

PRINCE EDWARD ISLAND AND THE CANADIAN CONSTITUTION: A Brief to the Standing Committee on the Constitution

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INTRODUCTION

Honourable Chair (Mr. Don MacKinnon) and other members of the Standing Committee on the Constitution of Canada -- it is indeed an honour for us to appear before you this afternoon, on this matter of critical importance to our country's future. We hope our contribution will be useful to your deliberations.

The Institute of Island Studies is no stranger to appearances before such Legislative Committees. Indeed, we have made a regular practice of it; we see it as helping to fulfill those parts of our mandate which call for us to "serve as a bridge between the University and Island communities" and to "contribute to the formulation of public policy in Prince Edward Island." Thus, over the years, we have presented Briefs on such pressing public issues as the Lands Protection Act, the Role of the Legislative Assembly, Access-to-Information Legislation, and Maritime Integration. Indeed, we are delighted that one of our specific recommendations -- that there be an autumn sitting of the Legislature -- has been instituted quite recently. While it may still be too early to call this innovation an unqualified success, we think it already apparent that the Legislature now seems more accountable to the people, and to public opinion, than it has been for many a year.

While our Brief is presented under the auspices of the Institute of Island Studies, we do not suggest that it represents the unanimous opinion of the members of the Institute's Advisory Board. What we have sought to do is to bring together some of the leading scholars at our University with particular expertise in these areas, so that their knowledge would be "fed into" this process in a formal way. The Institute's criterion of endorsement is that the resulting Brief be a worthy contribution to the ongoing debate. At the same time, we have attempted to ground our arguments in the work of the Institute, in relation to both our local and comparative islands mandates.

In fact, there can be no question but that the line of reasoning pursued in this Brief has been greatly influenced by the Institute's recent international work, especially with the North Atlantic Islands Programme. This research has led to at least two major insights: 1) Prince Edward Island has benefited enormously from what David Milne has called "the gift of jurisdiction"; in fact, our status as a separate provincial jurisdiction may well be the single most important resource in our possession -- one which we have only begun to exploit to the full. In this regard, Prince Edward Island has a great deal at stake in seeking to preserve -- or even to expand -- the powers available to each of the ten provinces. 2) The "world of jurisdiction" is an enormously complex one, and each country is to some extent unique in the way in which local, national and international

constituencies and interests have been accommodated. Thus it is possible to find elsewhere apparently successful models as we attempt to determine how both a tiny Island province like ours and a nation-in-the-waiting like Quebec can be accommodated within the Canadian Confederation.

The main argument of our Brief is this: that our national impasse will remain so long as Canadians refuse to recognize and accept the simple truth, that Quebec is in fact a nation. In this respect, the Calgary Declaration is inadequate. The challenge facing Canada is to accommodate a nation (Quebec) within a state. As we seek to square this particular circle, there are models and precedents from which we can learn.

QUEBEC FROM THE ISLAND PERSPECTIVE

Among all the provinces of Canada, none seems so well placed to understand the aspirations and sentiments of Quebec as Prince Edward Island. In fact, it could be stated that Quebec and Prince Edward Island are both anomalies of Confederation. But while we are thoroughly familiar with the point of view that Quebec represents an anomaly of language, culture and society -- a French island in an English sea -- we may not have considered that Prince Edward Island is also an anomaly -- an anomaly of geography, and of diminutive size. Our geographical and demographic insignificance in relation to the other provinces would thus seem to make us as "distinct", as set apart, as Quebec. The Island is so small, in fact, that many, particularly in Central Canada, question our right to exist as one of the family of ten. Even the present Prime Minister has been known to mutter in public about the perceived advantages of Maritime Union!

To take the argument still further, it may be possible to argue that Prince Edward Island is itself a distinct society, and is such with the blessing of the Canadian Constitution.

All Islanders are familiar -- perhaps too familiar -- with the term, the Island Way of Life. Now this phrase is vague and perhaps not all that useful; but if Islanders were pressed to define it, most would equate it in some way with our rural heritage, our landscape, and our tradition of small, freehold farmsteads. In other words, we define ourselves in relation to the land. And, as a result, we see the disposition of our land -- who can own it and how it is used -- as central to our existence as a province and a people.

Thus it is no accident that our legislation limiting non-resident ownership -- from both outside and, more significantly, *within* Canada -- is unique among the provinces. Nor should it come as a surprise that Island politicians have fought tooth and nail to keep the clause "enjoyment of property" out of Section 7 of the Canada Act of 1982; for if it were included, our legislation could scarcely hope to stand challenge in the courts. In fact, at one critical Federal-Provincial meeting, Premier Angus MacLean explicitly sought, and received, support from the separatist René Lévesque on this very point.

As stated in greater detail in the next section of this Brief, the Island's "distinct" land legislation has been challenged, all the way to the Supreme Court -- and has been upheld.

We shall end this brief section simply by stating that Prince Edward Island and Quebec seem to have more in common than would appear at first glance. In fact, it may be fair to suggest that a country which lacks the imagination and generosity to accommodate the aspirations of Quebec within the union may equally prove unwilling to continue to accommodate Prince Edward Island as a province either....

PRINCE EDWARD ISLAND'S "UNIQUE" CONSTITUTIONAL STATUS

The Island's history as a separate political jurisdiction began in 1769, when it was separated from the colony of Nova Scotia. It owed its distinct status to two factors -- the fact that it was an island, and the self-interest of the absentee proprietors to whom it had been granted in 1767. In fact, it was Walter Patterson, the Island's first British governor and himself a proprietor, who apparently led the lobby for separate status. The Island's jurisdictional status was greatly enhanced in 1773 when the Legislative Assembly was first established -- which makes ours the second oldest Legislature among the provinces of Canada.

Island society matured rapidly in the years between 1800 and Confederation in 1873. Not only was there a population explosion -- from about 5,000 people to 100,000 -- but the economy flourished and, in 1851, Islanders were granted Responsible Government, a form of home rule. By the time of Confederation, Islanders had gone a considerable way to establishing an identity as a people, so that they routinely referred to the Island as "our country" and there was substantial opposition to Confederation. Indeed, it was on the basis of this strength -- of this accomplishment -- that the Island joined Confederation as a separate province.

But quite apart from our particular history as colony and province, our distinct and separate provincial status owes a great deal to the Canadian Constitution. What is more, our constitutional status is "unique". By s.37 of the Constitution Act, 1867, as controlled by s.51 (2) (as amended), Prince Edward Island has more Members of Parliament than it should have by any standard of distribution by population. Ridings in Ontario commonly contain double the number of electors likely to be found in any constituency on the Island. (A further anomaly can be seen in the fact that, while not based on population, the number of Senate seats for Prince Edward Island almost equals those allotted to British Columbia, which is about to become the second largest province by population.)

This offends against one of the most basic of democratic principles, namely, that the distribution of representation should be roughly equal, based on population. (We have recently had some experience of this in our own provincial distribution of seats.) "Rep-by-pop" was a rallying cry in Canada West (Ontario) during the 1850s, a cry which reflected the dissatisfaction of those who saw an imbalance in the distribution of seats in the Parliament of the United Canadas. By the 1850s, the population of Canada West had far outstripped the population of Canada East (Quebec), but there remained an equal division in the number of seats. Necessarily, "rep-by-pop" was resisted in Canada East by those who feared "English" domination. This was one of the "causes" of the eventual Confederation.

We, on Prince Edward Island, violate the principle of "rep-by-pop". We are in a distinct state of inequality vis-a-vis the other provinces of Canada. We have a special "unique" status and it is the

Constitution of Canada which assures this status. In this sense, our Confederation is already "asymmetrical" and the provinces unequal in what must be regarded as, legally, a most fundamental way.

There are two other areas in which we, as Islanders, see a "uniqueness", namely, our regulation of land ownership and use (which was publicly decried by Pierre Elliot Trudeau during the federal-provincial sparring over the patriation of the Constitution in 1980) and the tax burden we place on the shoulders of absentee land owners. Both of these constraints have been upheld by the courts in *Morgan v. Attorney General of P.E.I.*,¹ and *McCarten v. Prince Edward Island* (1994), respectively.²

From a legal point of view, however, there is nothing "unique" about these policies and their expression in law. Both cases were decided by using sections 91 and 92 of the *Constitution Act, 1867* and the concepts embodied in those sections. Both decisions were based on powers well within the jurisdictional scope of any province.

Much of the history of the "making" of Confederation focusses on John A. Macdonald and his desire for a strong central government, and clearly, there are centralizing forces built into the *Constitution Act, 1867*. The allocation of residual lawmaking power to the Federal government the power to make laws for "peace, order and good government" are all designed to create strength at the centre. But there were other hands involved in the constitutional process, and one of those hands "slipped in" the words "property and civil rights in the province" (section 92, head 13).

In a certain sense, this was a devolutionary "bomb", simply waiting to go off. Those words have a history. In the *Quebec Act* of 1774, there is the following: "and that in all matters of controversy, relative to **property and civil rights**, resort shall be had to the laws of *Canada*, as the rule for the decision of the same..."³ (In 1774, the term "Canada" referred to what is now Quebec). This provision restored the "civilian" law in place before the "conquest" for all matters except the criminal law and, presumably, other areas of public and administrative law. In short, matters of "private" law, which encompass a huge area of the legal spectrum, were matters of "property and civil rights." (And large areas of public and administrative law are easily incorporated in provincial control of other subject matters encompassed by section 92.)

The Judicial Committee of the Privy Council, in early constitutional decisions, gave those words that meaning and, in so doing, sharply curtailed the centralizing forces otherwise inherent in the language of section 92. Indeed, ownership of property and the regulation of ownership falls well within "property and civil rights" (which was the decision in *Morgan*) and direct taxation of that property is clearly a matter of provincial authority, subject to Charter considerations of equality, if any (*McCarten*).

While scholars such as the late Chief Justice Laskin have severely criticized those decisions of the Privy Council--and it is at least arguable that "property and civil rights" might have been interpreted in light of the centralizing sections of the Act -- it is probably more reasonable to conclude that the inclusion of those words was intended to produce a devolutionary result and that was precisely the effect they have. Those decisions initiated a process of devolution, based

on the language of the constitution, which continues apace to this day. While this would certainly appeal John A. Macdonald, the "seeds" of devolution were definitely planted in the document he imagined would centralize.

QUEBEC AS A NATION

In yet another attempt to "save Canada," the nine federalist provincial premiers met in Calgary in mid-September to work out a means to keep Quebec in Confederation. The premiers, trying to mollify Quebec but realizing that the term "distinct society" was massively rejected during the Meech Lake and Charlottetown constitutional negotiations and remains unpopular in the West, settled on recognizing the role of the Quebec government "to protect and develop the unique character of Quebec society within Canada" as being "fundamental to the well-being of Canada."

However, their seven-point Framework for Discussion on National Unity provides no new powers for Quebec, since the same document also reaffirmed the belief in the equality of provinces; any powers conferred on one province in any future constitutional amendment must be available to them all. This squaring of circles does not bode too well for this new, yet in many ways dreadfully familiar, initiative.

Quebec separatists immediately heaped scorn and contempt on the proposals. Quebec's minister for intergovernmental affairs, Jacques Brassard, called it a "pseudo-recognition" which is "purely symbolic because it is once again constrained by the principle of the equality of provinces" and refuses to recognize the Québécois as a people. Premier Lucien Bouchard, too, denounced it as "an attempt to make Quebec's national reality disappear."⁴

Canada's federal structure remains a curious hybrid: It is neither a purely territorial model, with non-ethnic sub-units, such as one finds in the United States, Brazil or Germany; nor is it formally a union of different nationalities, as was the case in the Soviet Union or Yugoslavia. Is Quebec an ethnic homeland, or merely that one of the 10 provinces that happens to contain a French Canadian majority? Is Canada a federation of equal individuals and provinces, the U.S.-style model preferred by most western Canadians? Or is the country a union of two founding nations, as most Québécois have assumed? Might the country be recast as a dual union of two constitutionally equal partners? These remain unresolved questions. Unlike formerly centralized states such as the United Kingdom and Spain, which have devolved powers from the centre and have created new and innovative asymmetrical arrangements for peoples like the Scots and Catalans, at the moment English Canada seems increasingly wedded to a "one size fits all" notion of federalism--even as it all-the-while tries to accommodate Quebec's desires for ever more substantial powers. As Ronald Watts has remarked, this has produced "clashing pressures for more asymmetry *and* for more symmetry within the Canadian federation."⁵ And ultimately the clash between these contradictory strategies has sharpened internal tensions and conflicts. Such is the intractable nature of Canada's constitutional impasse.

Why do Canadians keep going around in constitutional circles? Because we perversely refuse to recognize the collective nationhood of the Québécois people--ironically, in large part due to a long line of federalist francophones from Quebec, Pierre Elliott Trudeau the most well-known and Stéphane Dion the latest, who have rejected this fact. For them, the concept of nationalism is

a survival from an earlier age and ethnicity an obstacle to be overcome, a vestigial relic which will inevitably decline in significance. As long as citizens of Canada, be they from Quebec or anywhere else, are guaranteed their individual rights and liberties within a democratic constitutional framework, they have no cause for complaint. Apparently, only genuinely oppressed peoples under colonial rule have the right to a state of their own.

NATIONHOOD AND NATIONALISM

But, "If nationalism is indeed the measles of mankind," writes David Miller, "then the human race shows no signs yet of passing beyond its infancy."⁶ As Eugene Kemenka reminds us, "Nationalism has stood, and perhaps still stands, at the centre of modern history."⁷ In the past decade, some 20 new "successor" states, based on the principle of ethnic secession, have been formed out of the detritus of various multi-ethnic entities. While some academics "deconstruct" nationalist "narratives" and texts, "real, existing nationalism" remains a powerful force. Notes Anthony Smith, "ethnic fragmentation and separatist nationalism are fundamental trends in recent history, not some temporary by-play, and they persist even in areas of advanced modernity."⁸

Walker Connor has observed that, in its pristine meaning, a nation is "a group of people who feel that they are ancestrally related. It is the largest group that can command a person's loyalty because of felt kinship ties; it is, from this perspective, the fully extended family." While objective criteria such as common language, religion, territory, and the like help define a national community, its essence is a psychological bond that joins it and "differentiates it, in the subconscious conviction of its members, from all non-members in a most vital way." And it also, Connor indicates, accounts for the emotional depth which it inspires, the "fanatical sacrifices which have been made in its name."⁹ And these are not necessarily negative: Benedict Anderson reminds us that, in an age when cosmopolitan intellectuals insist on the near-pathological character of nationalism, "it is useful to remember that nations inspire love, and often profoundly self-sacrificing love."¹⁰

This is why, despite some post-modernist theories of national identity now in vogue among some academics, which claim that national feeling is the product of sheer perception or cynical manipulation by elites and that nationhood is "instrumental," "situational," even an "invented" or "constructed" category, Miroslav Hroch contends that "Nation-building was never a mere project of ambitious or narcissistic intellectuals." They can "invent" national communities only if certain objective preconditions for the formation of a nation already exist."¹¹ They must articulate, build upon, and mobilize people around living cultural memories, myths and traditions that have long preceded them.

Canadian federalists typically frame their arguments against Quebec independence in economic terms; recall Paul Martin's threat before the referendum that "one million jobs" would disappear. They are also enamoured of sheer size, which they equate with efficiency and viability. It appears to them axiomatic that large territorial units are more competent and effective members of the international community. But ethnic conflicts are driven as much by cultural and political as economic causes (even if sometimes conducted in such language). The "search for identity" and the pursuit of it is much more likely to inform nationalist movements, and their rhetoric is

more apt to make reference to past "humiliation" and "disrespect" (the national unity crisis in Canada and the continuing communal strife in Ireland are two of numerous cases in point). Slovenes and Croats, Estonians and Latvians, Basques and Catalans, were all economically more successful than their neighbours, yet this in no way diminished nationalist fervour. In any case, national solidarity has proved to be a means by which people can position themselves to compete for access to political and material values. Apart from identity ethnicity provides meaning, a sense of self-worth to its members, as well as a smaller scale of management of human affairs.

Though intellectuals often make light of it, nationalism "is a profoundly understandable emotion," writes the internationally recognized Canadian philosopher Charles Taylor. "We have people belonging to a small nation, which has been denied the crucial defining experience of the modern Atlantic world...: that of belonging to a political entity with which one can wholeheartedly identify, because it really reflects you." Given the history of French Canadians, "it is more than understandable that many people should have an immense hunger for existence at last as a nation state -- "un pays normal," in the expression so dear to Jacques Parizeau."¹² The fundamental problem is one of respect, adds his McGill University colleague, William Watson. The question Québécois are now working through "is whether, in a world of nation-states, it is possible to enjoy sufficient respect without also being a nation-state."¹³

QUEBEC, A NATION-IN-WAITING

Quebec already enjoys most of the trappings of nationhood: province-wide organizations designate themselves as national bodies, the legislature is called the National Assembly, and the provincial *fleur-de-lis* flag is treated with greater regard than is Canada's maple leaf, which rarely flies outside non-francophone areas other than on federal buildings. Numerous studies have shown that the majority of people in Quebec now identify themselves first and foremost as Québécois. In the words of playwright Ghislain Bouchard, "There's a terrible moment when inside yourself you realize that the Canadian flag, and all it represents, doesn't mean anything any more."¹⁴ Federalist francophones have been forced to justify their position in purely utilitarian and economic terms, since it is common wisdom, as Lysiane Gagnon observes with a touch of derision, that "no proud Québécois can have an emotional link with the rest of the country." For many "real Québécois," being a sovereigntist has become the logical outcome of being loyal to Quebec.¹⁵

Quebec's leaders, in the main, have been making independence claims based on the right of national self-determination, asserting that as a conquered people French Canadians were effectively coerced into becoming part of Canada. Their nationalism dates back to the 17th century, when the colony of New France was first settled. We must confront, openly and frankly, that the defining moment in the collective identity of the Quebec nation is the defeat on the Plains of Abraham and its incorporation into the British Empire. The Québécois were never again total masters of their destiny, and their national impulses were thwarted again in 1837 and at various other times thereafter (including to some extent during the two world wars). Between 1840 and 1867 Quebec did not even exist as a separate colony. Hence the decision by some of its political elites to enter Confederation: it would at least provide, through provincial status within a new and enlarged (and self-governing) British colony, a form of home rule. It should not be forgotten that Canada was at that time and for at least a century more, a non-sovereign nation.

Quebec did not voluntarily join an independent federation: neither the Québécois nor the British Canadians were sovereign peoples. One side had been conquered a century earlier by those whom British Canadians continued to identify with. Post-nationalist English Canada might choose not to remember this fact; it remains central to the national consciousness of many Québécois.

"Ethnic groups," according to Dov Ronen, "are born and arise because of the perception of oppression."¹⁶ One francophone woman who told a journalist that voting No in the 1995 referendum would have been a rejection of her people and her past, said she saw "a continuous line from the conquest by the English in 1759. From the beginning the relationship wasn't equal. You can still feel it. I think we still feel attacked -- maybe even when it's not true."¹⁷ For her as for so many others, Quebec's motto "Je me souviens" ("Lest We Forget") remains very real. Quebec's inclusion in Canada involved, at its root, an act of conquest. The fact that Canada has evolved into a democratic federation and that individual French Canadians have risen to even the highest positions in the country does not negate that fact.

Many English Canadians were devastated the night of October 30, 1995; they repeated over and over again that they had "almost lost their country." They have adopted the Trudeau vision of a pan-Canadian nation, one in which the francophone element is an integral component and -- conveniently -- also marks them as being distinct from Americans. They cannot conceive of a Canada without Quebec. But the Québécois have interpreted Canadian constitutional history as being founded on a covenant between two peoples. In their view, that covenant has been broken by English Canadians with the promulgation of the 1982 constitution, hence, the Québécois have a legal recourse to independence. For Québécois nationalists, Quebec is their country. They are not breaking up anyone else's country, simply reclaiming their own. As with so many other contested areas around the world, from Bosnia to Ireland to Sri Lanka to Israel/Palestine, "whose country is it anyway?" becomes the ultimate question.

The case is sometimes made that, since Quebec also contains non-francophone and native peoples, it is not a nation. But very few countries in the world are truly homogenous nation-states. Romania is no less a nation because of its Hungarian minority, Finland because of its Swedish one, or Estonia because of its Russian inhabitants.

Despite all the talk of globalization and homogenization, some territorially concentrated ethnic and cultural communities have reacted to the demands of the new international political economy by reaffirming their distinct identities. Nationalist ideologies have been pressed into service as mobilizing strategies so that smaller nations may extract economic benefits and psychic recognition from the world community. "The renewed strength and appeal of "national identity" and nationalism stand as a secular response to the quest for identity in a world threatened by increasing homogenization," reflects Montserrat Guibernau. It "vindicates the right to be different...by articulating a discourse based upon the value of individual cultures and the rights of peoples to decide their political destiny."¹⁸

Small peoples no longer need to remain part of or beholden to larger states in order to benefit from protected markets and military security; their prosperity no longer depends on a diminution of their political independence or cultural distinctiveness. True, not every ethnic community will,

can or even desires to form a national state, but for those that do, they need no longer be held back for purely economic reasons; comparative advantage in trade is no longer tied to sheer size. Today, states can be voluntary collectivities of those who consider themselves a people -- which has usually meant those of similar ethnicity, language and culture. Quebec meets even the most stringent definitions of nationhood: a population speaking primarily a single language; a recognizable culture and a heritage of shared myths, symbols, and values; a comprehensive legal tradition; definable borders; sophisticated political institutions; a viable economy; and effective, well-educated leadership. Ephraim Nimni has suggested that we need to "look for novel ways of interpreting the right of nations to self-determination."¹⁹ Canadians must face the facts or face the consequences. The reality is that Quebec is a nation, not a province "comme les autres." This is not a "concession," a way of providing Quebec with "extra powers," but simple truth. If Québécois are not recognized as a nation within a larger Canadian jurisdiction, it is unlikely that they will forever forego creating a state of their own.

PATTERNS OF DEVOLUTION AND STATUS RECOGNITION

Clearly, there is a prevailing mood of fatigue and exasperation among Canadians outside of Quebec over the seemingly intractable constitutional question in this country. And, in Quebec, even among many federalists, there is frustration that the struggle for special recognition, or national recognition if you will, finds so little resonance beyond Quebec's borders. The debate continues in suspended stalemate; truly a dialogue of the deaf.

It is our view that this inevitably destructive course can only be redirected if we move beyond the stifling and introspective confines of the national debate. It is as if we were locked in a very small room with little light and virtually no fresh air, like hostages in the Lebanon of the last decade. We need to break down the doors and perhaps even the walls of our cell to see ourselves and our dilemma in a larger context. After all, we are not the only state in the world struggling to reconcile contending forces of integration and fragmentation; much less are we alone in facing this contest with powerful cultural and nationalist passions at play. Moreover, both the future of the territorial state, in this case Canada, and the development of the region, or would-be state, Quebec, are being played out against the larger tapestry of globalisation, that is the proliferating forces of direct international exchange and engagement which increasingly shape our agendas with dizzying levels of complexity. Yet globalisation offers simultaneous challenges and opportunities for both conventional territorial states and for ambitious sub-national jurisdictions. Just consider, for instance, how many of the latter entities have jumped on the bandwagon of global interaction beyond both their own borders and those of their "mother states:" Catalonia, Scotland, North-Rhine Westphalia, Quebec and NAFTA and the list could go on. Indeed, the most successfully engaged of the new sovereign states in post-Communist Europe, were those which were chaffing at the bit even as confined sub-national jurisdictions with limited autonomy: Slovenia, Estonia, Croatia. When we look south to another North American democratic federation in trouble, St. Kitts and Nevis, we see that one of the principal forces for Nevis secession and independence is its highly successful economic engagement of the world at large, particularly in tourism and off-shore finance, which fuels and drives the Nevis journey to statehood.²⁰

When we survey this larger global scene, and particularly if we focus on European democracies, where the language of the debate and the values of the political culture are most accessible and familiar to us, we can note three powerful currents over the last few decades. First, there is a trend to greater devolution, or to borrow a much cherished term within the European Union, to subsidiarity; that is to allow for accountable governance to the maximum degree at the most accessible and the most identifiable level of political expectations and loyalties. Subsidiarity is not seen to be in contest with larger tasks of building political communities, even beyond the nation state. Indeed, subsidiarity is an argument against the recognised problem of the so-called "democratic deficit," a lack of identity and accountability within the European Union, while it strengthens the real forces for a European identity across sub-national regions which ideally will find themselves working together at the European level. In any case, whatever the spin that European federalists might put upon it, there has been a clear and recognisable pattern of devolution of both powers and symbols to sub-national territorial jurisdictions. All of these trends seem to be acquiring further momentum in spite of, or perhaps because of, countervailing pressures to regional integration and heightened global engagement. Moreover, these trends are evident even in those states with a long history of centralisation; Spain, Portugal, even France and most recently Great Britain.

For Canadians this first trend is not at all remarkable. After all, the Canadian historical experience has always been that of a highly devolved federation. Are not these European societies finally recognising the common sense of bringing government as close as possible to local communities? Perhaps. But the second trend speaks more to the ongoing debate in Canada over the distribution of recognitions and powers within the federation. What is happening in Europe is a process of devolution, that is status recognition which is both symbolic and substantive, for national historical communities within the territorial state: Catalans, Basques, Galicians, Scots, Welsh, Faeroe Islanders, German-speaking Tyrolese, Åland Islanders, Flemings and so on. Quebec is not unique as a nation within a larger state family. And how Europeans are reconciling the claims for national recognition within their states goes beyond the devolution question per se and speaks to the central issue of how we acknowledge and accommodate Quebec within the Canadian federation.

The third trend is particularly pertinent for us. It is a pattern of flexible, pragmatic and asymmetrical solutions to problems of minority devolution. The Canadian straitjacket of strict equality for all provinces, essentially a zero-sum game, is by no means the standard practice for European democracies. There is an astonishingly wide range of devolution arrangements in place to suit the particular historical experiences and interests of particular national minorities. It is designer devolution if you will. Consider only the most recent example, the decision to establish national parliaments in Scotland and Wales with very different powers and capacities. A more generous concession of capacities for the new Scottish assembly was deemed inappropriate, at least for the time being, for Wales.²¹ No straitjacket here.

THE CASE FOR CATALONIA

Perhaps Spain is the most interesting case for Canadians. Following the death of General Franco in 1975 Spain moved rapidly to full democracy and with it to the constitutional recognition of its diverse regions. But not all of Spain's sub-national communities were to enjoy the same powers

of governance in the newly decentralised kingdom. Nor were they to move towards autonomy at the same pace. The "historic communities," of Catalonia, the Basque Country, Galicia, that is those regions which enjoyed autonomy in the brief years of the Republic, were recognised to have special claims in a devolving Spanish state, claims which were rooted in the cultural and national character of these regions. In Catalonia, for example, the historic seat of government, the Generalitat, abolished in 1714, was re-established in 1979 along with the Catalan flag, the official recognition of the Catalan language and the use of Catalan as the language of instruction in the schools, and the acknowledged mandate of the new Catalan government to protect and nurture Catalan national culture.²²

There is no doubt that this recognition has resulted in a major improvement in the status and the use of the Catalan language in spite of large-scale immigration to the prosperous region from other parts of Spain.²³ To these were added a continuing devolution of substantive powers and capacities across a broad continuum of jurisdictional responsibilities.²⁴ The pattern is one of ongoing decentralisation fired in part by the demonstration effect of successful autonomy and enviable economic development in the region²⁵ and in part by the adroit use of pressure by Catalan nationalist parties in Madrid, particularly the Ciu (Convergència i unió or Convergence and Union party) and its cunning and charismatic leader, Jordi Pujol.²⁶ The present national government, dominated by Prime Minister José Maria Aznar's conservative Partido Popular (Popular party), while initially resistant to demands for further devolution to the regions, has, nevertheless, been forced to come to terms with the formidable Mr. Pujol. As important as Catalan manoeuvres in Madrid is the skilful use of Catalonia as a European region and the playing off of Brussels against Madrid. Indeed the Ciu has exploited its coalition potential in Madrid to enhance the region's representation in virtually all areas of European Union decision-making.²⁷

What is important for our purposes is the basis of this devolution in Catalonia, rooted as it is in the recognition of the Catalans as a nation within the Spanish realm. Jordi Pujol has put it most clearly:

Catalonia is a country which comes from a long past. Her language, culture, *raison d'être*, her political institutions are ancient in origin....We are not an improvisation, nor a fad, nor are we a political or electoral union. We are a people which wishes to save its identity and history, but at the same time, a nation which is preparing itself for the year 2000.²⁸

What is most remarkable, perhaps, is that this assertion of national identity and its recognition in Catalonia's status as an Autonomous Community have been successful in spite of the fact that 40% of the people of Catalonia are non-Catalan! The Catalans consistently reaffirm the compatibility of the Catalan nation with the Spanish state, even though from time to time veiled threats of separation are uttered to win concessions and further flexibility. Consequently this compatibility has led to an enviable level of stability. No talk of partition here, in spite of a huge non-Catalan minority.

To be sure, patterns of devolution, national recognition and special status have also been resisted in the larger majority populations of European states. Often the process of devolution has been granted reluctantly and with suspicion. And everywhere nervous majorities have viewed such

concessions as threatening the integrity of the territorial state itself: particularly for the French who are nervous about any status recognition for Brittany, the Languedoc, the Basque country, Alsace, and especially for Corsica. We hear the same voices of resistance in Italy in the grudging and gradual recognition of the special status of South Tyrol; in Finland's tough bargaining position in every round of Åland negotiations; in Denmark's hard-ball negotiations with the Faeroe Islands over the bank crisis; in Sweden's resistance to Gotland's aspirations for separate status as a Hanseatic Åland; in the British Conservative government's outright hostility to devolution in Scotland and Wales; and among so many Castillians who understandably fear the ongoing and constant threats of secession, especially in Catalonia and the Basque Country, but even perhaps with the Galicians and the Canary Islanders too. In short the majority people of *any* state is angered, perplexed, uncomprehending of the collective memories and mythologies of the minority peoples in their midst, particularly when those people are territorially as well as culturally self-defined.

LESSONS FOR QUEBEC AND CANADA

And such resistance is framed in questions familiar to Canadians. Are the Catalans not Spanish? After all, Catalonia was finally and permanently integrated into Spain centuries ago. What possible residual Catalan identity could exist after such an aeon of time to challenge the 20th century integrity of the Spanish realm? And is not Catalan simply a variant on the Spanish language? And did the Scots not relinquish their claims for separate nationhood when they acceded to the Act of Union; surely this was not a conquest? Have the Scots not benefited disproportionately from their participation in a United Kingdom where they have excelled in political, economic and military honours? And is there not powerful common British national experience forged in times of crisis, in the trenches of the Somme and in Normandy and in the Falklands? And if you were a Turk would you not be worried for the integrity of your country by any concession of status to these troublesome Kurds? In any case are not the Kurds simply "mountain Turks" whose aspirations for recognition as a separate nation are both spurious and misplaced?

Are these not familiar arguments for Canadians; a mythical sense of grievance among minorities who have prospered within the union, a failure to respect contractual agreements of nation-building, a spurious claim for a distinct and primary loyalty in the misty and dim mythologies of the past, a misplaced and highly introverted sense of self-absorption and introversion at odds with the modern world.

The Québécois view of Quebec in Canada and the world is mystifying and incomprehensible for so many Canadians. Yet in Britain, Spain, Belgium and many other democratic states they are confronting exactly these demands and experiencing the same backlash common to all wounded majorities. Still, however difficult, and whatever the resistance, the trend to devolution is an increasingly powerful movement in many of the world's democratic states.

Moreover, the evidence in so many European democracies suggests that devolution and substantial recognition, even national recognition, may actually promote the unity of the state. There will be those who, like Lady Thatcher and most British Conservatives, argue that such recognition is the thin edge of the wedge, whetting the appetite for full independence and

eventual secession. For such doubters these concessions are the "slippery slope" to disintegration. Nevertheless, we tend to agree with the assessment of *The Economist* in its recent examination of devolution in Europe: "the paradoxical result (of such recognition) has often been greater harmony and a greater desire to stick together rather than anguish, chaos and disintegration."²⁹

Thus, we argue, admittedly in a rather bold gesture, that we should join those democratic states which have conceded special recognition and special derogations of powers and status to those units within their constitution which are largely defined by cultural and territorial bases of identity, frankly nationhood. By recognising Quebec as a nation within the Canadian family, with special constitutional derogations derived from that recognition, we would not be initiating anything that is not already well placed in other democratic states, some of them federal, and some crypto-federal. It is not as heart-wrenching, as cartographically mutilating, or as historically subversive as it might first appear.

The truth of the modern state system is that most states are home to two or more nations. Very few of the world's "nation-states" are homogenous national communities in the presumptions of that term. Even those states which have historically pursued policies of relentless centralism with a systematic denial of minority nations within their borders have been forced in the late twentieth century to recognise, however grudgingly and in whatever modest fashion, the claims of historical minority nations within the boundaries of their state. What is perhaps most remarkable in this age of McWorld and global cultural assimilation is the resilience and persistence of these national loyalties in spite of centuries of integration and even oppression.

The notion that democratic societies should honour and secure the rights of minorities, including national minorities, harks back to Wilsonian visions of a democratic global order. What proved to be disappointing in the early decades of this century is finally being realised through a variety of devolution arrangements and other guarantees in the closing years of the twentieth century. By viewing the encouraging experience of other democracies facing similar pressures we may shed welcome light on our own unhappy constitutional impasse.

CONCLUSION

Malyn Newitt has noted that "Individual island populations, however small, can easily evolve a strong sense of a separate identity."³⁰ They possess a feeling of community, with the shared interests, closeness and intimacy found in a smaller society. Their ability to survive despite their small size has served as an inspiration to other small nationalities -- minorities in larger entities -- to seriously consider the option of political sovereignty. As a small island jurisdiction, PEI enjoys an accentuated sense of self-definition, identity and coherence that should enable Islanders to empathize with a small nation such as Quebec.

What we are asking of Islanders and other Canadians is to show a generosity of spirit when responding to the national longings of Quebec. Not only is our recognition of Quebec's nationhood a commendable position to take, but it also allows Canada the flexibility to meet Quebec's demands. In that sense, we are wedding principle to pragmatism. We recognize that such recognition is by no means a panacea or "magic bullet" that will make separatism fade

away; there will always be those who demand nothing short of a fully sovereign state. However, a status analogous to that enjoyed by Catalonia in Spain might go a long way towards satisfying those Québécois who demand that their nationhood be recognized even if they choose not to exercise their inherent right to self-determination.

Unlike most other Canadians, who identify with their provinces only as units of a larger nation, and who look to Ottawa first and foremost to articulate their needs and wants and to represent them as actors in the international arena, most francophone Québécois feel their government in Quebec City is their national government. We must come to terms with this asymmetrical sense of identity and loyalty. Canada is, after all, a federation, not a unitary state; there is no shame in allowing some of its units to exercise the powers of self-governance in ways that are not identical with those chosen by the citizens of other provinces.

A final observation: If we learn to accommodate the nation of Quebec within the federation of Canada, we might then be able, in the same spirit of understanding, to address the claims of the aboriginal peoples in Canada, who existed as territorially-specific independent entities for millennia before the arrival of Europeans to this continent.

NOTES

1. [1976] 2 S.C.R. 349
2. 112 D.L.R. (4th) 711, 117 Nfld. & P.E.I. R. 1, 365 A.P.R. 1 (P.E.I. C.A.), leave to appeal to S.C.C. refused (1994), 115 D.L.R. (4th) viii (note) (S.C.C.)
3. 34 Geo. III, c. 83, VIII
4. *Globe and Mail*, Sept. 16, 1997, pp. A1, A4; Sept. 18, 1997, pp. A1, A4, A22; Oct. 4, 1997, p. A3.
5. Ronald L. Watts, "Canada: Three Decades of Periodic Federal Crises," *International Political Science Review* 17 (October 1996): 365, 368.
6. David Miller, *On Nationality* (Oxford: Clarendon Press, 1995), pp. 5-6, 160-162.
7. Eugene Kamenka, "Nationalism: Ambiguous Legacies and Contingent Features," *Political Studies* 61 (Special Issue), 1993: 80.
8. Anthony D. Smith, *Nations and Nationalism in a Global Era* (Cambridge: Polity Press, 1995), p. 51.
9. Walker Connor, *Ethnonationalism: The Quest for Understanding* (Princeton, NJ: Princeton University Press, 1994), pp. 197, 202, 206.
10. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1986), p. 129.

11. Miroslav Hroch, "From National Movement to the Fully-Formed Nation: The Nation-Building Process in Europe," *New Left Review* 198 (March/April 1993): 4.
12. Charles Taylor, "Deep Diversity and the Future of Canada," *Canadian Forum* 76 (September 1997): 16.
13. William Watson, "As Quebec Goes....," *Commentary* 101 (February 1996): 39 (emphasis in original).
14. Ian Darragh, "Quebec's Quandary," *National Geographic* 192 (November 1997): 56-57.
15. *Globe and Mail*, Aug. 23, 1997, p. D3; Aug. 30, 1997, p. D3.
16. Quoted in Arthur N. Waldron, "Theories of Nationalism and Historical Explanation," *World Politics* 37 (April 1985): 429.
17. Quoted in Guy Lawson, "No Canada?" *Harper's* 292 (April 1996): 71.
18. Montserrat Guibernau, *Nationalisms: The Nation-State and Nationalism in the Twentieth Century* (Cambridge: Polity Press, 1996), pp. 129, 135, 138.
19. Ephraim Nimni, *Marxism and Nationalism: Theoretical Origins of a Political Crisis* (London: Pluto Press, 1994), p. x.
20. *The Washington Post*, 29 October, 1997, A20.
21. *The Guardian* (London), 8 September, 1997 and 19 September, 1997.
22. Angelo A. Borrás, "Spain and the Catalan Problem," in John R.G. Jenkins (ed.) *Indigenous Minority Groups in Multinational Democracies in the Year 2000: Problems and Prospects* (Waterloo: Wilfred Laurier University Press, 1987), pp. 90-95.
23. In 1991 89% of the population understood Catalan; 67% could read it; 71% could speak it and 41% could write it. In 1996 these figures were 95%, 84%, 80% and 53% respectively. *The Economist*, September 20, 1997, 55. See also *The New York Times International*, April 1991.
24. Josep M. Colomer, "Spain and Portugal," in Josep M., Colomer (Ed.), *Political Institutions in Europe* (London and New York: Routledge, 1996), pp. 200-201.
25. Catalonia pays transfers to Madrid, receiving only Ptas 68 for every Ptas 100 given to the national treasury. *The Economist, A Survey of Spain*, April 25, 1992.
26. Michael Keating, *The Politics of Modern Europe* (Aldershot: Edward Elgar, 1993), p. 349.

27. On the representation of Europe's regions in Brussels see Liesbet Hooghe and Gary Marks, "Europe with the Regions: Channels of Regional Representation in the European Union," *Publius* XXVI (No. 1, Winter 1996), 73-91.

28. Borrás, op. cit., p. 96.

29. *The Economist*, 20 September 1997, 53.

30. Malyn Newitt, "Introduction," in *The Political Economy of Small Tropical Islands*, Helen M. Hintjens and Malyn D.D. Newitt, eds. (Exeter, UK: University of Exeter Press, 1992), p. 11.

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