone supporters, the Charter fosters a conception of citizenship that defines Canadians as equal bearer of rights independent of provincial location."<sup>39</sup> This symbolic representation of Canada fuels the view that provincial boundaries do not delineate national communities but are mere territorial divisions within a single political community. This representation of Canada culminated in the repeated failure from the federal government and the nine Anglophone provinces to recognize in the constitution the special status as a 'distinct society' that Québec was claiming for itself during the negotiations of Meech Lake (1990) and of Charlottetown (1992). This misrecognition severely hampers the multinational character of the Canadian federation and is a profound source of discontent among Québécois.

Thirdly, although it is not explicitly stated in the constitution, the federal government asserts its power to spend in provincial areas of jurisdiction; this is seen, especially by Québec as a limitation of provincial autonomy (and therefore, in the case of Québec, of national autonomy). The spending power has been defined by Trudeau as: "the power of [the federal] parliament to make payments to people or institutions or

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<sup>36</sup> The patriation of the constitution is the legal process by which the government of Canada 'brought home' the constitution. Until 1982, Canada was a British dominion and its constitution was a subject of British law, it was only amendable by an Act of the British Parliament. The patriation made the constitution amendable by Canada alone.

<sup>37</sup> Gagnon and Iacovino, 2007, 37-43.

<sup>38</sup> Taylor, 1991.

<sup>39</sup> Cairns, 1991, 79.

governments for purposes on which it (the parliament) does not necessarily have the power to legislate.”<sup>40</sup> Many Québécois hold that by making grants for programs under provincial jurisdiction conditional to their conformity with ‘national’ (i.e. pan-Canadian and defined by the federal government) standards and by selecting where these funds can be spent, the federal government encroaches on provincial competencies and, therefore, limits provincial autonomy. As Hamish Telford remarks, although for many Anglophone Canadians the federal spending power is viewed as a positive tool of nation-building which has helped to build a coast to coast egalitarian society (for example by providing funding for healthcare programs and other social programs), from Québec’s perspective, it is a ‘nation-destroying’ device which hampers its capacity to make decisions in certain key areas.<sup>41</sup> In 1999, Ottawa and the nine provinces (the one missing is Québec) signed the Social Union Framework Agreement (SUFA), which recognizes the federal spending power and sets pan-Canadian standards for social policy. As does the Charter, this agreement has the effect of homogenizing provincial legislations and puts forth a non-multinational conception of federalism: “the SUFA represents the continuation of a political project for the construction of a pan-Canadian political community, which aims to forge universal bases of citizenship across the country in the name of unity.”<sup>42</sup>

In sum, although important features of the Canadian federation can be seen as aspects of a multinational federation—the division of federal subunits along national lines, the division of powers, some weak *de facto* asymmetry (Québec’s civil code, pension plan and power in the realm of immigration and integration)—other features suggest that the extent to which this federation is multinational, and thus able to accommodate the Québec internal nation by allowing it to be self-governing, is still limited—a process of centralization centered around the Charter, the Supreme Court and the SUFA, the federal spending power, an aggressive pan-Canadian nation-building which fuels the failure to constitutionally recognize Québec’s special (asymmetrical) status as a nation. Given this ambiguity, it is perhaps more accurate to view federalism in Canada as a dynamic process involving a struggle between different conceptions of federalism—Québec pushing for a multinational and asymmetrical model while the rest of Canada is pushing for a territorial and symmetrical model—rather than as a fixed political structure.<sup>43</sup> So although they face resistance to their claims for national recognition and asymmetry as well as the pressure from a competing pan-Canadian nation-building process, Québécois enjoy some degree of collective freedom and are able to behave like a nation within Canada. For instance, with its language policy and its immigration and integration policy, Québec is engaged in its own rival nation-building project.<sup>44</sup>

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<sup>40</sup> Trudeau, Pierre Elliott (1969), *Federal-Provincial Grants and the Spending Power of Parliament*, Government of Canada, 4, quoted in Telford, 2003, 25.

<sup>41</sup> Telford, 2003.

<sup>42</sup> Gagnon and Iacovino, 2007, 49.

<sup>43</sup> James Tully emphasises that this agonistic and dynamic dimension of the struggle of and for recognition is a central aspect of multinational democracies. Tully, 1995 and 2001.

<sup>44</sup> This has recently been made clear in the 2007-2008 episode of the ‘reasonable accommodation debate’, which centered mainly on the issue of national identity and the integration of newcomers. During this debate, Québécois asked themselves how to fairly integrate immigrants to their French-speaking society. Which measures should they take in order

This ambiguous and mildly multinational federalism may perhaps explain why Québécois have been just enough satisfied with Canada to peacefully stay in over the last three decades. However, the reluctance to adopt a genuinely multinational federalism expressed in the affirmation of a pan-Canadian nationalism hostile to Quebec's national recognition and special status is the best flag that radical separatists can fly to rally their troops. It allows them to present their claims for independence in terms of an answer to the failure of the federal government to acknowledge their moderate claims for a more open federalism that would be sensitive to Québec's aspiration.<sup>45</sup> This contributes to de-radicalize separatism in the eyes of many Québécois and to present it to them as the only reasonable option whereas Canadian federalism is being presented as a radically anti-Québécois option. As such, the failure to fully embrace multinationalism maintains Canada in a precarious situation where a significant part of the population perceives the actual federal order as illegitimate and unacceptable.<sup>46</sup> In the next section, I examine some of the obstacles to the adoption of a genuinely multinational form of federalism that would be reasonably acceptable for Québécois and argue that none of them is insurmountable.

#### ***IV Overcoming the obstacles to multinationalism***

In this section, I examine three difficulties that have, until now, prevented Canadians from embracing a fully multinational form of federalism: the clash of divergent conceptions of the role of the central government, the rejection of the notion of asymmetry, and a fear that multinational federalism would undermine the basis of unity and cohesion.

First, the formal recognition of the special status of Québec as a nation within Canada is seen by many Anglophone Canadians as incompatible with their understanding of the role of the federal government. As I already mentioned, many of them feel that they belong to a pan-Canadian liberal and egalitarian society that extends from coast to coast. For them, a strong and centralist federal government plays an important role in building a community of equal citizens that transcends the boundaries of their province. That is why they view positively the spending power of the federal government, the uniformizing effects of the Charter and of the Supreme Court as well as the adoption of pan-Canadian social standards. For them, the federal government is an important actor that contributes to the achievement of the vision of the Canadian society that they cherish and value. Therefore they perceive Quebec's claim for greater provincial autonomy as running counter to this understanding of the role of the federal government because the protection of such autonomy would undermine the capacity of the federal to act as a lever for the achievement of equal conditions of life for citizens living in different provinces and regions. Québec's aspiration for autonomy therefore seems irreconcilable with the rest of Canada's desire for centralization.

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to generate in the immigrants a feeling of attachment to Québec society? Etc. See the Official report of the Commission on Reasonable Accommodation, Bouchard and Taylor, 2008.

<sup>45</sup> Seymour, 2000.

<sup>46</sup> Since 1995, surveys in Quebec have shown that the support for independence fluctuates around 40%.

This is so, however, only if we assume that the Canadian federation must be symmetrical and that accommodating Québec's claim for provincial autonomy would necessitate devolving powers equally to all provinces. If Canadians could recognize that Québec has different needs and interests than other provinces, then they could allow Québec to opt out of some federal programs (with compensation) and to secure exclusive jurisdiction over matters that are particularly crucial for its interest as a national minority within Canada without having all the other provinces following the same path, then the federal government could still play an important and strong role in the rest of Canada. Asymmetrical federalism in a multinational state allows the members of the dominant (majority) nation to rely on a strong federal government as the political actor that pursues the social goals of a nation that transcends provincial boundaries (i.e. the Anglophone Canadian nation) but it still offers some protection against centralization for the national minority (Québec) by allowing it to take some distance from the central government in some key areas—as I already highlighted, the special competency of Québec over immigration is a good example of such kind of asymmetry. As Taylor said it : "the demands for special status and strong central government can possibly be made compatible." <sup>47</sup>

However, and this is my second point, although asymmetrical federalism might achieve a balance between a strong federal government for Anglophones and autonomy for Québécois, it is met with a strong opposition in Anglophone Canada.

First, asymmetry is often perceived as a violation of the moral ideal of equality of all citizens. According to this critique, asymmetry allows Québec's citizens to be subjected to different norms, it thus creates a second class of citizens (e.g. Anglophones residing in Québec are subjected to limitations in the use of English in commercial signage and French-speaking Québécois whose liberty to send their kids to English school is restricted, whereas both these liberties are guaranteed outside Québec) and it prevents the equalization of the conditions of life of Québécois with those of residents of other provinces.

However, this view wrongly assumes that uniformity in a multinational state warrants paying equal concern to everyone. This is misleading since uniform laws might only reflect the preferences and interests of a national majority. For example, the insistence that Québec's linguistic policy of French promotion must be abandoned because of its incompatibility with the Charter of Rights and Freedom is based on a non-neutral understanding of Canada which does not pay equal concern to the needs and aspirations of Francophones in Québec. Uniform treatment therefore favours individuals who adopt a uninational understanding of belonging in Canada to the detriment of the Québécois' sense of national identity. <sup>48</sup>

Secondly, asymmetry poses a problem for the representation at the federal level of subunits with a special status. If the federal government delegates some powers in certain areas of legislation to the government of Québec, should Québec continue to take part in legislation-making in these areas at the federal level? <sup>49</sup> Many would view as illegitimate Québec's participation in federal parliamentary discussions over issues on which it exercises a special power that is not granted to other provinces. However, it

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<sup>47</sup> Taylor, 1991, 73.

<sup>48</sup> Kymlicka, 1998.

<sup>49</sup> Resnick, 1994.

might be possible for Québec and the other provinces to negotiate trade-offs between asymmetry and representation in certain areas.<sup>50</sup> The guiding principle behind these trade-offs would be that “the less a group is governed by the federal government, the less right it has to representation in that government. An asymmetry in powers entails an asymmetry in representation.”<sup>51</sup> Thus: “for every transfer of power to Quebec, there must be a corresponding reduction in the power of MPs, ministers, indeed civil servants from Quebec, where the rest of Canada is concerned.”<sup>52</sup>

Finally, the third obstacle to the adoption of genuine multinational federalism relies on the fear that the recognition of the multinational character of Canada would be a first step towards Québec’s independence. According to this view, the national recognition of Québec would strengthen Québécois consciousness of forming a distinct national group and the devolution of additional powers to Québec would help radical nationalist elites to mobilize the population to support independence. It would thus simply accentuate the divisions that oppose Anglophone Canadians and Québécois and bring the country closer to a break up. However, as I noted at the end of the previous section, it is the refusal to recognize Québec as a nation and to accommodate its claims for more provincial autonomy that fuels Québécois’ discontentment and disposes them to be more sensitive to the radical separatists’ arguments. Therefore, following Kymlicka, I would suggest that although multinational federalism cannot promote the same degree and kind of unity and social cohesion as a unitary state—since it acknowledge that some federal subunits are legitimate centers of national identification and allegiance—, it can help to preserve weak but enduring bonds of social unity.<sup>53</sup> Indeed, the recognition of Québec’s special status as a nation within Canada would help to built the trust in the rest of Canada that many Québécois have lost over the last three decades as a result of, amongst other things, the patriation of the constitution and the adoption of the Charter without their consent, and the failure of national recognition in the Meech Lake and Charlottetown constitutional negotiations. It would therefore generate the feeling that the Canadian federation has offered them fair terms of association which, I assume, would lead them to feel more attached to Canada. Multinationalism does not encourage secession, rather it provides a way of binding a country together that differs from the way people are bound in a traditional mononational state.

In sum, I believe that many of the obstacles to the adoption of multinational federalism can be overcome. First, the centralist vision of federalism favoured by many Anglophones is not irreconcilable with Québec’s demands for more provincial autonomy if we accept the idea of asymmetrical federalism. Second, although many are suspicious towards asymmetry, it could be shown to them that it does not violate the moral equality of individuals and that it could be possible to find an agreement over the issue of the representation at the federal level of provinces with a special status. Finally, we can question the fear that multinationalism would favour separatism by

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<sup>50</sup> *Ibid.*, 78-80.

<sup>51</sup> Kymlicka, 2001, 108.

<sup>52</sup> Special Joint Committee on a Renewed Canada, *Minutes of Proceedings and Evidence of the Special Joint Committee on a Renewed Canada*, December 3, 1991, p. 22:7, quoted in Resnick, 1994, 79.

<sup>53</sup> Kymlicka, 2001, 116-117; 1998, 284-289.

showing how it would rather promote the only kind of identification to the state that members of national minorities can be reasonably expected to develop.

In conclusion, I have shown that Canada is marked by deep diversity; as such it does not only face the challenge of accommodating multicultural diversity, but also that of accommodating multinational diversity and of preserving the fragile unity that binds several peoples within a single federation. I have endorsed the view, widely shared amongst Canadian intellectuals, that multinational federalism is the only institutional arrangement that can meet the challenge of deep diversity. I have then argued that although many features of the Canadian federation follow the principles of multinational federalism and enable Québec to enjoy a significant degree of self-government, many other aspects of federalism in Canada do not currently reflect the idea of multinationalism. As I explained, the main non-multinational aspect of Canadian federalism is the affirmation of a pan-Canadian nationalism that misrecognizes the existence of internal nations within the country. This process of pan-Canadian nation-building is based on an ideal of unity, but it is paradoxically the main source of division within Canada: it fuels Québécois' discontentment and nurtures the vision that their only future lies outside the federation. Creating and sustaining the bonds of trust, solidarity and unity in a multinational society cannot be achieved in the same way that this is done in a single nation state. A federation can only win national minorities' full-hearted willingness to continue to live in association with the rest of the society by recognizing its multinational character.

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