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Sexuality
La sexualité

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Introduction

For many, Canada is exemplary by virtue of recognizing all its citizens as equal, or "without properties or distinctions," while at the same time honouring myriad ways of belonging as embedded in official multiculturalism. These "authorized differences" adhere to a series of culturally stable attributes, and manifest themselves performatively in a range of programs from the arts to those that promote the retention of mother tongues. Within the framework of such recognition, however, sexuality is largely still excluded as a "private matter," neither a form of authorized difference within good citizenship, nor a performative whose diversity has been promoted. Without being facetious, it would be hard to imagine a government adopting as its own a policy of "multisexualism," not only because the erotic dispositions of the body are held to be private, but because they are also seen as subordinate to, or tributaries of, overarching cultural traditions as protected and respected by the multicultural ethos. Yet, questions of sexual citizenship traverse the life of the body politic in Canada, and in ever more visible ways. In much the same way that majority groups have seen themselves recast as "ethnic" in contemporary cultural studies, so too are majority regimes for structuring sexual behavior – those which are implicitly and explicitly rewarded by the state – being understood anew as every bit as performative as the "deviations" for which sexually renegade citizens had historically been stigmatized in Canadian

Présentation

Plusieurs considèrent le Canada comme un pays exemplaire, du fait qu'il reconnaît l'égalité de tous ses citoyens, ou « sans propriétés ou distinctions », tout en rendant hommage à une multitude de modalités d'appartenances telles qu'elles sont enchâssées dans la politique officielle de multiculturalisme. Ces « différences autorisées » adhèrent à tout un ensemble d'attributs culturellement stables et se manifestent de façon performative à travers une gamme de programmes qui vont des arts à la promotion du maintien des langues maternelles. À l'intérieur du cadre d'une telle reconnaissance, néanmoins, la sexualité demeure encore largement exclue à titre de « question d'ordre privé » qui ne serait ni une forme de différence autorisée dans le cadre du véritable civisme, non plus qu'un performatif dont on aurait promu la diversité. Toute facétie à part, on aurait peine à imaginer un gouvernement qui ferait sienne une politique de « multisexualisme » et ce non pas seulement parce que les dispositions érotiques du corps sont considérées comme privées, mais aussi parce qu'elles apparaissent comme subordonnées à, ou tributaires de, traditions culturelles architectoniques qui sont respectées et protégées par l'ethos multiculturel. Et pourtant des questions de citoyenneté sexuelle pénètrent toute l'existence du corps politique au Canada et ce sous des formes de plus en plus visibles. D'une façon très semblable à celle dont des groupes majoritaires ont été redéfinis comme « ethniques » dans

criminal law and in civil society. In other words, the struggle for the recognition of difference in sexual practice necessarily seeks to expose and revise earlier assumptions about the relation between sexuality and good citizenship. In so doing, such struggles resemble those for other forms of recognition as they negotiate the constitutive tensions between universalistic and difference-based politics. Through positing sexuality as an authorized difference of universal citizenship, they simultaneously quilt identitary positions that resist overly monadic claims regarding specific regimes of sexuality as authentic expressions of specific identities defined by markers of race, gender, class, ethnicity, and faith. In this way, sexuality brings its own agenda to the rethinking of citizenship in modern polities and resists mere subordination to socially ameliorative discourses generated from other subject positions.

Katarzyna Rukszto's essay on Anne-Marie MacDonald's *Fall on Your Knees* confronts us immediately with these issues. The essay begins by considering the enthusiastic reception of MacDonald's novel as the embodiment of the new multicultural ethos in Canada. Cape Breton, one of Canada's most iconic landscapes and a region typically identified with cultural homogeneity is "stripped bare"' (and the mining metaphor is certainly appropriate) through the chronicle of a family in which multiple ethnic and racial identities are interwoven. Yet, Rukszto claims that "the novel turns the notions of [racial and ethnic] diversity, of unitary identity, in fact of the

des études culturelles contemporaines, on est en train d'acquérir une nouvelle compréhension des régimes majoritaires de restructuration du comportement sexuel – ceux qui sont implicitement et explicitement récompensés par l'État – comme de régimes tout aussi performatifs que les « déviances » pour lesquelles les citoyens perçus comme des renégats sexuels ont toujours été stigmatisés tant dans la société civile que dans le droit criminel canadien. En d'autres termes, la lutte pour la reconnaissance de la différence dans les pratiques sexuelles s'efforce nécessairement de dénoncer et de remettre en question des présupposés antérieurs sur la relation entre la sexualité et le véritable civisme. Ce faisant, les luttes de ce genre rappellent celles qui ont entouré l'obtention d'autres formes de reconnaissance dans la mesure où elles se ramènent à des négociations portant sur les tensions constitutives entre des politiques universalistes et des politiques axées sur la différence. En affichant la sexualité comme une différence autorisée de la citoyenneté universelle, du même coup elles « ouatent et piquent », pour ainsi dire, des positions identitaires qui résistent aux prétentions excessivement monadiques relatives à des régimes de sexualité spécifiques considérés comme des expressions authentiques d'identités spécifiques définies par des indicateurs tels la race, le sexe, l'origine ethnique et les convictions religieuses. De cette façon, la sexualité impose son propre ordre du jour à l'intérieur du processus de redéfinition de la citoyenneté dans les régimes moderne, tout en résistant aux tentatives d'en faire un

knowable subject, upside down," and it does so by reading into sexuality a power that variously enables or incapacitates individual characters' processes of identification across and beyond the fixed identity categories out of which diversity is normatively constituted. Similarly, Lianne Moyes' reading of Nicole Brossard's novel *Baroque d'aube* also derives its force from a revisionist intention. Moyes considers how Brossard employs the figure of the baroque in order to test the boundaries of a (by now) classically-articulated lesbian feminist discourse. She sees in Brossard's work a courageous exploration of how, in such discourse, the erotic grammar of the female body may still be tied to the syntactic structure of phallogocentrism, albeit in the form of resistance instead of acquiescence. The novel puts into play "les tensions présentes à l'intérieur du…féminisme…entre la lutte contre la violence faite aux femmes, la souffrance ritualisée, et l'exploration de pratiques et de discours sexuels que caractérisent la passion et l'intensité du baroque." Brossard's historical ambivalence toward the baroque as a site of excess is here played out in a manner that restores the legitimacy of an erotics that are not in the first instance tainted by, or a mere representation of, other power relations. Far from suggesting that erotics can somehow stand outside the social, Moyes sees in the novel a plea to acknowledge how they may drive a process of resignification that in turn enhances and expands women's agency.

Issues of sexual recognition and agency are also central to Vincent

ordre qui serait subordonné à des discours d'amélioration sociale émanant d'autres positions de sujet.

L'article de Katarzyna Rukszto sur le roman, *Fall on Your Knees*, d'Anne-Marie MacDonald nous confronte immédiatement avec ces problèmes. Elle débute son texte en se penchant sur la réception enthousiaste du roman de MacDonald, que la critique a salué comme l'incarnation du nouvel ethos multiculturel au Canada. Le Cap Breton, soit l'un des paysages les plus iconiques du Canada et une région que l'on identifie traditionnellement à l'homogénéité culturelle, est « mis à nu » (pour utiliser une métaphore minière qui convient certainement dans ce contexte) dans une histoire familiale où s'enchevêtrent des identités ethniques et raciales multiples. Et pourtant Rukszto soutient que « le roman renverse sens dessus dessous les notions de diversité [ethnique et raciale], d'identité unitaire et, en fait, celle du sujet connaissable lui-même » et il y parvient en retrouvant dans la sexualité la marque d'un pouvoir qui, de diverses façons, favorise ou entrave les processus d'identification des personnages individuels à travers et au-delà des catégories d'identité bien établies dont la diversité est normativement constituée. De même, la lecture que Lianne Moyes fait du roman de Nicole Brossard, *Baroque d'aube*, tire sa force d'une intention révisionniste. Moyes examine la façon dont Brossard emploie la figure du baroque pour tester les frontières d'un discours féministe et lesbien aux articulations (désormais) classiques. Elle regarde l'œuvre de Brossard comme une exploration courageuse de la façon

Doyle's study of the creation of a "moral panic" in London, Ontario following the discovery, at the bottom of a river, of videotapes depicting sexual relations between adult and younger men. While careful to acknowledge that questions of exploitation, especially as a result of material and financial disadvantage, certainly come into play in such situations, Doyle methodically takes apart the complicity of police, child welfare agencies, and the media in brandishing the specter of a "kiddie-porn ring." In fact, very few of the thousands of charges laid in what came to be known as "Project Guardian" had anything to do with "kiddie porn." The vast majority of accused found themselves caught in the web of Canada's contradictory laws around the age of sexual consent and the age at which the depiction and actual performance of certain sexual acts is permitted. Nonetheless, the media continued to disseminate police allegations of a proliferating, uncontrollable "kiddie-porn ring" well after such fears were clearly proven to be groundless. Doyle examines the "epidemic logic," the media helped to solidify in the public mind by associations of gay men with contagion through AIDS. This association naturalizes the depiction of relations between adult men and male youths as predatory and corrupting on the one hand, while, on the other, depicting young men over the legal age of consent as devoid of sexual agency and uniformly unlikely to pursue same-sex desire on their own account. In Miriam Smith's historical review of the legal recognition won, and still remaining

dont, dans un tel discours, la grammaire érotique du corps féminin peut toutefois rester liée à la structure syntactique du phallogocentrisme, même si c'est sous la forme d'une résistance plutôt que d'un assentiment. Le roman fait jouer « les tensions présentes à l'intérieur du... féminisme... entre la lutte contre la violence faite aux femmes, la souffrance ritualisée, et l'exploration de pratiques et de discours sexuels que caractérisent la passion et l'intensité du baroque ». L'ambivalence historique dont Brossard fait preuve envers le baroque à titre d'un lieu d'excès se déploie ici d'une façon qui restaure la légitimité d'une érotique qui n'est pas, en premier lieu, viciée par d'autres relations de pouvoir, non plus qu'une simple représentation de telles relations. Loin de suggérer que l'érotisme pourrait, d'une façon ou d'une autre, occuper un lieu en dehors de la sphère du social, Moyes voit dans ce roman un plaidoyer pour la reconnaissance des façons dont l'érotisme peut animer un processus de resignification qui, à son tour, ferait la prise en main par les femmes de leur possibilité d'agir dans le monde.

Les problèmes de prise en main et de reconnaissance sexuelle jouent également un rôle central dans l'étude de Vincent Doyle sur la création d'une « panique morale » à London, en Ontario, à la suite de la découverte, au fond d'une rivière, de bandes magnétoscopiques comportant des scènes de relations sexuelles entre des adultes et des hommes plus jeunes. Tout en reconnaissant que les questions d'exploitation, découlant, en particulier, de handicaps matériels et

to be won, by lesbians and gay men in Canada, the contradictions in Canadian law that give expression to such attitudes would be classified as issues of equality in sexual freedom. Not surprisingly, campaigns for such rights continue to provoke more resistance than those for freedom from discrimination and equality in relationship recognition, where remedies often involve adjusting existing social programs, fiscal policies, and benefit plans to include same-sex couples. From the moment the equality provision (Section 15) of the Charter of Rights and Freedoms came into effect in 1985, its impact on lesbian and gay rights was not a foregone conclusion, Smith reminds us. She demonstrates that the courts have responded to the challenges brought before them by lesbian and gay activists, sometimes in concert with other progressive social actors including trade unions and human rights groups. The progress realized in lesbian and gay rights over the past fifteen years is at least as much a matter of political mobilization as of judicial activism. Smith argues that, contrary to what opponents claim, the broadening of recognized sexual citizenship for lesbians and gays by the courts generally respects a national consensus on this issue.

Marie-Blanche Tahon's article examines the debate around electoral parity, "la revendication que 50 pour cent des candidats soient des candidates," and not, as it has often been misrepresented, "que 50 pour cent des députés soient des députées." In her comparative study of Quebec and France, Tahon argues that parity is not about the corporate interests of women. Instead, it responds in kind to the universalistic

financiers, jouent certainement un rôle dans des situations du genre, Doyle démonte méthodiquement la complicité qui s'est tissée à cette occasion entre la police, des agences de protection de l'enfance et les médias, alors que ces intervenants sociaux s'alliaient pour brandir le spectre d'un « réseau de pornographie enfantine ». En réalité, seul un tout petit nombre des milliers d'accusations logées dans le cadre de ce qui s'est fait connaître comme l'opération « Project Guardian » avaient quoi que ce soit à faire avec la « pornographie enfantine ». L'immense majorité des accusés se sont retrouvés pris au piège des contradictions de l'écheveau des lois canadiennes en matière d'âge du consentement sexuel et de l'âge auquel il est permis à la fois de représenter certaines pratiques sexuelles et de s'y adonner réellement. En dépit de cela, les médias ont continué de diffuser des allégations policières sur l'existence supposée d'un « réseau de pornographie enfantine » tentaculaire et incontrôlable, et ce longtemps après que de telles craintes se soient avérées être sans fondement. Doyle s'interroge sur « la logique de l'épidémie » que les médias ont contribué à cimenter dans l'esprit du grand public en associant des images d'hommes gais avec la contagion à travers la peur du SIDA. Cette association a eu pour effet, d'une part, de naturaliser la présentation des relations entre des hommes adultes et de jeunes hommes comme abusives et corruptrices et, d'autre part, de présenter des jeunes hommes qui avaient dépassé l'âge du consentement légal comme s'ils étaient dépourvus de toute initiative sexuelle et uniformément peu

logic of the state, where citizens, from the moment of their entry into the community, are gendered into male and female subjects. Therefore, the state must allow for the equality of opportunity of all citizens *as it has gendered them in civil law* to represent the nation. The universalistic character of this logic could only become visible, argues Tahon, once women achieved the right of control over their own bodies as signified by the right to interrupt pregnancies. Underlying this emergence of woman "as an individual who can say 'I'" and who "finally shares the formal right of modern man according to which 'my body belongs to me'" is the recognition of woman as a sexually autonomous being. The acceptance of her sexual citizenship removes from her the burden of the "particular interests" of motherhood and her inability to represent the community as a whole.

Melissa Haussman's article traces the history of abortion law reform from the adoption of Pierre Trudeau's 1968 Omnibus Bill through the failure, in 1991, of attempts to adopt new Criminal Code provisions after the Supreme Court ruled that the established system, based on therapeutic abortion committees, was unconstitutional. Haussman chronicles the debates both within political parties and between successive governments and the women's watchdog and policy organizations they in some cases helped establish and fund. As the representation of reproductive rights as an equality issue took root, Haussman explains, they were also "linked to child care, pay equity, and

enclins à désirer de leur propre chef avoir des relations intimes avec des partenaires du même sexe. Dans l'examen historique de la reconnaissance juridique obtenue, et encore à obtenir, par les lesbiennes et les hommes gais au Canada auquel se livre Miriam Smith, les contradictions inhérentes au droit canadien qui permettent d'exprimer de telles attitudes serait classées comme des questions d'égalité au plan de la liberté sexuelle. Il n'y a pas à s'étonner de ce que les campagnes visant à l'obtention de tels droits continuent de se heurter à une plus forte résistance que celles qui visent à mettre fin à la discrimination et à obtenir une reconnaissance de l'égalité des types de relations personnelles, où les mesures correctives envisagées comprennent souvent des rajustements aux programmes sociaux existants, ainsi qu'aux politiques fiscales et aux régimes d'avantages sociaux, dans le but d'en faire bénéficier les couples de même sexe. Cependant, à partir du moment où la disposition de la Charte des droits et libertés relative à l'égalité (soit l'article 15) est entrée en vigueur en 1985, il n'allait pas du tout de soi, comme Smith nous le rappelle, qu'elle aurait la moindre incidence sur les droits des gais et des lesbiennes. Elle démontre que les tribunaux ont répondu aux défis que leur posaient les groupes de défense des droits des gais et des lesbiennes, agissant parfois de concert avec d'autres intervenants sociaux, dont les syndicats et les groupes de défense des droits de la personne. Les progrès accomplis dans le domaine des droits des gais et des lesbiennes au cours des quinze dernières années résultent au moins

new power relations between men and women." Today, a "checkerboard" of differential access to abortion exists across Canada. Issues of adequate facilities and funding are left to the provinces and municipalities where anti-choice forces wield influence that are often out of line with the social consensus on the issue. In effect, such opposition considers women seeking abortion as bad citizens: by virtue of their sexual irresponsibility, they are deemed unworthy to benefit from the resources of the nation's health care system.

* * *

In our first off-topic article, Eric Breton discusses multicultural policy in Canada with the objective of finding a way to reconcile its goals with the demands, especially of Quebec and Native peoples, that their distinct character be recognized. Breton sees no contradiction between the recognition of the diverse heritage of all Canadians and the possibility of distinctly recognizing Quebec, Aboriginal Peoples and Anglophone Canada as each multicultural in its own right. This is not an argument for special regimes of individual rights within Quebec and Aboriginal jurisdictions, but rather for forms of asymmetry that recognize the rights of these communities to practice substantive societal goals while upholding the universally recognized rights enjoyed by minorities in liberal democracies. Anne-Marie Gingras' essay on the contentious saga of split-run periodicals between Canada and the United States displaces this debate to the international level. Here, it is

autant d'une mobilisation politique que de l'activisme judiciaire. Smith soutient que, contrairement à ce que prétendent certains de leurs adversaires, l'élargissement, par les tribunaux, d'une citoyenneté sexuelle reconnue pour les gais et les lesbiennes respecte généralement un consensus national sur cette question.

Dans son article, Marie-Blanche Tahon se penche sur le débat qui entoure la parité électorale, soit « la revendication que 50 pour cent des candidats soient des candidates », et non pas, comme on l'a souvent prétendu à tort, « que 50 pour cent des députés soient des députées ». Dans son étude comparative du Québec et de la France, Tahon soutient que la parité n'a pas trait aux intérêts corporatistes des femmes. Elle vise plutôt à rendre la monnaie de sa pièce à la logique universaliste de l'État, aux yeux duquel les citoyens, dès le moment de leur entrée dans la communauté, sont sexués en sujets masculins et féminins. En conséquence, l'État se doit d'accorder l'égalité des chances de pouvoir représenter leur pays à tous ses citoyens *tels qu'il les a sexués dans le droit civil*. Le caractère universaliste de cette logique, soutient Tahon, ne pouvait commencer à ressortir qu'à partir du moment où les femmes ont obtenu le droit de contrôler leur propre corps, tel qu'il est signifié dans le droit qui leur est reconnu de mettre fin à une grossesse. Sous-jacente à cette émergence de la femme « à titre d'individu qui peut dire "je" » et qui « finalement partage le droit formel de l'homme moderne selon lequel "mon corps m'appartient" », on retrouve la reconnaissance de la femme à titre d'être autonome au

Canada, with its limited market, that demands an equal playing field through concessions that recognize its historical and cultural distinctiveness. This dispute between Canada and the United States and played out against the backdrop of the WTO and GATT accords is symptomatic of the ways in which the new globalist paradigm compels new thinking about Canada. Indeed, Frances Abele's review of literature on Nunavut, the new territory in Canada's Arctic, demonstrates how its inception is a consequence of the worldwide campaigns for self-determination and recognition by indigenous peoples that have followed the demise of Europe's colonial empires and the collapse of the bipolar world order of the Cold War era. Abele's review identifies key issues in the vast literature on the Canadian north while stressing how closely the world is watching the social experiment entered into between the Inuit and the Canadian government. Cherry Clayton performs an instructive comparison between two collections of writing on Canadian literature and culture, the first compiled in the heyday of nascent modern Canadian nationalism and "CanLit" that followed the centenary of Confederation, and the second a contemporary attempt to reconfigure the critical landscape to take into account the transcultural and transnational ideoscapes of which Canada is now part. Clayton reminds us that the material conditions of production of such new appreciations may be every bit as masked to the producers of it as in the older case. If minorities are pretty much invisible in the latter, their specific conditions of struggle

plan sexuel. L'acceptation de sa citoyenneté sexuelle la décharge du fardeau des « intérêts particuliers » de la maternité et de son incapacité de représenter la collectivité dans son ensemble.

L'article de Melissa Haussman raconte l'histoire de la réforme des lois en matière d'avortement depuis l'adoption du Bill Omnibus de Pierre Trudeau, en 1968, jusqu'à l'échec, en 1991, de tentatives d'adoption de nouvelles dispositions du Code criminel, après que la Cour suprême eût déclaré inconstitutionnel le système établi, fondé sur l'existence de comités de l'avortement thérapeutique. Haussman fait l'historique des débats qui ont eu lieu tant au sein des partis politiques qu'entre les gouvernements qui se sont succédés, et les organismes de femmes voués à la surveillance et aux politiques que, dans certains cas, ces mêmes gouvernements avaient contribué à créer et à financer. Haussman explique que, tandis que l'idée que les droits de procréation constituent un enjeu d'égalité commençait à prendre racine, il est également apparu que ces droits étaient « liés aux questions de garderie, de parité salariale, ainsi qu'aux nouvelles relations de pouvoir qui étaient en train de s'instaurer entre hommes et femmes ». Aujourd'hui, un véritable « damier » de différentes modalités d'accès à l'avortement existe à travers le Canada. C'est aux provinces et aux municipalités qu'il incombe de s'occuper des questions de financement et d'équipements adéquats. Or, les forces anti-choix y exercent une influence qui contraste souvent avec le consensus social sur la question. À toutes fins utiles, ces

and marginality may be occluded in the former by cavalier celebrations of the postmodern tropes of hybridity and heterogeneity. Rather than evacuating the space of the nation through the tropes of post-modern and post-colonial theory, Clayton insists that literary and cultural critical theory must employ them to address the Canadian social formation as it really exists, with all its tensions and struggles for recognition.

Robert Schwartzwald
Editor-in-Chief

forces d'opposition regardent les femmes qui cherchent à se faire avorter comme de mauvaises citoyennes : du fait de leur irresponsabilité sexuelle, elles sont considérées comme indignes de bénéficier des ressources investies dans notre système national de soins de santé.

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Dans notre premier article hors-thème, Eric Breton discute de la politique canadienne en matière de multiculturalisme à la recherche d'un moyen de réconcilier les objectifs de cette politique avec les demandes de reconnaissance du caractère distinctif de certains, et en particulier le Québec et les peuples autochtones. Breton ne voit aucune contradiction entre la reconnaissance du patrimoine diversifié de tous les Canadiens et la possibilité d'une reconnaissance distincte du Québec, des peuples autochtones et du Canada de langue anglaise comme chacun une entité multiculturelle de plein droit. Ce n'est pas là un argument en faveur de l'établissement de régimes particuliers des droits individuels à l'intérieur du Québec et des champs de compétence autochtones, mais plutôt un argument en faveur de l'adoption de formes d'asymétrie qui reconnaîtraient les droits de ces communautés de poursuivre des objectifs sociétaux substantiels tout en préservant les droits universellement reconnus dont jouissent les minorités dans les démocraties libérales. L'article d'Anne-Marie Gingras sur la controverse entourant le roman fleuve des périodiques à tirage dédoublé entre le Canada et les

États-Unis transporte le débat sur la scène internationale. Ici, c'est le Canada, un pays au marché limité, qui exige l'instauration de règles du jeu équitables au moyen de concessions visant à reconnaître son caractère historique et culturel distinct. Ce différend canado-américain, qui se déroule sur l'arrière-fond des accords du GATT et de l'OMC, est révélateur des façons dont le nouveau paradigme mondialiste nous force à repenser le Canada. De cette façon, l'examen de ce que l'on a écrit sur le Nunavut, le nouveau territoire de l'Arctique canadien, auquel se livre Frances Abele, démontre que la création de cette entité découle des campagnes mondiales visant à la reconnaissance et l'autodétermination des peuples autochtones qui ont suivi la chute des empires coloniaux européens et l'effondrement de l'ordre mondial bipolaire de l'époque de la Guerre froide. Dans son examen, Abele dégage les questions clés à l'intérieur de l'immense littérature sur le Nord canadien tout en soulignant à quel point le reste du monde s'intéresse à cette nouvelle expérience sociale à laquelle se livrent présentement les Inuit et le gouvernement canadien. De son côté, Cherry Clayton procède à une comparaison instructive entre deux collections d'écrits sur la littérature et la culture canadiennes, la première compilée aux jours les plus glorieux de la naissance du nationalisme canadien moderne et de l'époque « CanLit » qui a suivi les célébrations du Centenaire de la Confédération et, la deuxième, une autre collection, résultant, celle-là, d'une tentative contemporaine de reconfiguration du paysage critique pour tenir compte des « idéopaysages » transculturels et

transnationaux dont le Canada fait désormais partie. Clayton nous rappelle que les conditions matérielles de la production de nouvelles évaluations positives de ce genre peuvent être aussi masquées aux yeux de leurs producteurs que c'était le cas pour la collection la plus ancienne. Si les minorités sont pratiquement invisibles dans cette dernière, dans la collection plus récente, les conditions particulières de leurs luttes et de leur marginalité peuvent avoir été oblitérées par des célébrations désinvoltes des tropes postmodernes de l'hybridité et de l'hétérogénéité. Clayton insiste pour dire que, plutôt que d'essayer d'évacuer l'espace de la nation au moyen des tropes de la théorie postmoderne et postcoloniale, la théorie critique de la littérature et de la culture devrait s'en servir pour interpeller la formation sociale canadienne telle qu'elle existe réellement, avec toutes ses tensions et ses luttes pour obtenir la reconnaissance.

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Out of Bounds: Perverse Longings, Transgressive Desire and the Limits of Multiculturalism: A Reading of *Fall on Your Knees*

Abstract

Instead of reading Ann-Marie MacDonald's Fall on Your Knees *as representing a multiculturalist sensibility in Canadian literature, this paper will argue that* Fall on Your Knees *is an exploration of the contested nature of claiming identity. At stake in the novel is the very knowability of identity and the perverse pleasures of the unknown. From the implications of incest on family relations to the desire for the other and to the impurity of race, MacDonald fuses questions of national belonging, racial fictions and sexual fantasies. The boundaries of sex, race and nation are literally crossed; no longer a fact of biology or a historical accident, identity is written as the fluctuating effect of contested arenas of desire and power.*

Résumé

Au lieu de lire Fall on Your Knees *d'Ann-Marie MacDonald comme la représentation d'une sensibilité multiculturaliste dans la littérature canadienne, on soutient ici que ce roman est, en réalité, une exploration du caractère contesté de la revendication de l'identité. Ce qui est en jeu dans ce roman, c'est la possibilité même de connaître l'identité et les plaisirs pervers de l'inconnu. En allant des répercussions de l'inceste sur les relations familiales au désir de l'autre et à l'impureté de la race, MacDonald opère une fusion des questions touchant à l'appartenance nationale, aux fictions raciales et aux phantasmes sexuels. Les frontières du sexe, de la race et de la nation sont littéralement traversées : l'identité, qui n'est plus désormais reconnue comme un fait de la biologie ou un accident de l'histoire, est écrite comme l'effet fluctuant des arènes contestées du désir et du pouvoir.*

Ann-Marie MacDonald's *Fall on Your Knees* has been widely reviewed as a mysterious tale of family deception, secrets and divided loyalties. The multi-generational saga of the Piper family weaves incest, love and desire with questions of memory and history, of (be)longing, and of the uncertainty of knowing. The novel has also been hailed as exemplary of the coming of age of a certain multiculturalist sensibility in Canadian literature, where cultural plurality is no longer accommodated within the dominant narrative of unified Canadian identity but forms the representational basis for writing the nation.

Such readings expose the limits of the language of diversity on which the discourse of multiculturalism rests. Cultural diversity has been officially sanctioned in Canadian multiculturalism policies. The idea of multiculturalism has been further popularized by the arts, television programming and literature. The actual multiculturalism policies have been subject to various criticisms, being seen as ineffective tools in combating racism to reifying culture as "decorative," that is, culture as food, song and dance (Fleras and Elliott, 1992:136). Most recently, multiculturalism has been charged with essentializing identity as a set of knowable, shared characteristics of a "community," which does not account for how identity gets constructed through the interaction of race, gender, class, sexuality and so on. This critical assessment focuses on multiculturalism's inability to take into account how gender, race, class, sexuality and other points of identification interact with notions of "culture," "pluralism," "identity" and "cultural diversity." Sociological categories of identity like race and ethnicity are scrutinized both for the ways in which they naturalize historically produced differences and for the ways in which individuals' understanding of themselves is constituted both through and against the grain of identity categories. "Culture," or "pluralism," no longer signify a unifying homogeneity of identity, or a cluster of bounded, identifiable groups, but are rather the sites of conflicts, private and public, over the meaning of identity. Such an analysis is interested in destabilizing the unified notion of identity (which for multiculturalism signifies race/ethnicity) as a set of knowable and shared discrete characteristics. Instead, the notion of "difference" is proposed as a more fruitful way of dealing with the process of constructing identity through the interaction of gender, race, class, sexuality, space and language. For instance, Joan Scott offers Homi Bhabha's articulation of difference as "the effect of an enunciation of difference that constitutes hierarchies and asymmetries of power" (1995:5) as a more productive way to enter an analysis of identity and identification. The process of identification becomes as important in the construction of identity as the existing system of values denoting hierarchies of difference. Normative gender, race and other identity codes are no longer facts of self-evident natural differences, but are "achievement[s] forced on us by the terrible historical experience of the contradictory social realities of patriarchy, colonialism and capitalism" (Haraway, 1989:179). Identity, and with it differential knowledge, is the product of the processes of differentiation (Crosby, 1992:140).

The notion of queerness ideally encapsulates this dynamic process of constituting identity. "Queer" itself is a term that defies definitional closure; as Alexander Doty states, "in all of its uses so far, queerness has been set up to challenge and break apart conventional categories, not to become one itself" (1993:xv). Importantly and centrally, "queer" denotes same-sex desire and identification, especially as an affirmative designation against dominant prescriptions of "proper" sexuality and gender. But to many, "queer" is also something more, as noted by Eve Kosofsky

Sedgwick: the term has been increasingly used to discuss "all the ways that race, ethnicity, postcolonial nationality criss-cross with these *and other* identity-constituting, identity-fracturing discourses" (1993:9). Rather than a category, "queer" denotes the expansive and unpredictable possibilities of identification, of fashioning oneself in the context of, but not being determined by, the existing sexual, cultural, racial and gender norms. For Sedgwick, "queer" reflects "the open mesh of possibilities, gaps, overlaps, dissonances and resonances, lapses and excesses of meaning when the constituent elements of anyone's gender, of anyone's sexuality [and other dimensions of identity] aren't made (or *can't* be made) to signify monolithically" (1993:8). In *Here is Queer*, an important study of discourses of sex and nation in Canadian literatures, Dickinson "interrogates the (hetero)normative assumption that 'nation' and 'sexuality' are somehow discrete, autonomous, historically transcendent, and socially uninflected categories of identity" (1999:3). In this context, "queer" refers to any counter- normative sexuality that "challenges and upsets certain received national orthodoxies of writing in Canada" (Dickinson, 1999:5). "Queer," then, challenges the stability of normative categories and makes visible the queerness of difference, that is, the living excess of identity beyond the established ontology of sociological categories.

This paper will argue that *Fall on Your Knees* is an exploration of such a process of enunciation, of the contested nature of claiming identity. Through the transgressive effects of desire, racial and sexual proprieties are crossed and questions of belonging become questions of longings. This refusal to "stabilize boundaries of identification" (Walcott, 1998:157), to think of identity as a stable and imposed category, lays bare the limits of multiculturalism as a basis for imagining community and nation. From the implications of incest on family relations to the desire for the other and to the impurity of race, MacDonald fuses questions of national belonging, racial fictions and sexual fantasies.

Fall on Your Knees is about identification out of bounds, exceeding prescriptive means of belonging. In effect, the novel is, from this point of view, about queering the nation.[1]

The Limits of Multiculturalism

Canadian multiculturalism has been continuously debated among academics, activists and government officials. Official Canadian multiculturalism policies organize "culture" through the notions of essential unitary markers such as, or rather primarily, national, racial and ethnic identity. The mandate of the various federal and provincial multiculturalism policies is to preserve ethnic cultures and to assist immigrants in the area of language training as a way to "become Canadian." Since the inception of the 1971 Federal Multiculturalism Bill and the

subsequent 1988 Multiculturalism Act, critics have pointed out a number of conceptual and practical problems inherent in the policies. For example, critical evaluations have unveiled the problematic dichotomy between "ethnic other" versus "Canadian"; many have criticized the policies' focus on cultural "show and tell" rather than on anti-immigrant and especially racist discrimination; and for conceptualizing culture as static and unchanging.[2]

That said, multiculturalism has over the last two decades become undisputedly a commonsense concept to define Canadian identity. Academic and political debates about the pros and cons of multiculturalism notwithstanding, no one is denying the facticity of multiculturalism in Canada. While there are disagreements about what the concept means and how (or whether) it benefits Canadian society, it seems to be universally assumed that it is a defining characteristic of Canadian cultural and political life. Roxana Ng argues that the official introduction of multiculturalism "provided a new way for Canadians to think about social reality on the one hand, and a new way to manage Canadian society on the other" (1992:2). Then Prime Minister Pierre Trudeau's introduction of multiculturalism in 1971 is generally considered the turning point for popular discourses of Canadian national identity, when the notion of Anglo-conformity became questionable and was replaced by the notion of ethnic pluralism (Ng, 1992). Thus the introduction of multiculturalism policies provided for the official articulation of a new community, of Canadian identity centred on the notion of "multi-culture." That is, Canadian society and the ideal Canadian identity has been imagined as the sum total of an assortment of diverse cultures, metaphorically represented as "a cultural mosaic."

The problem with this understanding of culture and cultural difference is that it assumes culture to be acquired, inherited outside of social relations. In the multiculturalist framework, cultures are observable as static systems of values and customs. As Homi Bhabha states, unlike the notion of cultural difference, "cultural diversity is an epistemological object — culture as an object of empirical knowledge."(1994:34) Cultures are seen as knowable, bounded and cultural identities are stabilized as shared by all subjects "belonging" to the said culture by virtue of heritage.

In literary studies, this multiculturalist understanding of diversity has given rise to specializations based on identity groups — "ethnic literature," "minority literature," "regional literature," "immigrant literature;" and more specifically "Ukrainian Canadian literature," "black Canadian literature," "Prairie literature" and so on, containing "culture" firmly within the language of race, ethnicity and/or region. While the study of non-canonical writing is an important and necessary component of literary criticism in Canada and elsewhere, this method of classifying different bodies of literary work at times reproduces the very binaries and essentialisms that multiculturalist discourses have been accused of, including positioning race/ethnicity as separate and discrete from sexuality,

gender and desire.[3] Reading non-white writers as representatives of "ethnic" or minority writing has given rise to several difficulties. First, it reproduces the centre-margin relation of canonicity in Canada, where "Canadian literature" remains the purview of white Anglo(cized) writers, and where the much debated tropes of Canadian literature — wilderness, Canada as a colony — continue to be reference points for discussions of these "other" literatures. Further, the arch of identity under which writers are grouped may inadvertently lead to homogenizing the writing into a "type." Herb Wyile writes that the impetus behind asserting the distinctiveness of regional literatures has led to "the common strategy of tying a fairly diverse body of texts to a central metaphor" (1998:145). For instance, texts by Prairie writers have been unified by their attention to the physical landscape of the region. As Wyile points out, there are a number of problems with such an approach:

> [T]his approach implies in the chosen texts a troublesome and reductive representativeness, and is ultimately somewhat self-fulfilling, creating the illusion that such patterns are found rather than constructed: that these ostensibly definitive tropes, themes, or images emerge through a process of critical selection, interpretation, and emphasis is somewhat obscured, as is the fact that they are by no means limited to, nor exhaustive of, those regions (1998:145).

At times, attempts to critically examine large bodies of literature demand generalizations, which, in highlighting some aspects of the work, diminish the importance of others. As Christl Verduyn (1998a) explains in the introduction to *Literary Pluralities*, Canadian literary criticism has undergone a profound shift in the last decade towards an increasing engagement with the concepts of race, ethnicity, gender, immigration and so on, as these figure in Canadian literature. Contributors to *Literary Pluralities* and other similar collections often attribute this change to the fact that minority writers explore different themes than the ones established in canonical Canadian literature. For instance, Enoch Padolsky (1998) points to the common exploration of ethnic and racial intersections in minority writing; Tamara Palmer Seiler comments on the "near obsession" of immigrant writing with the notions of duality and dislocation (1998:57). Christl Verduyn (1998b) herself has also written on the centrality of the theme of dislocation in "minority writing." She traces in such writing the commonality of expressive representations of the disjunctions between the tropes, images and metaphors of the Canadian imagined community found in popular discourses and the experiences of exclusion, isolation and discrimination of minority groups. In another, but related essay on this theme, Verduyn (1998c) argues that minority women writers are transforming Canadian literature, and hence representations of Canada, through their complex rendering of the relations between race, gender and class in their constructions of Canada as not simply a geographical location, but as a psychic space of relocation.

Notwithstanding the careful consideration by Verduyn (and other critics) of the interrelatedness of race, gender and class in the writing examined, general assessments of "types" of literature, however, always risk rendering some aspects of the writer's work as more definitive than others. In the case of "minority writing," the representations of race and/or ethnic relations are often examined as the primary theme in the literature. This makes it difficult to integrate those aspects of such writers' work that seem to fall outside of this designated theme, even if they are central to the plot or focus of the text. For instance, critics of Dionne Brand's work tend to focus on the themes of racism and discrimination that feature in her poetry and prose.[4] In Brand's *In Another Place, Not Here*, however, lesbian desire, migration, dislocation, and political awakening are integrally connected, rather than separated as themes. Dickinson argues that Brand "(dis)plac[es] or (dis)locat[es] the national narrative of subjectivity…into the diaspora of cross-cultural, -racial, -gender, -class, and -erotic identifications." (1999:157)

The complex rendering of identificatory practices of subjects in "minority writing" needs to be interrogated beyond the confines of classifications of literary "types." This approach tends to position identities as discrete and separate, so that, for example, race and ethnicity are examined separately from sexuality and gender. In such readings, the relationship between social and political identities, their production by the state, their location in particular discourses, and their relation to the identification processes of the subject are somewhat elusive. This makes attempts at queering the nation in Canadian literature all the more necessary.

This is not to argue against the importance of focusing on patterns and similarities that exist in the writings of variously grouped writers. However, the frequent presentation of such patterns as *the* primary theme in the texts, as that which defines the writing of "minority writers," "Prairie writers," "women writers" is cause for concern. This is not only because writers "belonging" to the given category obviously write about other things than the one theme designated by critics as definitive of such writing. More importantly, such homogenizing moves render the theme, and the identity that is seemingly defined by the theme, as artificially singular. Such limited analysis does not attend to what Jeff Derksen (1997-98) in his analysis of "texts read as multicultural" calls "antisystemic writing" — "the rearticulation of the sites and effects of multiculturalism itself" (63). Instead of replicating politics of diversity, antisystemic writing exhibits an understanding of identity as "the unstable, never-secured effect of a process of enunciation of cultural difference," where "the cultural" exceeds the singularized boundaries of race, ethnicity and nation that a multiculturalism discourse assumes (Scott, 1995:11). To quote Scott further, "subjects are produced through multiple identifications, some of which become politically salient for a time in certain contexts, and [...] the

project of history is not to reify identity but to understand its production as an ongoing process of differentiation, relentless in its repetition, but also [...] subject to redefinition, resistance and change." (1995:11) Here, the concept of performativity becomes crucial in order to understand this relationship between the reproduction of dominant norms and their rearticulation, and even the opposition to them. Judith Butler defines performativity "not as a singular or deliberate 'act,' but, rather, as the reiterative and citational practice by which discourse produces the effects that it names" (1993:2). That is, normative categories such as "gender" and "race" are both maintained through the regulatory repetition of normative practices: every subject is addressed and constituted through "sex" and "race." Thus a subject is not an autonomous individual, able to fashion herself at will outside of regulatory discourses. At the same time, these same regulatory norms are never stable because of the possibility of a rearticulation or appropriation of the norm towards a construction of counter-normative subjectivity.

Such an understanding of historicized difference stands in sharp contrast to the pluralist notion of cultural diversity, where identities stand alongside each other as readily identifiable, bounded sociological categories referencing assumed shared group sameness with regards to customs, language, belief systems, heritage and so on. This kind of an analysis is not driven by a desire to disavow the regulatory effects of discriminatory state and social practices that figure importantly in many of the texts that are read as multicultural, ethnic or minoritized. Rather, this analysis poses the following questions: "how can a text counter the system of official multiculturalism? How can a text move from being oppositional — from a position of refusal — to an agent of rearticulation?" (Derksen, 1997-98: 64-65). How can "nation" become the site of productive identity crisis, where identity is permanently unstable? And finally, to focus specifically on the relation between sex and nation, "what happens when (homo)sexual *dissidence* is used to signal a somewhat more *ambivalent* attachment to the idea of nationhood?" (Dickinson, 1999:6) The remainder of this paper will attempt provisional answers to such questions through a hopefully antisystemic reading of Ann-Marie MacDonald's *Fall on Your Knees*.

The Queerness of Difference

Fall on Your Knees has enjoyed tremendous success since its publication in 1996. It reached the number one spot for bestselling hardbacks almost immediately after appearing in bookstores, and stayed there for months. Now in paperback, the book was one of the top five bestsellers for nearly two years after its publication. The novel has been variously hailed as a prime example of multicultural sensibility, as a brilliant representation of regionalism, as well as a mesmerizing tale of family drama. The book's jacket reads "*Fall On Your Knees* is a story of inescapable family bonds, of

terrible secrets, of miracles, racial strife, attempted murder, birth and death, and forbidden love."

One reviewer praised MacDonald for "doing what no one else has done," (Currie, 1998:113) by creating a picture of Cape Breton as a complex, multi-ethnic, industrial community. Another reviewer (a Cape Bretoner himself) pointed out that such a rendering of the island is all the more important because it undermines the common stereotypical representations of Cape Breton — serene hills, Scottish heritage and the like. This reviewer too finds that the novel offers "a face of Cape Breton never before presented" (Marchand, 1997: 88). Often lists of the ethnicities that populate the novel can be found in the reviews. One reading concludes that "the final version of the family tree,...unites the various strains of the family (Scottish, Lebanese, African-Canadian, and African American)" (Palumbo, 1997:37). The descriptions of the town range from a brief mention of "the Scottish, West Indian, Jewish and Lebanese citizenry" (Thomas, 1996:C20) to a lavish enumeration of groups: "except for the Mi'kmaq...[Cape Breton] is populated by immigrants, from Italy, France, Ireland, Scotland, Germany, the Ukraine, Africa, Lebanon, and Poland" (Currie, 1998:113). While such reviews praise the complex rendering of the ethnic makeup of Cape Breton, and generally recognize the novel as a welcome corrective of the more common stereotypical cliches of the island, they do not comment on the instability of race and ethnicity that features so centrally in the text. The novel is praised for representing the diversity of Cape Breton, but not for queering race or ethnic identity.

Set primarily in the mining town called New Waterford, and spanning from the turn of the century to the 1960s, the novel follows the developments of the Piper family, starting with the marriage of James and Materia, to the subsequent births of their daughters Kathleen, Mercedes, Frances and Lily, and all that happens in between and after. The novel centres on one traumatic family event that, in its mystery, mediates the lives of the family. Slowly, we see the unraveling of James' and Materia's marriage, the growing bond between James and Kathleen, his talented first-born, and the parallel bonding between Materia and her other two daughters, the devout and obedient Mercedes and the troublesome Frances. James goes to, and returns from, Europe to fight in the First World War. On his return, he sends the talented Kathleen to New York to become an opera singer. After receiving a mysterious letter, James rushes off to New York and brings Kathleen back home, separating her from her newfound love. Shortly after Lily is born, disabled with polio, and Kathleen dies, followed by Materia's death the day after, the novel proceeds with Mercedes, Frances and Lily living with, and eventually discovering, the mysteries of their family past.

The novel *is* about Cape Breton, racial strife, inescapable family bonds, birth and death and forbidden love, but not in the way that those fond of the romance of multiculturalism and region would necessarily like. The novel

turns the notions of diversity, of unitary identity, in fact of the knowable subject, upside down. Difference is queer and disruptive.

Each beginning of the story starts from difference. One beginning has James being born in Egypt, Cape Breton, to an English father and a Gaelic mother. Another is when James meets Materia in the home of her parents, the Lebanese couple who owned a shop in Sydney. Mrs. Mahmoud speaks Gaelic and tells James about the island and its various relations. James, following his father's admonition never to set foot in the mine, fixes pianos. During one of his routine tune-ups, he first sees Materia, his wife-to-be: "the darkest eyes he'd ever seen, wet with light. Coal-black curls escaping from two long braids. Summer skin the colour of sand stroked by the tide...He wanted to say, 'I know you,' but none of the facts of his life backed this up so he merely stared, smitten and unsurprised" (MacDonald, 1996:12). While signs of difference mark the subjects — language, ethnicity, class — the emphasis is on how they interconnect to form the basis of subjects' identities. Differences are noted in their multiplicity, in their (un)familiarity and in their desirability. Materia to James, and James to Materia are others as beloved. There is no immediate and necessary assumption of difference as hierarchical. That will come later.

The fact of difference as central to the novel, in particular race and ethnic difference, is what earned it a label as a multicultural text. But the text imagines difference in quite opposite ways to its multiculturalist counterparts. Difference is not the thing that produces hierarchical relations. The other is not othered as an absolute condition of his/her difference. The "I know you" that James wants to but never utters only confirms the simultaneous recognition of and surprise at meeting his companion. They are not yet estranged from each other in their differences. Instead, as Scott notes, difference must be enunciated within discriminatory codes, "a process that establishes the superiority or the typicality or the universality of some in terms of the inferiority or atypicality or particularity of others" (1995:6). Discrimination happens, indeed, it even happens to James and Materia. But only after James sees Materia's difference as intolerable, inferior, to his own. More so, the many characteristics that make Materia become subsumed under the one sign of difference that comes to explain all to James — race.

James embarks on producing Materia as the inferiorized Other, and in fact this process is supported by, and in turn reproduces, the racial codes into which he inscribes all others. James' increasingly heightened sense of the racial identities of others is necessary in order to mark his own identity as white. It is against Materia's darkness and Catholic superstition, the Jewishness of his closest neighbours, the immigrant blackness of miners who live in a neighbourhood called Coke Ovens, that his Protestant white gentlemanly self has any chance to emerge, at least to himself.

The need to assert himself as white becomes a lifelong ambition to James. Since his identity is perpetually stained as a result of his wanton surrender to desire for Materia, he sets out to accomplish his goal by the grooming of his eldest daughter, Kathleen. James has decided that Kathleen will be a white lady of impeccable taste, unparalleled talent and worldly success. And for a long time, she is. Kathleen has "silky red-gold hair, green eyes and white white skin" (MacDonald, 1996:35). Kathleen's looks are a blessing, in terms of James' plan, but it is not simply her looks that solidify her whiteness. Once learned, she revels in performing her identity through racial codes. Just like Clare in Nella Larsen's *Passing*, who "passes not only because she is light-skinned, but because she refuses to introduce her blackness into conversation," (Butler, 1993:171) Kathleen is white because she refuses to acknowledge her hybrid heritage, her Lebanese mother, her father's racial indiscretion. In turn, she presumes herself as the white norm when she dissociates from black people in town, including Leo Taylor, hired by James to drive Kathleen to and from school. In fact, the closeness of Kathleen's relationship with James is proportional to her estrangement from Materia.

But James' need to form relationships through categories — of race, class, sex, kinship, in a word, of propriety — conflicts with the hidden, excessive, and in the case of his relationship with Kathleen damningly perverse, desire for the pleasures of the other, of the unknown. James essentializes Materia partly because he is unable to deal with her hybridity. He makes her into a caricature of a peasant Lebanese woman — a cartoon character of bulking flesh, dimmed intellect and the unintelligible speech of an imbecile. Once Materia became dark for James in a socially significant way, she also has "gone slack in mind and body" (MacDonald, 1996:37). What was different and desirable about Materia — her looks, her speech, her class, and her unpredictability (after all, she approached James and she ran away from her parents' home) — became homogenized under the sign of the racial Other. All indications of Materia's individuality — her speech, her singing, her spontaneous piano compositions, her walks along the shore — were read by James as negative characteristics of her mentally and culturally weaker racial self. But these contained Materia's hybridity only on the surface. Neither mothering nor housewifery came naturally to Materia, she would have none of the conventionality of linear musical scores in her piano playing, and at one point she took a job singing and playing with a black vaudeville show. All of this got on James' nerves and he put an end to it. But Materia still sang, still played, still spoke Arabic, just not when James was around.

Similar deception was achieved in James' relationship with Kathleen. He made her white, he groomed her to be an opera legend, he wanted her to leave for New York. Their relationship was the model of father-daughter devotion and camaraderie, constantly in danger of being revealed as duplicitous performances. He must hide Kathleen's maternity, cultivate in

her distaste for her mother's music even though her voice is Kathleen's inheritance from Materia. He raises her to be a stranger in Cape Breton, her home, and he denies the sexual desire he feels for his idealized daughter. The unsayable is precisely speech that reveals. The open secrets of the Piper family are a coded knowledge of the perverse, but also of the transgressive and potentially disruptive of the normality of family, sex, national and racial belonging. When his feelings for Kathleen become too obvious to ignore, James signs for overseas duty and spends three years fighting in the First World War. Knowing about James' secret, Materia "prays he'll be killed quickly and painlessly in Flanders" (MacDonald, 1996:85). Her prayers go unanswered, as James is able to rescue men (from both friendly and enemy camps) in record numbers with no harm to himself. The trauma of the war changes James considerably, with lasting effects not immediately detected. Kathleen is the only thing in common between the old James and the new. Ominously, the new James "steps off the train in Sydney, an unexploded shell" (MacDonald, 1996:115). Upon his arrival home, James embarks on making boots and ignoring Kathleen. In an effort to "banish her before he gets used to her being alive again" (MacDonald, 1996:116), James sends Kathleen away to New York to study opera. In the end, none of the categories that he erects in the desperate attempt for an orderly life — in his family and community — protect him from feeling the effects of incestuous desire, of the impurity of race, and of the power of community interconnections.

When James receives an anonymous letter of warning about Kathleen's involvement in the dangers of race mixing, he embarks for New York to save his daughter. The sight of her in bed with her lover, who is black and female, unleashes James' not-so-hidden desire and rage. In a violent frenzy, James beats Rose, then throws her out ("James would never kill a woman") and rapes Kathleen:

> "I'll never let anyone hurt you again
>
> "No!"
>
> never let anyone *touch* you
>
> "NO!"
>
> No one *No* one *No. One.* Will *ever* ever
>
> She has stopped screaming.
>
> *Hurt* you *Ever*
>
> she is lying perfectly still now
>
> *Again!*
>
> He shudders. "Shshshsh. It's all right now. Hush, my darling. It's all right" (MacDonald, 1996:550).

James' possessive obsession with his daughter cannot withstand the damning evidence of her rejection of patriarchal control and racial/sexual

norms. The violence of his reaction is not simply a brutal lashing out borne of his perverse want for Kathleen, who has betrayed him ("Why, Kathleen?" He is not feeling angry") (MacDonald, 1996:549). As Butler points out, "[e]specially at those junctures in which a compulsory heterosexuality works in the service of maintaining hegemonic forms of racial purity, the 'threat' of homosexuality takes on a distinctive complexity" (1993:18). The sight of Kathleen and Rose in bed together is unbearable to James because it speaks to the failure of his attempts to produce a normative white patriarchy, with Kathleen as the embodiment of white femininity. Butler notes that sexing practices both secure and contest the boundaries of racial distinction (1993:18). The union of Kathleen and Rose explodes the binary logic of compulsory heterosexuality, racial purity and national differences. All of these are explored, racial and national stereotypes are challenged, and new affiliations and self-fashionings are made by both women. What is devastating to James, and what seems to unleash his terrible fury, is that his authority — both immediate as father to Kathleen, and symbolic as a representative of white patriarchal power — is relevant only as the norm that is rejected.

Kathleen comes back to New Waterford pregnant, but her pregnancy is concealed. Kathleen dies ("the influenza, you know, there's not a family on three continents hasn't been touched by it" (MacDonald, 1996:165) when Lily is born ("the thing you do in a case like this is to go along with the idea that the child is the offspring of its grandparents" (MacDonald, 1996:165). Materia commits suicide the next day. Lily's birth signals the beginning of mysteries unraveling. From bits and pieces of conversations heard, images recalled, memories encoded in dreams, Frances and Mercedes proceed to discover the truth about Lily, James and Kathleen. With Materia and Kathleen gone, the Piper household undergoes yet another transformation. Mercedes, as the oldest sister, takes on the role of the suffering mother. Frances embarks on a path of ever more daring acts of rebellion, defying James and pursuing the truth of her family's secrets. Lily, born with a "shriveled leg," is the imperfect, more human Kathleen whom James is able to adore without the conflicting feelings of incestuous desire. But the normalcy of the family is again only superficial. Frances' outward defiance is regularly met with her father's heavy hand until she defeats him (after Frances comes home with her hair shorn, James stops himself from hitting her. "She's as beat as she'll ever be") (MacDonald, 1996:291). Frances starts making money selling sexual favours, with the "menu" firmly controlled by her. The reader later learns that Frances is punishing James for using her as a sexual outlet in moments of sorrow at the loss of Kathleen. The continuous incest, abuse and stifling secrecy and isolation bring out the complexities of family realities, and the difficulties of gender, sexual and racial codes. Taboos such as race mixing and sexual transgressions are central to the family narrative.

James does eventually become a devout, non-threatening father. This happens almost in resignation. Defending Frances one day, Mercedes pushes a drunk James down the stairs and uses his shame to cover her action and force him into submission: "You got drunk and fell," and then, breaking him, "You tried to touch Lily" (MacDonald, 1996:388). With this lie, Mercedes makes James pay for what he did to Frances. He becomes a good father after, as if repenting, he tells his story to Frances, and after his stroke leaves him weak and dependent on his daughters. He even starts reminiscing about Materia. James' story is not one of redemption, but rather of the power of knowledge. James cannot escape what he knows about himself, and facing the consequences of the truth about himself means coming to terms with the destructive effects of his actions on those he loves. It also means coming to terms with the fiction of the normative prescriptions that organized much of his life. He is finally able to befriend his Jewish neighbour, and return to an affectionate memory of Materia. All that is possible only when his ambitions shift from living a middle-class dream of white Protestant respectability to the ordinary pleasures of making boots for Lily. At the same time, this shift happens only after the patriarchal power and violence that James used to control his household is finally rendered ineffective by his daughters' agency. Hostility, self-imposed isolation in the community, a sense of racial and cultural superiority, all were utilized by James in his efforts to bolster his self-image. At the end of his life, and because of his daughters' insubordination, James lost commitment to these as desirable traits, and allowed himself the pleasures of neighbourly connections, of the memories of Materia, of the taste of Lebanese food, and of the simplicity of home life.

Through both Kathleen and Frances, racial, sexual and cultural codes become fully revealed as the regulatory fictions that they are. Regulatory because through them norms are created which constrain and delimit the range of available identificatory practices to individuals, and punish those who contest such norms. Fictions because through contestation their homogenizing imperative gets revealed, and the messiness of non-conformity, of mixing, of the excess, of the unthinkable yet there, is made visible. The misrecognition of identity and the subversive play with identity codes are the other side of the official representation of identity. Upon arriving in New York, Kathleen's identity and all established social norms become destabilized. She reveals and accepts the hybrid nature of her racial self, and in fact learns about the impurity of race in general. Her love affair in New York foregrounds lesbian desire, national and racial difference, and counter-normative femininity as interrelated in the process of fashioning identity.

She falls in love with Rose, her piano accompanist who is for herself a composer, who is the black daughter of a white mother, all of which Kathleen discovers against her assumptions. Their love affair is transgressive in many ways. The propriety of sex and gender codes are

rejected when she falls in love with a girl who "is not only beautiful, she's handsome too" (MacDonald, 1996:496) and who on their outings to Mecca, a jazz club in Harlem, is "the beautiful young man with the fine-cut face between hat and cravat" (MacDonald, 1996: 515). The relationship reveals whiteness as a performative fiction when Kathleen realizes that the mores of racial hierarchy are socially produced. Falling for Rose, a black woman, changed Kathleen's view of the world and her own place in it. By seeing Rose as an equal, she gave up the pretensions of white superiority. Not only did her whiteness become a subject for debate, but it lost its desirability. To the question of whether music has a colour, she muses, "[d]oes Brahms turn black when Rose plays him? If he does, then it looks good on him and he should be so lucky" (MacDonald, 1996:487). By reveling in the world of jazz clubs, by critically noticing the effects of social inequality on different groups of people, and through the company of Rose, Kathleen begins to question the racial hierarchies she grew up with and tried to reproduce. As she reveals her colour and stops behaving as if she were white, she embraces Materia as her mother. In New York, and through her love affair, she admits to her love for Materia, to her belongingness in Cape Breton, to owing the richness of her voice to her mother's music and Cape Breton's soul. In all this, she comes to desire the Other as beloved, and as familiar in her difference.

Kathleen and Rose revere each other in their mutual recognition through difference. Kathleen says that when she takes off Rose's uniform, her public self, to make love to her, Rose can finally come home (MacDonald, 1996:530). As did Kathleen. The unexpectedness of Kathleen and Rose's passion for each other, against prescriptive racial and sexual norms, against the racial and sexual fantasies of imagined national communities, testifies to the incommensurability of reproduction — racial, familial, national — and desire. The heteronormative imperative in the reproduction of national, racial or family identities insists on the assumption of the sameness of desire, of its predictability, of heterosexual normalcy. The logic of reproduction is inadequate to recognize same-sex desire. The latter exceeds the confines of the reproductive script and rejects the assumption of heterosexual normalcy. Counter-normative desire cannot be harnessed for the reproduction of normative identities. Spoken in a different context, the reproductive logic is simple: "you can't think of founding a sovereign state with gay and lesbian couples" (Probyn, 1994:23). As Michael Warner argues, the theorization of identity is necessarily problematized by "the intrication of genetic and erotic logics of both race and gender" (1994:xviii). "Reproduction usually implies eros; but when identity is apprehended as desire, as in same-sex or cross-race relations, its reproductive telos disappears" (Warner, 1994:xviii). While James' perverse desire for Kathleen partially echoes his obsession with reproducing whiteness as the dominant family trait, the connection between Kathleen and Rose undermines all acceptable ways of sociability. Kathleen's transformation, from the uppity white girl to a free woman,

makes James' self-identity as the hard-working, proud father of a talented and beautiful and predictably white daughter as elusive as ever. Kathleen no longer feels the need to pass.

Frances, the third daughter, goes about upsetting racial and sexual norms in a different way. She embarks on a path to retrieve her family memory, and restore the unspoken fragments of her family's history. Her mission, not always known to herself, necessitates disobeying the rules of family privacy, gender codes and prescriptions against race mixing. She grows independent in spite of James' control, she makes money as a prostitute, she seduces Leo, the local black man who used to be Kathleen's driver, to get pregnant, and she gives birth to Anthony. All of these actions, in some ways, connect with the need to reconcile the many hidden aspects of the family's history. Frances' actions eventually enable Lily to find Rose, who finally is able to grieve the loss of Kathleen. Much later, when Rose and Lily are respectively in their sixties and forties, they get a visit from Anthony, who brings the complete Piper family tree. The tree, created by Mercedes and passed on to Anthony to be delivered after her death, acknowledges the unions and relations that till now were hidden. Kathleen and Rose are joined as a couple, and Anthony's and Lily's origins are made clear. Frances' mission, to save money for Lily "just in case" and to get pregnant by Leo, results in the eventual recording of all aspects of the family's narrative.

Kathleen and Rose find and recognize each other. As do others, even if for fleeting moments — James and Materia, Materia and her Jewish neighbour, Mrs. Luvovitz, Frances and Leo Taylor, Frances and Teresa, Leo's sister, and Lily and Ambrose, the ghost of her dead brother. At his first meeting with Lily, Anthony "looks at her more closely, not trusting his sense that he's met her before, which happens to him so often. As does the reverse" (MacDonald, 1996:564). Such conflictual connections, across difference, attest to the complex relations between the instability of national belonging, racial fictions and desire, including desire for the unknown. At Frances' funeral, "Mrs. Luvovitz looks east at the horizon and reminds herself of what she has learned: that nothing in life is not mixed" (MacDonald, 1996:560).

This paper has focussed on those aspects of the novel that make *Fall on Your Knees* a text that counters the dominant multiculturalist discourse, rather than being inscribed by it. The text does testify to the rich and heterogenous heritage of Cape Breton, but it does so in a way that, instead of enumerating cultural diversity, works against the "closure on identity" (Derksen, 1997-98:68). This is largely accomplished through the presence of queerness in the text, which "challenges and upsets certain received national orthodoxies of writing in Canada" (Dickinson, 1999:5). The complex relations of nation, sexuality and other forms of difference in *Fall on Your Knees* testify to the rich possibilities of writing identity while refusing the idea, to follow Elspeth Probyn, "that sexuality and other forms of sociality are different possessions" (1994:24).

Multiculturalism regulates against reading sexuality, gender and desire into the text precisely because it limits "culture" and "diversity" to race and ethnicity. But here, gender, race, and class relations and sex and desire are always fused, not separated because not separable. The mines are as much of the central vein that connect people to each other as racial or kin relations are. In fact, the very cultural and racial diversity of Cape Breton is due to the fluctuating needs of the mining industry. The complexity and multiplicity of discourses of racialization and discourses of gender arise in the context of social relations of class and migration. Similarly, while the novel has likewise been claimed as a representative of regional writing, this label also does not fit so well. For while *Fall on Your Knees* is about Cape Breton, and it provides a sense of the marginal location of the island to the rest of Canada, the text undercuts any monolithic notion of regional identity by producing the region as marked by heterogeneity, as "people, classes, social formations, spatial collectivities..." (Wyile, 1998:153). The activist group Queer Nation sees the "national" as both a site of contestation and visibility (Dickinson, 1999:34). I would argue that *Fall on Your Knees* subverts hegemonic discourses of Canadian identity and, as a result, unleashes something more of our identities (Walcott, 1998:158). In this way, things are made perfectly queer.[5]

In conclusion, I have argued that *Fall on Your Knees* explores the process of enunciating difference, of the contested nature of claiming identity. As such, it explodes the boundaries of nation and the liminalities of sex, race and space. At stake in the novel is the very knowability of identity and the perverse pleasures of the unknown. Because nothing is as it seems, the narrative also exceeds the bounds of multiculturalist language of diversity. No longer a fact of biology or historical accident, identity is written as the fluctuating effect of contested arenas of desire and power.

Notes

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1. The phrase "queering the nation" is taken from the conference of the same title held at York University in summer 1998.
2. See Fleras and Elliott (1992) for an overview of criticisms.
3. It needs to be pointed out that many collections of visible minority and/or immigrant women's writing avoid, and in fact problematize, such artificial divisions. For example, see Makeda Silvera, ed. *The Other Woman: Women of Colour in Contemporary Canadian Literature* (Toronto: SisterVision, 1995), Eva Karpinsky, ed. *Pens of Many Colours* (Toronto: Harcourt Brace Jovanovich. 1996).
4. Chapter 6 in Dickinson (1999) critically examines reviewers' common representations of Brand's work.
5. I borrow from Alexander Doty's title, *Making Things Perfectly Queer: Interpreting Mass Culture*. (Minneapolis: University of Minnesota, 1993).

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Lianne Moyes*

Rien de sacré : *Baroque d'aube* de Nicole Brossard aux limites des discours lesbiens-féministes sur la sexualité

Résumé

Se penchant sur l'ambivalence de Baroque d'aube *dans ses rapports avec les expressions baroques de l'intensité sexuelle, et en particulier celles qui esthétisent la violence ou la souffrance, cet article s'inscrit dans le cadre d'une discussion plus large de l'éthique féministe, du désir sexuel et des pratiques sexuelles. Le roman de Brossard, y soutient-on, explore une érotique de l'incongru qui accouple des figures classiques et chrétiennes, des amants de différentes générations, la culture féministe lesbienne et la culture masculine gaie, les martyrs jésuites et les «* leathermen *» (gars de cuir), des lesbiennes et des* pietà*, et il soulève des questions à la fois inquiétantes et potentiellement productives sur les orthodoxies des discours féministes et lesbiens eu égard à la sexualité.*

Abstract

Examining the ambivalence in Baroque d'aube *toward baroque expressions of sexual intensity, particularly toward those that aestheticize violence or suffering, this paper participates in a broader discussion of feminist ethics, sexual desire and sexual practice. Brossard's novel, it argues, explores an erotics of incongruity which yokes together classical and Christian figures, lovers of different generations, lesbian feminist culture and gay male culture, Jesuit martyrs and leathermen, lesbians and pietàs, and which raises unsettling yet potentially productive questions about the orthodoxies of lesbian feminist discourses of sexuality.*

Résister au baroque

Même si le mot « baroque » surgit à l'occasion au fil de ses entrevues accordées ou dans ses essais et ouvrages de fiction publiés depuis le milieu des années 70, Nicole Brossard avait toujours hésité à se servir de ce terme pour qualifier sa propre écriture avant la publication de son roman *Baroque d'aube*, en 1995. En m'attachant à saisir les différentes significations prêtées au baroque dans les discours de Brossard et afin de mettre à jour les termes de sa résistance première à l'application de cette épithète à son œuvre, j'entamerai cette analyse de *Baroque d'aube* par un bref survol de trois textes qui ont précédé le roman de 1995 : une entrevue que Brossard accordait en 1982, *Picture theory*, publié en 1982, et l'essai de 1975 intitulé « *E* muet mutant ». Ce coup d'œil rétrospectif me permettra de définir les

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modalités de l'utilisation de ce terme par Brossard à l'intérieur du discours littéraire québécois tout aussi bien que dans le cadre plus ample de l'esthétique baroque. Introduit dans le discours critique de la fin du dix-huitième siècle pour désigner des conventions et des pratiques artistiques qui avaient eu cours depuis la fin du seizième siècle et pendant tout le dix-septième siècle et que l'on considérait désormais comme démodées et grotesques, ce terme fait référence de nos jours à des conventions et des pratiques qui, bien qu'associées de façon primordiale à cette période, ne cessent de revenir au cours de l'histoire (voir d'Ors)[1]. En clair, on aurait peine à inscrire le projet lesbien-féministe de Brossard dans le cadre de la ferveur religieuse de la Contre-Réforme si cruciale au développement du Baroque. Il reste, cependant, que ce dernier a également été le théâtre de transformations culturelles substantielles (dont un changement radical dans la conception même du sujet) : il s'agit d'une période centrée sur la passion, sur l'idée d'imprimer des signes d'émotion à la peinture, au marbre, au langage, au tissu, à la chair même; d'une période fascinée par l'extase du martyr, vouée à l'allégorie, aux représentations qui interrompent l'éternel en le liant à l'historique; enfin, il s'agit d'une période associée à l'ornement, au détail, au grotesque et à d'autres catégories qui ont partie liée avec le féminin. Peu importe l'attitude que Brossard adopte à son égard — résistance, mobilisation ou recontextualisation —, ses textes ont intérêt à explorer le baroque.

En 1982, lors d'une discussion dans *La nouvelle barre du jour*, Brossard évoque la figure de Claude Gauvreau. Connu à titre de cosignataire du manifeste *Refus global* de 1948, Gauvreau a également retenu l'attention par l'intérêt qu'il témoignait envers le baroque, particulièrement dans son roman *Beauté baroque*, publié en 1952. D'après Jacques Marchand, le terme de « baroque » était fréquemment utilisé dans les années 1950 et 1960 comme synonyme d'adjectifs tels « inégal », « excessif », « inhabituel » et « exagéré »[2]. Gauvreau considérait comme « baroque » toute œuvre marquée par la bousculade des impulsions de la vie, par la texture erratique du désir (Marchand 84-85). Son baroque est caractéristique du vingtième siècle, qui n'existe qu'à travers une forme et une abstraction imbibées d'émotion. Reprenant à leur compte la référence de Brossard à Gauvreau, les critiques lui demandent si elle ferait de *Picture theory* un roman baroque (« Entretien » 193). Elle répond par la négative, en expliquant que c'est la précision, et non l'imprécision, du changement de perspective qui constitue la clé du sens de l'hologramme de la femme en jeu dans *Picture theory* (« Entretien » 193-94). Le terme de « baroque » n'en apparaît pas moins dans *Picture theory*, et ce à l'occasion d'une méditation sur les yeux, dans une section intitulée « La Perspective » : « Claire Dérive pousse à l'ultime rencontre / nos sexes. Les yeux baroques, la clarté excessive / la paupière à peine répétitive à l'émerveille. » (*Picture theory* 84)

Je suis d'accord avec Brossard lorsqu'elle soutient que *Picture theory* constitue davantage un roman sur la clarté, la lumière et l'*intégration* de

différents angles de vue plutôt qu'un roman de l'ambiguïté, de l'ombre et de la prolifération de perspectives diverses. *Picture theory* met l'accent sur l'importance de la lucidité à l'intérieur du processus d'écriture et de ce que Brossard a depuis qualifié de « projection d'un espace mythique libéré des images patriarcales méprisantes » (« *An Interview* » 118)[3]. En même temps, *Picture theory* témoigne d'un certain intérêt pour le baroque. Le fait que Brossard tend à minimiser cet intérêt trahit l'ambivalence de son attitude face à cette esthétique, une ambivalence qui va s'intensifier et se répandre dans *Baroque d'aube*.

L'essai « *E* muet mutant » de 1975 offre une autre occasion d'observer l'ambivalence de la présence du baroque dans le discours de Brossard. Dans cet essai, le terme de « baroque » sert à qualifier la parole féminine :

> La parole féminine a tôt vite de faire le tour d'elle-même. Parole censurée par excellence. Parole confinée. Condamnée à tourner en rond, à se clore sur elle-même dans la mesure où elle n'entre pas dans l'histoire; où l'histoire y entre par défaut. Parole du détail et de l'insignifiant (pour l'autre). [...] Parole répétitive, fondée sur le zéro de la tradition qui se transmet, *ainsi va la vie*. Parole baroque, rococo, pleines de fioritures; qui se dépense en pure perte d'énergie qui ne transforme rien. Parole qui se *contredit*. (11)

L'essai de Brossard ne témoigne pas tant d'une résistance au baroque que d'une résistance féministe à la façon dont on perçoit généralement la parole des femmes. Au cours des deux décennies qui ont séparé la publication de « *E* muet mutant » de celle de *Baroque d'aube*, l'écriture de Brossard a évité une façon de mobiliser le mouvement non-linéaire, l'excès de forme et l'épuisement de signification qui servent si souvent de prétextes à la dévaluation de la parole des femmes. Comme le remarque Caroline Bayard dans une réflexion sur « *E* muet mutant », « ce qui semblait initialement être un désavantage est devenu un outil, un moyen de transformer la nature même de la créativité » (184)[4]. Tant sur le plan de la pratique textuelle que sur celui de la recherche théorique, un texte tel *Picture theory* se préoccupe de la relation entre le sens et le non-sens : « La fiction déjoue alors l'illysybilité dans le sens où elle insinue toujours quelque chose de plus qui te force à imaginer, à dédoubler. À y revenir. » (48) Habité par une sibylle, le terme même de « illysybilité » suggère qu'il y a toujours, en fait, quelque chose à comprendre dans ce qui semble illisible et que le fait de s'attarder à conférer un sens à ce qui, à première vue, semble inintelligible peut constituer une occasion de transformation. Dans *Baroque d'aube*, le baroque offre à Brossard une structure conceptuelle à l'intérieur de laquelle elle peut approfondir l'oscillation entre le sens et le non-sens. Comme le dit l'un des personnages mis en scène dans le texte : « l'ensemble de la pensée baroque [...] hésite entre le Chaos et le Cosmos » (155).

La « sibylle » de l'« illysybilité » de *Picture theory* devient un personnage central dans *Baroque d'aube* : il s'agit de Cybil Noland. Les sibylles sont ces femmes dont les textes équivoques, mais prophétiques, illustrent un

pouvoir de décoder le présent et d'intervenir dans la culture contemporaine bien davantage que celui de prédire l'avenir. Dans le roman de Brossard, Cybil Noland est témoin de la transition d'une culture livresque à une culture de prolifération d'images et d'informations, transition aussi radicale que le fut en son temps le passage de la culture de la transmission du savoir sous forme manuscrite à celui du triomphe de l'imprimerie aux seizième et dix-septième siècles (voir Guardiani 132-35; Moyes « *Introduction* » 9-11). Parfois, dans *Baroque d'aube*, l'oscillation entre le sens et le non-sens adopte la forme agressive d'« images rapides qui avalent le sens au fur et à mesure » (67). Dans ce contexte, Cybil lutte pour déchiffrer et décoder, pour travailler avec les signes et leur donner un sens, maintenant ainsi une tension productive entre le Chaos et le Cosmos, le sens et le non-sens, des catégories qui sont si importantes pour la transformation de l'imaginaire culturel entreprise par Brossard.

En plus de mobiliser les éléments formels associés au baroque, *Baroque d'aube* réintroduit la question de la parole des femmes que soulevait « *E* muet mutant ». Brossard y explore différentes façons de représenter le dialogue entre femmes. Comme dans tous ses textes de fiction, elle y évite le genre de discours anecdotique que « *E* muet mutant » associait au baroque. Toutefois, plus que n'importe quel autre de ses romans publiés jusqu'à maintenant, *Baroque d'aube* privilégie la question du dialogue (voir Brossard « *Energy, Emotion, and Perspective* » 57-58). Le texte s'ouvre sur une rencontre sexuelle entre deux femmes et la conversation qui en résulte. Interrogée par la Sixtine (sa cadette), qui voudrait savoir « s'il est dans ses habitudes de "prendre l'ascenseur" avec des inconnues », Cybil répond : « Si possible, oui. [...]. Il y a dans la rencontre sexuelle de deux inconnues un bris temporel qui permet de faire abstraction du récit que chacune porte en elle. Il y a là une économie de l'histoire au profit de la présence » (26). L'énergie sexuelle qui émane de la différence entre les deux femmes, une résultante du fait qu'elles sont étrangères l'une à l'autre, constitue la source de cette extraordinaire conversation.

L'échange entre Cybil et la Sixtine nous amène à nous interroger sur la raison pour laquelle, dans les termes mêmes de Brossard discutant avec Lynne Huffer en 1993, il est si difficile « pour les femmes dramaturges de créer un dialogue entre femmes en dehors de la relation mère-fille », pourquoi « [l]a plupart du temps, les personnages féminins interagissent à travers des monologues » (« *An Interview* » 119)? La réponse hésitante de Brossard — « Est-ce à cause d'une éthique féministe qui ne permet pas de relations de pouvoir ou de rôles hiérarchiques entre femmes? » (119)[5] — oriente ma lecture de *Baroque d'aube*. Cette réponse remet en question l'égalité dans les relations entre femmes, une question litigieuse et que les débats féministes des années 80, par exemple, ont soulevée à propos du sadomasochisme[6]. Dans le roman de Brossard, les personnages féminins expérimentent des relations et des rôles que les discours lesbiens-féministes, autrement, passeraient sous silence (y compris les relations

sexuelles entre des femmes de différentes générations, entre des femmes qui ne se connaissent pas). Dans ce qui suit, j'examine les ambiguïtés et les contradictions inhérentes au discours du roman de Brossard, ambiguïtés et contradictions qui rendent possible un débat plus poussé : Qu'est-ce qui entre en jeu dans la fascination pour l'art religieux baroque dont témoigne ce roman? Comment l'auteure y manipule-t-elle la translation entre le spirituel et l'historique, le sacré et le profane que cet art a rendue possible? Qu'est-ce qui, dans les discours lesbiens-féministes sur la sexualité, demeure sacré? Comment les diverses réinterprétations du baroque dans le roman — et particulièrement ses rapports avec la passion, l'extase du martyre et les relations de domination et de soumission, de sadisme et de masochisme — repoussent-elles les limites de tels discours?

Alors que, dans « *E* muet mutant », le terme de «baroque» désigne un type de discours, dans *Baroque d'aube*, il fait référence à une façon d'écrire l'ambivalence de la relation du texte avec la technique, la violence, la passion, la souffrance ritualisée, le christianisme, la culture *queer*, le sadomasochisme et les relations de pouvoir entre femmes. Dans son texte de 1995, Brossard s'appuie sur des éléments sous-jacents à la peinture et à la sculpture religieuses, surtout celles du baroque, pour relire le sublime et l'extatique en termes homo-érotiques. *Baroque d'aube* voit dans le geste de Michel-Ange réunissant prophètes et prophétesses (sibylles) dans l'enceinte d'une chapelle vouée au culte chrétien un précédent important de ses propres conjonctions baroques. Le texte de Brossard reprend le geste de Michel-Ange en le transformant en la rencontre sexuelle de deux femmes, Cybil et la Sixtine. Réunissant figures classiques et figures chrétiennes, lesbiennes et *pietà*, martyrs jésuites et *leathermen*, amantes de différentes générations, culture lesbienne-féministe radicale et culture *queer*, *Baroque d'aube* explore un érotisme de l'incongru. À un moment, une rencontre entre deux femmes se caractérise par la tendresse et la tranquillité d'une *pietà*; l'instant d'après, elle est marquée par la violence et l'intensité de corps baroques empoignés vers l'extase. Chaque rapprochement inattendu, chaque incongruité apparente soulève des questions troublantes, et néanmoins pertinentes, à propos de définitions, de valeurs et d'attitudes qui paraissent incontestables, inviolables, presque « sacrées ».

Femmes d'âges différents : la rencontre du classique et du chrétien

Cybil Noland et la Sixtine, ainsi que le texte l'indiquent clairement, sont d'époques et d'âges différents. Elles se rencontrent à Los Angeles, la cité des anges. La première nuit où les deux femmes « pren[nent] l'ascenseur » ensemble à l'Hôtel Rafale (26), l'amante de Cybil, une femme que le texte décrit comme « musicienne et jeune », insiste sur le fait qu'elle n'a pas seize ans : « *But I am not sixteen*. » (16-17) Cybil la baptise immédiatement « la Sixtine », en référence au nom de la chapelle Sixtine (qui doit son nom au pape qui l'a fait construire, Sixte IV). Cette chapelle est évoquée à nouveau

dans un paragraphe subséquent et plus tard dans le roman, toujours en référence aux cinq sibylles de Michel-Ange (un autre ange du texte). La deuxième nuit où les femmes prennent l'ascenseur ensemble, c'est au tour de Cybil de se faire décrire, cette fois-ci du point de vue de la Sixtine, comme « la femme aux cheveux gris » (45). Cybil est l'aînée de la Sixtine à plus d'un titre. Les prophétesses de l'antiquité, les sibylles, avaient pour mission de révéler les oracles des dieux. Intégrées au récit chrétien des fresques de la chapelle Sixtine, ces femmes de mots et de livres deviennent l'illustration du désir de la Renaissance de réconcilier culture classique et christianisme « pour percevoir l'antiquité comme la préparation à l'Évangile » (O'Malley 116). Les sibylles convenaient particulièrement à ce projet car elles étaient censées avoir prédit l'avènement du Christ (O'Malley 116)[7]. Le texte de Brossard leur prête une signification supplémentaire du fait de l'importance relative que leur a conférée Michel-Ange, à elles et à leurs livres, dans sa représentation picturale des récits de la Genèse.

Dans le roman de Brossard, les sibylles de Michel-Ange soulignent les problématiques, propres au baroque, de l'encadrement, de la perspective, des origines et de l'incongruité. Dans un chapitre de *Baroque d'aube* intitulé « Sibylles et *ignudi* » s'insère une description des fresques de la chapelle Sixtine. Elle met en scène un navire, le *Symbol*, qui est engagé dans une recherche océanographique au large des côtes argentines. Cybil a été embauchée par une océanographe du nom d'Occident des Rives pour rédiger un livre qui portera sur la mer et qui comprendra également des photographies prises par un autre personnage, Irène Mage. *Padré* Sinocchio, un prêtre qui se trouve à bord, évoque Rome, et Occident saisit l'occasion « pour entraîner tout le monde dans la chapelle Sixtine » (139). Figure du pouvoir, Occident parle sans cesse, sans jamais s'arrêter pour écouter ce que les autres pourraient avoir à dire. Son propre discours, à l'image du récit de la Création représenté dans les panneaux centraux du plafond de la chapelle, paraît homogène. Toutefois, la narratrice, à qui il incombe de décider de ce qui sera rapporté ou non, trouve moyen d'intervenir en se concentrant sur le compte rendu d'Occident sur les *ignudi*[8] et les sibylles, figures massives et tridimensionnelles qui, avec les prophètes, encadrent les panneaux illustrant différentes scènes tirées de la Genèse. La narratrice rappelle aussi au lecteur l'importance de la perspective — qu'il s'agisse de l'endroit où le spectateur se situe dans la chapelle ou du point de vue de celui qui en raconte l'histoire — sur l'interprétation des relations entre les neuf panneaux centraux et les sibylles et les *ignudi*. La plupart du temps, la présence des sibylles et des *ignudi* n'est perçue que comme une simple ponctuation du récit biblique. La narratrice, néanmoins, insinue que, dans la mesure où ils perturbent la position centrale des tableaux, en attirant l'attention sur ceux qui se situent le long de la marge, les sibylles et les *ignudi* jouent un plus grand rôle (140). D'après la narratrice de Brossard, pour qui le bras droit dénudé de la Sibylle de

Cumes est « musclé comme celui de Dieu » (140), les femmes de livres ont un rôle-clé à jouer dans la (représentation de la) Création.

En réunissant Cybil et la Sixtine, *Baroque d'aube* pose un geste baroque semblable à celui qui a présidé à la création des fresques de Michel-Ange : c'est un geste qui accommode la différence, l'incongruité. Le roman de Brossard associe la relation entre la chapelle et les fresques, et plus spécifiquement les sibylles des fresques, à une liaison entre deux femmes. Comme le remarque Alice Parker, « les noms dans le roman sont si ostensiblement symboliques que le texte se lit en partie comme une fable ou une allégorie » (195)[9]. La rencontre sexuelle entre Cybil et la Sixtine peut être lue comme une allégorie[10] des liens érotiques qui unissent des lesbiennes de différentes générations, différents discours sur le désir, différentes méthodes de représentation de soi, et ainsi de suite. (Ce qui importe ici n'est pas tant le fait que Cybil et la Sixtine représentent deux groupes identifiables que la possibilité, ouverte par leur rencontre, d'imaginer plusieurs conjonctions inattendues.) Dans le contexte de la culture littéraire lesbienne du vingtième siècle, cette rencontre n'est pas moins dramatique que celle des mondes classique et chrétien. Les figures classiques telles les Amazones, les Euménides (les Furies) et les sibylles ne sont pas souvent associées aux martyrs, aux madonnes et aux chapelles chrétiennes. La littérature et la critique lesbiennes préfèrent privilégier des figures classiques telles la Méduse, Léda, Déméter et Perséphone plutôt que de s'intéresser à des figures chrétiennes. Les Amazones revêtent une telle importance dans ce corpus littéraire et critique que la notion même d'« intertextualité lesbienne », mise en circulation par Elaine Marks, en 1979, a pu être rebaptisée « intertextualité amazone » par Jeffner Allen dans un essai paru en 1993. De plus, la figure de l'antique poète grecque Sappho, clé de l'idée d'intertextualité de Marks, ne cesse de refaire surface dans les analyses d'écrits lesbiens du début du vingtième siècle (voir Benstock; Marcus), un corpus avec lequel l'œuvre de Brossard entretient des liens étroits (voir Meese; Moyes « *Composing* »).

Comme le remarque Raymond-Jean Frontain dans *The Gay and Lesbian Literary Heritage*, jusqu'à présent, la Bible n'a fourni que peu de figures inspirantes à la tradition littéraire gaie et lesbienne (99). Des raisons importantes permettent de rendre compte de cette préférence marquée pour la culture classique plutôt que pour le biblique, dont le fait que des figures telles les Amazones et Sappho se prêtent plus facilement à des lectures utopiques lesbiennes et homo-érotiques (Griffin Crowder 25), les modalités de la construction du corps féminin et de la régularisation de la sexualité féminine à l'intérieur du christianisme, ainsi que les obstacles mis en travers des femmes qui auraient voulu accéder à des positions de discours et d'autorité à l'intérieur de l'Église. Comme le dit Cybil Noland : « Les livres sacrés [...] de tout temps ont mis la vie des femmes en péril ». (76) D'après Marks : « Il n'y a pas une personne à l'intérieur ou à l'extérieur de la fiction qui représente un plus grand défi à la tradition

judéo-chrétienne, au patriarcat et au phallocentrisme que la lesbienne-féministe. » (369) Ceci ne veut pas dire qu'aucune œuvre de ce type ne s'inspirent de la tradition chrétienne[11]. Toutefois, les positions adoptées envers le christianisme — conversion plus ou moins fervente, recontextualisation parodique ou encore érotisme humoristique et sacrilège — varient énormément et, dans quelques cas, elles sont assez controversées pour enrayer, ou du moins ralentir, les efforts déployés pour établir des relations intertextuelles.

Il n'est pas étonnant de voir le texte de Brossard associer des sujets chrétiens à une inspiration baroque. L'histoire de l'art offre un précédent important à cette association : elle enseigne, en effet, que du fait d'une transformation de l'esthétique de la seconde moitié du seizième siècle résultant de l'œuvre picturale de Michel-Ange et d'autres peintres de la seconde moitié du seizième siècle, cette période peut être considérée comme la première époque du Baroque. Dans un essai intitulé « *Homosexuality in the Renaissance: Behavior, Identity and Artistic Expression* »[12], James M. Saslow observe que « [s]uccombant à la Contre-Réforme ascétique, [chaque peintre] se détournait des sujets païens interdits par le Concile de Trente [pour se tourner] vers une imagerie exclusivement religieuse » (102)[13]. Saslow poursuit en suggérant que « [m]ême si le mythe judéo-chrétien offrait officiellement moins de matériel pour l'identification homosexuelle, le traitement que plusieurs artistes faisaient des héros religieux suggère une sensibilité voilée ou semi-consciente à la beauté et l'émotion mâles » (102). *Baroque d'aube* exploite le même potentiel d'interprétations homo-érotiques — et plus spécifiquement lesbiennes — présent dans l'iconographie chrétienne. Parce qu'elle travaille avec le langage plutôt qu'avec la peinture, et qu'elle écrit en tant que femme, lesbienne et féministe de la fin du vingtième siècle, le rapport que Brossard entretient avec une telle iconographie diffère de celui des peintres dont parle Saslow. Il n'en reste pas moins qu'elle et ces peintres ont ceci en commun qu'ils s'approprient des images apparemment « inappropriées » pour ouvrir des espaces représentatifs à des sensibilités et des sexualités officiellement rejetées par l'Église[14].

Jeux de passion

Dans le texte de Brossard, que pourrait être l'enjeu de l'orchestration d'une rencontre entre le classique et le chrétien? Que vient faire Cybil, la figure de l'écrivaine dans *Baroque d'aube*, à côté de la Sixtine, figure du christianisme? Pourquoi ce roman s'attarde-t-il davantage aux anges, aux martyrs et aux *pietà* qu'aux figures classiques qui, d'habitude, peuplent l'œuvre de Brossard[15]? On songera peut-être à chercher une réponse dans le fait que *Baroque d'aube* cherche à être (entre autres choses) une méditation sur la relation des femmes avec la souffrance et, plus précisément, sur l'image de la souffrance à l'intérieur du christianisme. Une conversation entre Cybil et « Nicole Brossard », ici décrite comme « une romancière

rencontrée à Londres à l'occasion d'un colloque sur l'autobiographie » (55), en constitue un exemple. Lorsque Cybil lui demande « pourquoi elle réunissait si souvent ses personnages autour d'une table de restaurant ou de travail » (56), la romancière réplique : « Je ne sais sans doute pas assez souffrir pour imaginer ce qui se passe dans le cœur des gens » (56). Un peu plus tard, à l'occasion d'une telle scène de conversation autour d'une table, Cybil et Jasmine, une autre écrivaine, s'inquiètent « des grandes ficelles de souffrance qui entourent le monde, un monde fagoté comme dans les emballages de Christo » (68). Ce n'est pas la première fois que la question de la relation que les femmes entretiennent avec la souffrance se pose dans l'œuvre de Brossard. Dans son essai de 1983 intitulé « *Kind Skin My Mind* », par exemple, elle écrivait : « [l]a lesbienne rejette la mortification comme mode d'existence. La lesbienne souffre de la mortification des femmes » (108). Là où *Baroque d'aube* innove, c'est par l'utilisation qu'y fait Brossard d'icônes chrétiennes telles les martyrs et les *pietà*. Je formulerai bientôt l'hypothèse que le texte de Brossard reconfigure la *pietà* de façon à refuser le récit de transcendance par le sacrifice qui sous-tend la passion du Christ. Cette passion, toute teintée de martyre et de souffrance, est maintenant réexaminée et réinterprétée en tant qu'affection ardente de deux femmes.

Dans *Baroque d'aube*, la Sixtine est associée aussi bien à la souffrance la plus vive qu'au plaisir le plus intense. C'est ainsi, par exemple, qu'elle réagit à la couverture médiatique d'un massacre perpétré devant une cathédrale de l'ancienne Yougoslavie en adoptant une « pose terriblement gênante de *pietà* qui engourdi[t] les membres » (25) : c'est la pose de celle qui porte toute la souffrance du monde sur ses épaules. Entretenant « la fièvre de vivre » (25), Cybil cherche à toucher la Sixtine et à détourner son attention de la litanie des atrocités qui l'ont assaillie. Dans cette scène, la *pietà* est centrée sur la mort, ne laissant à Cybil aucune possibilité d'intervention. Plusieurs chapitres plus tard, lors d'une journée passée avec l'écrivaine Jasmine, Cybil visite un cimetière et s'arrête devant un monument représentant la Vierge et le Christ. Après souper, tandis qu'elle retourne à Rimouski en empruntant la route qui longe le Saint-Laurent, elle imagine voir arriver la Sixtine qui s'assoie au pied de son lit, « le dos étincelant de perles d'eau patineuses » (68). Elle la prend alors dans ses bras et « [d]ans une série de gestes lents, elle appu[ie] la tête de la Sixtine sur sa poitrine de manière que leurs corps forment une gigantesque *pietà* au milieu de la chambre » (68). Ici, le texte tire une étreinte de la figure de la *pietà*. Dans la mesure où la Sixtine (figure du Christ) est vivante, cette deuxième *pietà* transpose l'intensité de la passion du Christ pour en faire une passion entre femmes. La simple identification des deux femmes au Christ ou à la Vierge les associerait de façon beaucoup plus évidente à la sainteté. Une étreinte met davantage l'accent sur le toucher et la contiguïté, et illustre d'autres rôles que ceux d'affligée et de sacrifiée.

Les deux *pietà* partagent une même qualité sculpturale, pour explorer la relation entre le corps de Cybil et celui de la Sixtine, leurs postures, leurs gestes, leur caractère tridimensionnel et leur situation dans l'espace. En accentuant le contraste entre la posture engourdissante de la première *pietà* et le mouvement de la deuxième, le texte met en scène de manière significative la transition d'une sculpture renaissante à une sculpture baroque, d'une image fixe à une unité en mouvement[16].

La deuxième *pietà* transforme la souffrance des récits chrétiens en reconfigurant leurs signes, de sorte qu'ils deviennent les récits d'une intensité érotique de relations entre femmes. En parallèle, le texte de Brossard jongle avec l'ambiguïté inhérente à une telle reconfiguration ou « resignification ». Que sous-tend l'interprétation des visages et des attitudes que la souffrance imprime en tant que signes du plaisir? Quelles sont les limites éthiques d'une telle interprétation? Comme Brossard le remarque dans un essai de 1990 : « Il y a des thèmes qui sont destinés à avoir au moins un effet troublant, sinon idéologique : la *sexualité*, l'érotisme, l'homosexualité, le lesbianisme — il y a toujours quelque chose en jeu avec l'érotisme car il traite des limites, de la morale et de l'inavouable » (« *Poetic Politics* » 79)[17]. Elle poursuit en expliquant qu'« une personne créative a de l'imagination et est capable de traiter des émotions ambivalentes et des contradictions, aussi bien que de transformer la colère, l'extase, le désir, la douleur, ainsi de suite, en une signification sociale » (« *Poetic Politics* » 81)[18].

Soulignant le moment où ce procédé de transformation de l'émotion et de la sensation en une signification sociale commence à se détériorer, *Baroque d'aube* explore le phénomène ambigu d'un visage reconfiguré par une expérience extrême. La rencontre initiale de Cybil et de la Sixtine inspire à la première une réflexion sur la façon dont « la jouissance allait recomposer les traits de la bouche et du menton, alourdir les paupières, dilater les pupilles ou garder les yeux vifs » (19), sur celle dont, « la plupart du temps, le visage dessinait sa propre aura d'extase à partir de la lumière filtrant par la fente énigmatique que forment les paupières quand elles restent entrouvertes à égale distance de la vie et du plaisir » (19). Plusieurs pages après le récit de cette rencontre, Cybil et la Sixtine, se promenant dans les rues de Los Angeles, entendent des coups de feu au loin. « [C]omme pour prouver qu'elle savait la violence et la cruauté pérennes, la jeune Sixtine avait fait allusion à un vieil écrivain français [Georges Bataille] qu'elle avait récemment vu à la télévision. [...] Il avait décrit le supplice du Leng-Tch'e » (37) dont il avait été témoin, au début du siècle, enfant, dans les rues de Pékin. Cybil répond qu'elle connaît les images de cette fameuse torture à mort, images qui « ont d'abord été publiées en 1923 dans un traité de psychologie [de Georges Dumas], puis, en 1961, par un auteur [Bataille] qui les a investies d'une dimension érotique » (38). Troublée par l'utilisation des mots « extatique » et « érotique » (Bataille 237-39) « pour expliquer l'expression confuse que l'extrême douleur dessinait sur le

visage du supplicié » (38), Cybil accélère le pas en marmonnant « des paroles dont le sens échapp[e] à la Sixtine » (38). Cette rupture de la communication, qui prend la forme d'un excès de mots plutôt que d'un silence, suggère que Cybil est incapable de comprendre la torture : elle a de la difficulté à reconnaître l'expression du plaisir dans un visage marqué par la douleur. Les marmonnements de Cybil sont interrompus « par les cris d'une femme qui gesticul[e] au milieu de la rue en montrant sa poitrine tachée de sang » (38), signe qu'à travers les termes du texte, il y a danger à confondre la violence et la souffrance avec l'érotisme. La scène suggère qu'on ne saurait minimiser l'incidence destructive de cette confusion sur la vie des femmes.

Cybil est tourmentée, tant comme personnage que comme écrivaine, par la représentation de la violence et de la souffrance. En fait, elle « souffre de la mortification des femmes » (« *Kind Skin My Mind* » 108). Sa réaction à l'interprétation érotique du visage torturé à laquelle se livre Bataille (30-31) est du même ordre que celle que provoque la « pose terriblement gênante de *pietà* » (25) de la Sixtine. Dans les deux cas, elle est terrassée par une profusion de mots et d'images de mort et de violence qui proviennent des médias. Dans une scène comme dans l'autre, Cybil s'interroge sur « le volcan de violence qui déferle dans les villes » (23) ainsi que sur les raisons qu'elle a d'écrire « ce livre violent » (24) pour lequel « elle n'a ni le talent, ni le vocabulaire, ni l'expérience » (24). Le fait que Cybil, la protagoniste de *Baroque d'aube*, se voie constamment confrontée à des scènes de violence suggère que la référence à « ce livre violent » nous renvoit au roman même de Brossard. Dans la mesure où « ce livre violent » est son œuvre, il lui est impossible de prendre ces distances face à ces scènes de violence et de souffrance : elle en est en quelque sorte la complice. Installée à une terrasse de Buenos Aires avec ses co-chercheures, Irène et Occident, Cybil entend soudain une voix qui lui dit : « Tu crois que garder la distance te protégera contre la répétition, t'aidera à mieux comprendre la face cachée de tes personnages. Avoue que tu aimerais bien toucher le fond sans trop te salir. » (111)

Dans les pages qui suivent, j'explorerai « la face cachée » du personnage de Cybil. J'étudierai plus particulièrement le rôle qu'elle joue à l'intérieur de fantasmes qu'elle pourrait autrement condamner et le plaisir qu'elle prend à utiliser un vocabulaire violent et cru pour parler de la sexualité, alors que c'est un vocabulaire qu'elle devrait rejeter. Cette ambivalence chez Cybil est symptomatique des tensions présentes à l'intérieur du texte de Brossard — et du féminisme — entre la lutte contre la violence faite aux femmes, la souffrance ritualisée, et l'exploration de pratiques et de discours sexuels que caractérisent la passion et l'intensité du baroque.

Le cœur baroque de Cybil

Le texte de Brossard a peine à « garder ses mains propres » lorsqu'il touche à l'art religieux baroque, car cet art est non pas seulement sujet à la

réinterprétation homo-érotique : il implique de fréquentes références au sacrifice de soi et à la souffrance. Après tout, le martyre est au Baroque ce que les miracles sont à la Renaissance (Hartt 688). Les représentations de martyrs et de saints, conçues pour donner aux spectateurs l'impression d'une expérience extrême du divin et susciter chez lui une réaction émotionnelle intense, jouaient un rôle-clé dans le projet de stimuler la conviction personnelle que s'était donné la Contre-Réforme (Hartt 688). Comme les mêmes codes s'appliquaient aux œuvres sacrées et aux œuvres profanes (Lucie-Smith 79) et qu'on accordait de l'importance à la représentation du corps dans des états extrêmes, les représentations baroques de martyres oscillent de façon ambiguë entre l'extatique et l'érotique. Comme le remarque Saslow : « Le Saint Sébastien de Sodome, attaché à un arbre et transpercé de flèches, se tord en ce qui semble être une extase religieuse ouverte à de multiples interprétations personnalisées, à partir du modèle du sadomasochisme jusqu'au commentaire de l'artiste sur son propre "martyre" public. » (« *Homosexuality in the Renaissance* » 102)[19] Dans *Baroque d'aube*, l'exemple le plus frappant de réinterprétation homo-érotique de l'extase religieuse est celui d'un fantasme que Cybil imagine alors qu'elle s'entretient avec *padré* Sinocchio, à bord du *Symbol*.

Le prêtre discute avec elle du rôle des Jésuites dans la promotion de l'art et de l'architecture baroques en Argentine, en essayant de lui faire comprendre qu'elle ne connaîtra jamais l'ennui et qu'elle vivra toujours intensément si seulement elle accepte d'écouter son « cœur baroque » (155). Se détachant un instant de la conversation, Cybil se demande ce qui fait qu'un prêtre peut être considéré comme un jésuite (155). Elle l'imagine attaché à un arbre dans les forêts du Québec, tourmenté par les moustiques et les mouches noires. Sa peau, lorsqu'elle entre en contact avec des pierres incandescentes, se boursouffle, elle est « prête à éclater comme une identité » (155)[20]. Le brouillard enveloppe le martyr et, lorsqu'il réapparaît, c'est avec « les poignets liés et retenus au-dessus de la tête par un anneau de fer » (155), le corps « percé de partout » (155). En face de lui se tient un homme « en partie vêtu de cuir noir » (155) qui est occupé à évaluer le degré de douleur requis pour porter le martyr à l'orgasme. Chassant de son esprit cette image d'un homme qui « aime [...] cultiver sa douleur comme un art » (155), Cybil revient au *padré* Sinocchio, dont la bouche « tourne avidement de tous les tourments baroques autour de son dieu de délivrance » (155). Cependant, c'est elle, Cybil, qui vient à l'instant même de conjurer « tous les tourments baroques » de cet homme. C'est de *sa* rêverie qu'il est question.

Cette scène de torture du Jésuite est reprise ailleurs dans le roman lorsqu'il est question d'un tableau que Cybil désire vivement aller voir à la cathédrale Marie-Reine-du-Monde, à Montréal (176). Le tableau, *Le martyre des pères jésuites J. de Brébeuf et G. Lalemant au pays des Hurons 1649*[21], permet au texte d'intégrer un commentaire sur les modes populaires de représentation des Jésuites martyrisés[22]. Dans un rêve, Cybil assimile au

padré Sinocchio le Jésuite qui apparaît au premier plan du tableau. Elle s'étonne particulièrement de l'absence de signes de souffrance et d'agression dans le tableau : « Nulle part sur les visages, il n'y a trace de douleur, de haine ou de cruauté. Sinocchio est concentré, le regard patient vers le ciel. Les Indiens ont l'air paisible et pacifique de qui profite des premiers jours de printemps. » (177) Le texte de Brossard nous rappelle que le Jésuite témoigne de sa foi envers Jésus Christ en acceptant la douleur extrême. La description des Iroquois « paisible[s] et pacifique[s] » semblera plus étrange. L'image picturale dont elle rêve provient en fait d'une série de tableaux de Georges Delfosse qui racontent des épisodes de la fondation de Montréal et que Cybil a vus dans la cathédrale. Curieusement, les Iroquois du tableau original, avec leurs tisonniers brûlants, leurs seaux d'eau bouillante et leurs colliers de pierres incandescentes y sont dépeints sous des traits beaucoup plus agressifs que ne le suggère le rêve : dans l'ouvrage, paru en 1910, qui reproduit les photographies de ses propres œuvres prises par Delfosse, l'abbé Élie J. Auclair a beau jeu de décrire le contraste évident entre la figure « sereine » du père Jésuite et « celles de ses bourreaux si pleines de férocité » (27). En minimisant la gravité des actes et l'agressivité des Iroquois, le texte de Brossard vise à faire valoir d'autres formes de violence, soit l'esthétisation de la torture et de la souffrance ou encore la fabrication d'un mythe fondateur de Montréal, qui glorifie les épreuves des Jésuites et, du même coup, justifie la conquête spirituelle des Iroquois.

Cybil entretient une relation ambiguë avec les scènes de martyre et de sadomasochisme qui surgissent dans son rêve et sa rêverie. Tout en prenant sa revanche sur le prêtre et en critiquant le culte de la souffrance des Jésuites, Cybil ne parvient pas à échapper à la fascination que ce culte exerce sur elle. Vers la fin du récit, elle explique : « N'ai pu résister à l'envie de revoir ces toiles de Delfosse. Je ne sais pourquoi ces toiles sont restées gravées si longtemps dans ma mémoire de voyageuse. » (215) La rêverie de Cybil, son rêve et son désir naissant sont liés tout en demeurant les manifestations contradictoires d'un même fantasme, auquel je reviendrai après avoir considéré la façon dont sont construites les scènes de martyre et de sadomasochisme, ainsi que les différentes façons de les interpréter.

Le prêtre-devenu-Jésuite-devenu-*leatherman* de Cybil, tout comme le Saint Sébastien de Sodome, constitue tout à la fois l'objet et le résultat d'interprétations multiples (Saslow, « *Homosexuality in the Renaissance* » 102). La rêverie de Cybil autour de la passion jésuitique du *padré* Sinocchio pour le baroque a pour effet de démythifier l'expérience des jésuites, en soumettant virtuellement l'homme d'Église à la torture et en décrivant de façon détaillée l'effet de cette torture sur son corps. Puis, joignant le martyre du jésuite à la scène s/m, le fantasme sexualise la passion du prêtre/Jésuite. De nouveau, *Baroque d'aube* fait jouer l'ambivalence inhérente à la notion de passion entre l'affection ardente et l'enthousiasme heureux, et le sacrifice de soi et la souffrance. Le texte laisse entendre que la passion

implique un état d'assujettissement ou de dépendance. La stratégie de lecture du Jésuite en tant que *leatherman* du texte ressemble à celle de la *pietà* en tant qu'étreinte lesbienne, et à la relation entre les sibylles de Michel-Ange et la chapelle Sixtine réinterprétée comme une liaison entre femmes de différents âges. Dans chaque cas, le texte reconstruit le sujet chrétien en des termes homo-érotiques et il pulvérise des catégories supposément absolues comme celles du sacré et du profane.

On doit néanmoins établir une distinction entre l'analyse qui, dans le texte de Brossard, suggère l'existence d'une continuité radicale entre l'état de résignation qui caractérise le martyr et celui du masochiste et l'interprétation qui transforme un sujet comme la Vierge pleurant la mort du Christ ou la création du monde par Dieu en l'image d'une liaison entre femmes. Il n'est pas difficile, en effet, d'intégrer une *pietà* lesbienne, par exemple, aux discours lesbiens-féministes sur la sexualité et, plus particulièrement, à l'ensemble des symboles positifs que véhiculent les bras des femmes dans les textes de Brossard (voir Moyes « *Composing* » 215-19). Tandis que l'étreinte entre les deux femmes constitue une véritable réinterprétation de la *piéta*, symbole de douleur et de lamentation, comme un doux corps à corps, les *leathermen* confirment le martyre du jésuite en transformant la douleur en art de la douleur : l'extase, dans un tel cas, continue d'être dérivée de la souffrance et de lui être associée. L'appropriation de la *pietà* et le rejet du martyr-devenu-*leatherman* de Cybil en disent long sur ce que la culture lesbienne-féministe sauvegarde et respecte — ce qui y devient « sacré » — et ce qui lui répugne et l'offense.

Pure Lust (1984) de Mary Daly, texte qui porte sur des scènes de martyres de jésuites dans le cadre d'une analyse des éléments sadomasochistes présents dans la société occidentale, constitue un intertexte important pour Baroque d'aube[23]. Le texte de Daly retrouve dans la description écrite de telles scènes le même message que celui que Brossard tire de leurs représentations picturales : « Les nobles chrétiens ne se défendent pas. » (38)[24] Pour Daly, « [m]ême si ces descriptions de "martyrs" jésuites ne nomment pas explicitement l'aspect *sexuel* de l'ascétisme, elles reflètent évidemment le penchant masculin pour les obsessions lubriques. Le fanatisme des missionnaires et aussi de l'auteur zélé de ces descriptions appartiennent au domaine de la sado-hagiologie. » (38)[25] D'une certaine façon, en juxtaposant les martyrs et les *leathermen*, *Baroque d'aube* vise à expliciter « l'aspect sexuel de l'ascétisme » (38) auquel Daly fait allusion. Tout comme *Pure Lust* voit dans le sadomaso- chisme « essentiellement un phénomène phallique, intrinsèquement dirigé vers la destruction de l'autre » (60)[26], le roman de Brossard limite aux hommes sa représentation du sadomasochisme. Selon Daly[27], « lorsque les femmes, qu'elles soient hétérosexuelles ou lesbiennes [...] se proclament pro-sadomasochisme, pro-pornographie [...], elles pratiquent peut-être la "liberté d'expression", mais elles ne parlent ni *comme* féministes ni *pour* les féministes » (66)[28]. Le texte de Brossard joue davantage avec ces notions que celui de Daly, en

autorisant une certaine ambivalence qui est par ailleurs totalement absente de l'œuvre de cette dernière. Toutefois, on pourrait peut-être dire que l'analyse de ce que Daly appelle la « sadosociété » et la « sadospiritualité »[29] qui la légitimise (35) structure la rêverie de Cybil. Vue sous un tel angle, la représentation des pratiques sadomasochistes dans la rêverie apparaît davantage comme une dénonciation du rituel chrétien que comme une restructuration homo-érotique de telles pratiques.

Les connotations négatives du sadomasochisme à l'intérieur de *Baroque d'aube* sont renforcées par des parallèles que le texte établit entre l'allure corporelle des *leathermen* et celles des femmes et des hommes que Cybil et la Sixtine croisent dans les rues de Los Angeles. Le texte de Brossard associe l'attirail du sadomasochisme — tatous, perçages corporels, cuir noir et têtes rasées — à la tyrannie grammaticale du masculin sur le féminin :

> Une autre rue. Ici et là des femmes aux biceps tatoués, des hommes torses nus, mamelons percés, déambulaient, crâne rasé, bottes noires. Armés d'un vocabulaire neuf, ils laissaient les murs tranquilles, préférant dans leur chair des signifiants plus directs. Ils portaient la peur et le danger dans leur corps ne s'armant qu'à l'occasion de rencontres sexuelles où l'électricité d'un seul coup sortait bruyamment de leur chair. (39)

De façon inhabituelle, le texte de Brossard n'évoque que de façon fugitive les femmes aux biceps tatoués pour se concentrer quasi-exclusivement sur les hommes. Cette préséance du masculin sur le féminin ne saurait qu'étonner, surtout si l'on se souvient de l'affirmation faite par Brossard en 1973 selon laquelle « [u]ne grammaire ayant comme règle : le masculin l'emporte sur le féminin doit être transgressée » (« Vaseline » 14). En confirmant la règle grammaticale, le texte de Brossard associe le marquage de signes dans la chair à une économie de la représentation qui a pour effet de rejeter les femmes dans l'ombre. Dans les termes du texte, il apparaît relativement impensable que celles-ci puissent tirer un plaisir sexuel de telles pratiques. De plus, il est pratiquement tout aussi impossible à imaginer que des objectifs féministes puissent être servis par la culture *queer*, une culture qui expose l'incohérence et ainsi déstabilise les catégories comme celles de « femme » et d'« homme »[30]. S'insérant entre la conversation sur la mort de Leng-Tch'e (37-38) sous la torture et une métaphore de la mort comme bourreau (39), le passage cité plus haut nous invite à comparer le maître de la scène sadomasochiste au tortionnaire/bourreau. Il est vrai que les deux rôles sont caractérisés de façon différente dans le texte, où l'un est présenté comme un homme « concentré », qui « calcule » minutieusement la douleur pour en arriver au plaisir (155), alors que l'autre « qui ne compte pas les gouttes de sang sur son front libre et solitaire » (39) se contente, purement et simplement, d'exécuter sa victime. Il demeure, néanmoins, que le spectre de la torture, apparu très tôt dans le texte (37-39), revient hanter la scène du fantasme de Cybil tout empreint de sadomasochisme masculin (155).

Pourtant si, comme le suggère le texte de Brossard, le sadomasochisme apparaît comme une source potentielle de danger dans une perspective féministe, quelle place lui revient dans ce fantasme? Il semble à l'évidence que le texte utilise le fantasme sadomasochiste pour renforcer sa critique féministe de l'ascétisme religieux et de la souffrance ritualisée. D'un autre côté, le sadomasochisme fait tout aussi bien partie de Cybil et de sa critique féministe que les scènes de martyre « gravées si longtemps » (215) dans sa mémoire. Le fantasme sadomasochiste rappelle le rapport troublant, mais nécessaire, que le féminisme entretient avec les questions de la sexualité, du pouvoir et de la violence. Il évoque, par exemple, un désir inconscient ou refoulé de domination — le désir de faire souffrir le prêtre — qui ne peut être ni avoué ni satisfait, mais que l'on peut transposer en une scène de martyre, même sadomasochiste, qu'il soit possible de *regarder*. L'absence d'un maître ou d'un tortionnaire dans les rêves de Cybil à propos du martyr jésuite, une absence soulignée par la présence d'un maître dans la scène sadomasochiste (et dans les tableaux de Delfosse), est symptômatique de cette répression et, simultanément, rappelle le rôle que joue Cybil dans l'orchestration du martyre du *padré* Sinocchio.

Dans leur *Vocabulaire de la psychanalyse*, Laplanche et Pontalis définissent le fantasme comme un « scénario imaginaire où le sujet est présent et qui figure, de façon plus ou moins déformée par les processus défensifs, l'accomplissement d'un désir et, en dernier ressort, d'un désir inconscient » (152). Le fantasme de Cybil se manifeste à différents niveaux : elle imagine d'abord le martyre de *padré* Sinocchio dans une rêverie et le réinterprète comme une scène masochiste; plus tard, elle rêve au martyre du *padré* tel qu'il serait représenté dans un tableau; enfin, elle ressent un besoin inexplicable de voir le tableau évoqué dans le rêve. En m'appuyant sur l'œuvre de Teresa de Lauretis à propos des formes et des effets du fantasme, je situerais ce dernier besoin de voir le tableau, exprimé à la première personne, sur le versant conscient de la « gamme fantasmatique »[31], tandis que la rêverie appartiendrait au versant de l'inconscient (143-48). La rêverie, la forme du fantasme qui, dans ce contexte, requiert le plus d'analyse, constituera le point central de ma lecture.

Le fait que Cybil ne soit pas la protagoniste de sa rêverie me paraît significatif d'un refus de toute implication personnelle dans les scènes de martyre et de sadomasochisme. De plus, elle ne semble même pas prendre plaisir au fantasme : immédiatement après cet épisode, elle va rejoindre Irène, Occident et les plongeurs, « soulagée d'avoir échappé à l'enthousiasme de Sinocchio et surtout à la morbidité des images qu'il avait éveillées » (152). Cependant, lorsqu'elle imagine le *padré* Sinocchio souffrant dans les forêts de la Nouvelle-France et qu'elle substitue son visage à celui du jésuite du tableau de la cathédrale, Cybil tient le rôle de la maîtresse dans la scène de martyre jésuite. En fait, la rêverie de Cybil est conforme au conseil du prêtre qui lui suggérait de laisser parler son « cœur

baroque » pour échapper à l'ennui — dans ce cas-ci, l'ennui distillé par le propre discours de l'homme d'Église.

On pourrait soutenir que le fantasme en question n'est pas celui de Cybil mais celui du prêtre et que Cybil ne fait que le concrétiser, pour ensuite dénoncer ses « aspects sexuels » (Daly 38). Toutefois, cette hypothèse supposerait à la fois la négation du « cœur baroque » de Cybil — un cœur dont l'influence ressort avec évidence du discours sur la sexualité qui se développe ailleurs dans le roman — et l'abandon de toute idée de continuité entre la rêverie, le rêve et l'éveil du désir de Cybil. On ne peut réduire ce fantasme à la simple condamnation des pratiques de martyre et de sadomasochisme qui y sont représentées. Il incarne probablement les désirs (féministes) de Cybil, quoique de façon indirecte et déformée; en fait, le niveau de détournement ou de déformation est proportionnel au danger que ces désirs représentent pour le féminisme. Le fait que les deux scénarios ne mettent en scène que des hommes et illustrent des désirs masculins plutôt que ceux de Cybil ne constitue pas seulement un symptôme de ce que Daly nomme la « sadosociété » : le malaise que le féminisme éprouve devant des femmes qui témoignent d'un désir de s'infliger de la douleur[32] ou d'opprimer d'autres femmes rend impossible une présence féminine à l'intérieur du fantasme sadomasochiste de Cybil. Comme l'a montré Julia Creet dans un article sur la façon dont le féminisme s'inscrit dans l'économie du fantasme sadomasochiste lesbien, cette anxiété a structuré les luttes menées au sein du mouvement féministe depuis la fin des années 1970 :

> Les allégations des deux côtés des « guerres sexuelles » sont remarquablement similaires : l'allégation de la répression (par le côté « pro-sexe ») et l'allégation de la reproduction du désir masculin (par le côté « anti-sexe ») charrient avec elles le poids symbolique de la figure du père. L'ambivalence du fait d'assumer l'une ou l'autre position de pouvoir est indissociable du monopole que les hommes ont gardé sur elles. Nous avons peur de tomber dans le système dont nous essayons de nous libérer. (138)[33]

Creet poursuit en remarquant qu'« [u]n mouvement basé sur le refus de toute transformation du corps en objet sexuel a de graves difficultés à réapprivoiser le sexe et ses complexités inhérentes sans questionner les principes du mouvement même » (139)[34].

Transposés dans le texte de Brossard, les arguments « pro-sexe » et « anti-sexe » du féminisme prennent la forme suivante : la représentation de femmes participant à des scènes de martyre ou de sadomasochisme ne fait que reproduire les désirs masculins; la négation de la participation des femmes à des scènes de martyre ou de sadomasochisme ne fait que refouler certains aspects de leur subjectivité et de leur sexualité. En toute apparence, le fantasme de Cybil confirme le premier argument (anti-sexe), mais lorsqu'on l'analyse de façon symptomatique, on découvre qu'il sert également à illustrer le deuxième argument (pro-sexe). L'ascétisme du

prêtre, par exemple, peut être interprété comme une figure de discipline et de régulation des fantasmes sexuels dans le contexte des discours « anti-sexe » féministes. Si la scène s/m traite de l'intensité érotique résultant de l'abstinence et l'auto-discipline du prêtre, elle exprime aussi bien des désirs qui ne sont pas représentés à l'intérieur de certains discours féministes (voir Creet 142-45). Le désir de domination qu'on a évoqué plus haut — celui de faire souffrir le prêtre — est peut-être le moins dangereux et le plus facilement avouable de ces désirs, parce qu'il peut être compris comme une forme de résistance féministe.

La rêverie de Cybil, où elle adopte la position de « voyeuse » d'une scène s/m entre hommes, non seulement transgresse l'interdit relatif au sadomasochisme (et à la pornographie), alors même qu'elle cherche à l'établir, mais elle renégocie également le retour[35], dans les années 1980, de certaines lesbiennes, notamment de lesbiennes sadomasochistes telles Pat Califia, « vers les hommes [gais] en tant qu'instructeurs et partenaires de jeu dans le monde des pratiques sexuelles » (Creet 148)[36]. Il est possible, et même utile, de lire *Baroque d'aube* comme une méditation sur les rapports paradoxaux que des femmes peuvent entretenir avec les fantasmes d'hommes gais, et la resignification de ces derniers. Les contacts répétés de Cybil et de la Sixtine avec des rituels érotisés de violence et de domination nous rappellent que l'histoire de la lutte des femmes contre de tels rituels sous-tend leur critique du sadomasochisme. La relation des femmes avec la culture *queer* que Cybil et la Sixtine observent dans les rues de Los Angeles est, elle aussi, tout à fait particulière. En soulignant la façon dont les grammaires « masculinistes » gomment le féminin, *Baroque d'aube* dit la préoccupation que provoque en Brossard une culture *queer* qui semble vouloir donner lieu à une construction du sujet apparemment neutre, mais ultimement masculine. Par ailleurs, le texte de Brossard va jusqu'à reconnaître que les hommes gais ont ouvert un espace critique, représentationel et érotique pour les femmes. La possibilité même de la liaison entre Cybil et la Sixtine résulte de l'ouverture de cet espace, aussi bien pictural qu'architectural, car il a été créé par Michel-Ange, qui était lui-même un homosexuel. Bien sûr, le texte de Brossard réinvente l'espace entre Cybil et la Sixtine dans les termes d'une sexualité et d'un désir spécifiquement lesbiens. C'est ainsi qu'il s'approprie des détails comme les bras musclés des sibylles — dans lesquels Saslow reconnaît le signe de « l'obsession [de Michel-Ange] pour la forme nue masculine idéale » (« *A Veil of Ice* » 78)[37] — au profit de sa propre quête de figures féminines de passion et d'autorité culturelle : « L'envie d'écrire lui vient forte, musclée comme une femme séduisante qui l'entraînerait au lit. » (149) Toutefois, l'érotisme de l'incongruité qui inspire la relation entre Cybil et la Sixtine motive également celle que les fresques de Michel-Ange entretiennent avec le texte de Brossard.

Véritables tourments de plaisir

Pourquoi le sadomasochisme se retrouve-t-il ainsi au cœur des débats lesbiens-féministes sur la sexualité qui ont eu cours depuis les années 1970? Discutant de cette question, Susan Ardill et Sue O'Sullivan émettent l'hypothèse que « le manque de lesbiennes parlant de, et écrivant sur, la sexualité, le langage de l'excitation sexuelle utilisé dans, par exemple, *Coming to Power: Writings and Graphics on Lesbian SM*, retentit parmi un grand nombre de femmes qui ne sont pas, techniquement parlant, intéressées au s/m » (40)[38]. Le fait qu'un langage sadomasochiste lesbien puisse servir à explorer et à communiquer une intensité sexuelle revêt une grande importance pour ma lecture du texte de Brossard. Même si la douleur physique ne constitue pas une source de plaisir dans les rencontres sexuelles entre femmes dans *Baroque d'aube*, le thème du plaisir vient à plusieurs reprises s'inscrire poétiquement à travers des métaphores sur la violence, la souffrance et les sensations extrêmes : c'est ainsi que le roman débute par l'injonction de la Sixtine à Cybil « dévaste-moi, mange-moi » (13); plus tard « [l]es corps s'immolent, s'immobilisent, frôlent l'extase » (44); puis écoutant le violon de la Sixtine, Cybil « file un parfait tourment de plaisir » (45); les sons stridents lui rappellent les « toiles de Luciano Fontana qui, lacérées d'un seul coup, ouvrent l'œuvre, fendent le cœur et font du déchirement une question de fond » (45); enfin, plus loin, Cybil imagine une femme aux « [l]èvres ardentes à brides abattues sur le cou » (149). Par un bref survol du discours tenu autour de plusieurs des scènes évoquées ci-dessus, cette dernière section nous ramènera aux questions soulevées par l'analyse de l'appropriation du (et de la résistance au) baroque dans le texte.

Très tôt dans le roman de Brossard, on insiste sur le fait que les deux femmes réunies dans la chambre d'hôtel ne se connaissent pas et qu'elles n'ont échangé que deux ou trois phrases avant d'avoir une relation sexuelle. Même si cette circonstance est présentée comme une résistance au biographique de la part de Cybil, elle est tout aussi significative de la résistance aux discours lesbiens-féministes sur la sexualité de la fin des années 1970 et des années 1980. Ruby Rich remarque qu'à l'intérieur de ces discours, « l'amour remplace le mariage comme prérequis pour une relation sexuelle » (529)[39]. En présentant une rencontre sexuelle entre femmes se situant en dehors — ou aux limites — d'une relation établie, la scène d'ouverture de *Baroque d'aube* s'éloigne de ces discours. De plus, la conversation entre Cybil et la Sixtine à propos de l'habitude que la première a acquise « de "prendre l'ascenseur" avec des inconnues » (26) met en relief le thème de la promiscuité, autre « sujet irrespectable »[40] qui, d'après Ardill et O'Sullivan, a conduit à la formation de coalitions au sein des « radicales sexuelles » (40)[41]. La sous-culture lesbienne-féministe, poursuivent Ardill et O'Sullivan, a tendance à utiliser toutes « ces problématiques qui se chevauchent »[42] comme des prétextes de disputes autour du sadomasochisme (40).

La rencontre sexuelle sur laquelle s'ouvre *Baroque d'aube* établit — et confond — des positions de domination et de soumission au sein même des relations entre Cybil et la Sixtine. Lors de cette rencontre, l'ordre, « [d]évaste-moi, mange-moi » (13), est donné par celle-là même qui veut se perdre dans une expérience limite avec l'autre. Ce que Ardill et O'Sullivan appellent « la dramatisation sexuelle [...] des relations de pouvoir » (40)[43] est marqué d'encore plus d'ambivalence dans l'ordre tel qu'il est entendu par Cybil : « Dé, vaste moi, m'ange moi. » (13) Cette énonciation très poétique met l'accent sur l'instabilité des relations de pouvoir et des modes d'interpellation dans la scène. L'interjection « Dé », qui semble interpeller Cybil, est suivie d'une expression en apposition, « vaste moi », que l'on interprétera facilement comme une référence à la Sixtine. De même, « m'ange moi » semble être un impératif adressé à Cybil, mais un impératif présentant les caractéristiques d'un verbe pronominal, c'est-à-dire d'une action réfléchie sur son sujet. L'intense équilibre nécessaire au maintien du rythme fébrile de la scène d'ouverture continue de caractériser la description de deux danseurs de tango que l'on peut lire un peu plus loin :

> Un morse en dents de scie et d'harmonie ordonne chaque pas de rapprochement, éloigne les corps, prolonge le pacte. Bris de rythme. Bris de pacte. La robe s'entr'ouvre, de la cheville au galbe de la cuisse, la femme fait volte-face. Beauté des gestes codés, fétiches là où l'équilibre est tout à la fois précaire, indiscutablement parfait. (121)

Le tango, tout comme la pratique sexuelle des deux femmes, est une performance assujettie à des règles strictes, tout en demeurant ouverte à des resignifications infinies. Les deux scènes flirtent avec la distribution de rôles selon des règles précises. Le langage du texte de Brossard met plus spécifiquement l'accent sur le mouvement ou le *jeu* entre les rôles, les positions et les modes d'interpellation. Le texte suppose que le pouvoir est négocié avec précaution et qu'il demeure perpétuellement en mouvement : c'est l'ange que Cybil croit entendre dans l'ordre de la Sixtine.

Lorsque les femmes prennent l'ascenseur ensemble pour la deuxième fois, Cybil regarde la Sixtine se maquiller de peine et de misère en préparation de son concert de la soirée. Le spectacle de ce rituel cosmétique provoque en elle des réactions contradictoires : elle remet d'abord en question « les outils et les stratégies inventés pour faire face » (42) et associe le maquillage, le tatouage et le perçage à un « débordement de sens » (43); puis, elle en vient à prendre plaisir au spectacle, pour s'approprier, dans le cadre d'une rencontre sexuelle, l'image des lèvres « qu'elle colore d'un rouge vif qui brille comme mille scénarios dans l'histoire des femmes » (43). Les réflexions suscitées par le spectacle du maquillage expliquent en partie l'ambivalence de Cybil face aux images de torture et de souffrance, dans cette scène comme dans tout le roman :

> Imaginer donnait à la vie un autre tournant qui laissait supposer que la vie avait un sens. Quand l'impression était de bonheur, le

> sens figeait. Quand la douleur se montrait, le sens reprenait ses droits, incitait à de prodigieuses croyances, à de terribles altercations avec le monde des vivants. Chaque altercation engendrait de nouveaux mots, forçait le sens comme on tord un poignet. (42-43)

Les réflexions de Cybil suggèrent que la souffrance, beaucoup plus que le bonheur, stimule l'imagination et favorise la création d'objets culturels. Dans *Baroque d'aube*, la souffrance génère le vocabulaire nécessaire à l'exploration de l'intensité de la passion des femmes et à l'écriture de « ce livre violent » (24). Mais le sens produit par cette souffrance est coercitif. Cybil se retrouve bientôt plongée dans une époque baroque de transformations culturelles débordant d'un trop-plein d'esthétiques, « trop de sensations, de savoirs. Trop de signes » (151) à analyser et à interpréter. Malgré cette diversité, il y a « [t]rop de la même vie » (151). L'ultime résistance de Cybil face à cette répétition engourdissante qui se voudrait différence est de « [d]échiffrer, calculer les chances de vie au milieu des signes. Calculer en chaque signe une plus-value permettant de danser au milieu des questions et de justifier le bonheur » (43). La réinterpétation par Cybil de la pose initiale de la *pietà* comme d'une étreinte avec la Sixtine constitue un exemple concret de ce travail de manipulation des signes.

La scène où Cybil regarde la Sixtine se maquiller se révèle comme un rituel élaboré de préliminaires. La méditation de Cybil sur la souffrance débouche sur une rencontre sexuelle : « Tout s'embrouille. Les gestes diffèrent de ceux de la veille. Autres mots, autres caresses. La chambre s'emplit d'une énergie toute vierge. Les corps s'immolent, s'immobilisent, frôlent l'extase » (43-44). Même si Cybil qualifie d'abord le maquillage de « débordement de sens », le point culminant de la scène suggère plutôt qu'elle n'est pas immunisée contre l'effet de ce spectacle d'assombrir les yeux et d'enflammer les lèvres. Le discours, engendré par son plaisir sexuel, dérive d'un vocabulaire de l'extrême qu'elle a en commun avec le christianisme. Tout comme les représentations de martyres dans la peinture de Delfosse et le fantasme de Cybil, cet épisode oscille de façon ambiguë entre la sexualité et l'ordre du religieux. À l'occasion d'une réflexion sur la relation entre le féminisme et les fantasmes de domination érotique, Jessica Benjamin associe les continuités entre l'érotisme sexuel et religieux à la « sécularisation de la société » et à l'érosion des « formes de vie commune existant auparavant qui permettaient une transcendance rituelle » (296)[44] . À ses yeux, « le masochisme ou la soumission érotique exprime le même besoin pour la transcendance de soi [...] précédemment satisfaite et exprimée par la religion » (296)[45]. Même si le discours de Benjamin est empreint d'une nostalgie dépourvue de tout intérêt pour le texte de Brossard, ses propos aident néanmoins à expliquer pourquoi — chez des peintres comme Sodome et chez des écrivaines comme Brossard — les discours sur l'extase religieuse sont si facilement investis par les fantasmes d'extase sexuelle (voir aussi Bataille 239). La tension entre le récit de l'atteinte de la transcendance à travers le sacrifice que suggèrent les mots

« immoler » et « extase », et la résistance opposée à un tel récit (la resignification de la *pietà* demeure une énigme.

Comme je l'ai suggéré à plusieurs reprises, Cybil ne peut éviter de se prêter à une certaine complicité et elle n'est pas dépourvue de contradictions. Elle est capable d'analyser les mécanismes par lesquels la souffrance génère un ensemble spectaculaire de signes qui ne produisent que peu de sens. Par exemple, lorsque Cybil entend un ancien membre des Hell's Angels faire à d'autres élèves de sa classe d'espagnol le récit de plusieurs viols collectifs dont il aurait été témoin, elle remarque que « [t]out mécréant sachant raconter la main sur le cœur, confidentielle, détournait chaque fois le sujet au profit d'une promiscuité affective qui faisait "comprendre" les pires crimes et goûter le morfil des sens aiguisés par la violence » (109). Cybil n'en est pourtant pas moins elle-même sensible à une poétique de souffrance et au « morfil des sens aiguisés par la violence ». Elle continue de suggérer la même chose lorsqu'elle réfléchit à la forte envie qu'elle éprouve de voir les tableaux de Delfosse dans la séquence qui clôt le roman : « Il se pourrait après tout que nous soyons en mesure de reproduire la joie de vivre tout en introduisant comme autant de motifs décoratifs nos tourments et quelques mauvais arguments au large de la joie. » (215)

Les contradictions et la complicité de Cybil sont cruciales pour comprendre la façon dont le texte de Brossard à la fois s'approprie le baroque et lui oppose une résistance. Cybil ne participe qu'à contrecœur à la fabrication de « ce livre violent » (24), *Baroque d'aube*. Sa résistance procède d'une conscience critique des tendances à esthétiser et érotiser la douleur que manifestent toute une gamme de discours — de celui du christianisme à celui de la science occidentale. Elle participe de manière passionnée aux projets et aux relations dans lesquels elle s'engage avec d'autres femmes. Consciente de l'exubérance et de la dimension sexuelle inhérente au baroque, elle recule tout de même lorsqu'elle se voit confrontée à ce spectacle effréné de violence ritualisée. Car, si le baroque constitue le théâtre de l'intensité sexuelle, il est aussi celui de la douleur. Le façonnement du corps baroque, surtout le lacérage et le marquage de la chair, peut être associé de manière incertaine à une éthique lesbienne-féministe qui « rejette la mortification comme mode d'existence » (« *Kind Skin My Mind* » 108), ainsi qu'à une politique lesbienne-féministe qui n'est pas disposée à risquer l'apparence d'un attachement passionné aux termes de sa propre subjection (voir Butler 6). Malgré tout, dans *Baroque d'aube*, un texte aux agencements inattendus et précaires, il demeure possible, par le détour d'une méditation sur le « [m]aquillage, tatouage et perçage » (43), de conclure le récit sur un crescendo de passion lesbienne.

On peut dire de ce roman qu'il résiste au baroque en opposant une résistance à la culture électronique qui pousse la production de signes jusqu'à un « débordement de sens » répétitif et insensé « qui ne transforme rien » (« *E* muet mutant » 11). Cependant, le texte de Brossard se tourne lui

aussi vers le baroque et plus particulièrement vers l'art religieux baroque, pour explorer de nouveaux vocabulaires et de nouveaux discours sur la sexualité lesbienne. L'art religieux baroque présente des thèmes qui se prêtent à l'appropriation et à la resignification (les sibylles de Michel-Ange, la *pietà*) et d'autres qui sont davantage susceptibles d'inspirer la résistance et la critique (les martyrs jésuites). En dépit du déploiement de ces stratégies de resignification et de critique, cela signifie que la poétique de la souffrance et du sacrifice de soi qui sous-tend les images de *pietà* et de martyrs présente une valeur considérable dans les représentations du plaisir que l'on retrouve dans le texte, qu'il s'agisse du plaisir d'écouter de la musique ou de regarder un tango ou encore du plaisir sexuel. Si le féminisme a un côté moralisateur, il a également un côté baroque. En un sens, *Baroque d'aube* nous présente ces deux aspects, en laissant au lecteur le soin de se demander où cesse la passion et où commence la douleur, quelle est la différence entre le *leatherman* et le tortionnaire, entre l'exubérance et le débordement, entre la resignification lesbienne-féministe et le cliché. Face à tant d'ambivalences — si importantes pour le baroque — le lecteur ne peut que se plier à l'injonction de Cybil et «[d]échiffrer» (43).

Notes

* Je tiens à remercier Nancy Roussy de l'aide qu'elle m'a apportée dans le cadre de ma recherche, de même que pour m'avoir fait part de ses réflexions sur les contradictions inhérentes au texte de Brossard. C'est elle qui a produit cette version française, qu'a ensuite révisée Isabelle Charbonneau. Je suis également reconnaissante à Robert K. Martin de ses conseils. La recherche qui a mené à cette analyse a été rendue possible grâce à des bourses du Fonds pour la formation de chercheurs et du Fonds d'aide à la recherche du Québec, ainsi que du Conseil de recherches en sciences humaines du Canada.

1. J'utilise le terme de « baroque » (avec une minuscule) en référence aux pratiques et préoccupations qui ont fait surface au vingtième siècle, et réserve celui de « Baroque » à la période d'histoire de l'art qui s'étend environ de 1580 à 1750.
2. Le thème de « baroque » n'a pas complètement disparu dans les années 1970 et 1980. Il refait surface, par exemple, dans l'œuvre d'André Bourassa et de Marchand, à la fin des années 1970, et dans celle de Louise Dupré, à la fin des années 1980. Avec la recrudescence d'intérêt pour le baroque qui a marqué les années 1990, on s'est mis à l'utiliser plus souvent. Voir, par exemple, les travaux de Robert Richard sur Hubert Aquin (1990), de Claudine Bertrand sur les nouvelles tendances dans l'écriture québécoise (1993), de Pierre L'Hérault sur Antonio D'Alfonso (1994) et de Michel Peterson sur Gauvreau (1994).
3. « The projection of a mythic space freed of inferiorizing patriarchal images » (version originale). La traduction vers le français des textes originaux anglais ont été faite par Nancy Roussy et Lianne Moyes.
4. « What initially appeared to be a disadvantage became a tool, a means to transform the very nature of creativity. »
5. « I am amazed how difficult it seems for women playwrights to create dialogue between women outside of the mother-daughter relationship. Most of the time,

female characters will interact through monologues. Is it because of a feminist ethic that won't allow for power relations or hierarchical roles among women? »

6. Comme le remarque Ruby Rich dans son étude de l'évolution des attitudes féministes envers la sexualité à la fin des années 1970 et durant les années 1980 : « la défense du sadomasochisme lesbien est reliée à une attaque contre le féminisme lesbien des années 70 et sa fausse orthodoxie (la non-exploitation, les relations de pouvoir égales, etc.) ». Traduction de « the defense of lesbian sadomasochism is linked to an attack on 1970s lesbian feminism and its assumed orthodoxy (nonexploitation, equal power relations, and so forth) » (532).
7. « To see all antiquity [as] "preparation for the Gospel" ».
8. Les *ignudi* sont les figures nues qui portent les médaillons et les tablettes sur lesquels sont inscrits les noms des prophètes et des sibylles. Tout comme les captives et les esclaves que Michel-Ange sculpta durant cette période, les *ignudi* préfigurent le mouvement brusquement interrompu, les formes tordues et l'expression intense des visages caractéristiques de la sculpture et de la peinture baroques (O'Malley 101; Blunt 374).
9. « Names in the novel are so pointedly symbolic that the text reads in part like a fable or an allegory. »
10. L'allégorie, forme associée au baroque par Walter Benjamin (166) et Christine Buci-Glucksmann (68), permet d'opérer un glissement entre les moments historiques, certes, mais aussi entre le mythique et l'historique, le spirituel et le matériel, les fresques de Michel-Ange et les amantes lesbiennes d'aujourd'hui.
11. Je pense, par exemple, à *Goblin Market* de Christina Rossetti, à *The Well of Loneliness* de Radclyffe Hall, à *The Color Purple* d'Alice Walker, à des poèmes tels que « Immaculate, Inviolate : *Como Ella* », « Holy Relics » et « My Black Angelos » dans *Borderlands/La Frontera* de Gloria Anzaldua, à *Oranges are not the only Fruit* de Jeanette Winterson, et à des titres tels que « Passion Play » dans *Coming to Power* (Samois), « Virgin's Request » dans *The Second Coming* (Pat Califia et Robin Sweeney), et « Jesus Taught Me to Bottom » dans *Some Women* (Laura Antoniou).
12. Malgré l'accent mis sur la Renaissance dans le titre, la première ligne du résumé de synthèse fait bel et bien référence aux « périodes de la Renaissance et du Baroque » (90).
13. « Succumbing to the ascetic Counter Reformation, each [painter] turned from the pagan subjects forbidden by the Council of Trent toward exclusively religious imagery. Although Judeo-Christian myth officially offered less material for homosexual identification, many artists' treatment of religious heroes suggests a veiled or half-conscious sensitivity toward male beauty and emotion. »
14. Dans son analyse de la pièce de théâtre *Les Feluettes* de Michel Marc Bouchard (adaptée pour les besoins du film *Lilies* de John Greyson), Robert K. Martin commente de façon pertinente la tension entre une Église « fondée sur la haine du corps et la répression du désir » et une autre qui « fait une place [...] pour l'homo-érotisme ». Traduction de « a church "founded on the hatred of the body and the repression of desire" and a church which "makes a place […] for the homoerotic" ».
15. Je ne veux pas donner l'impression que les figures classiques dominent les textes de Brossard ou qu'il n'y ait que deux discours possibles, le classique et le chrétien. Dans son effort pour perturber les codes et des symboles dominants, l'écriture de Brossard couvre un très large spectre — de la littérature à l'économie, en passant par la physique et la culture populaire — et intercale ces discours de manières inattendues.

16. La couverture de *Baroque d'aube* présente également la *pietà* comme une étreinte entre deux femmes, toujours en rapport avec ce glissement d'une esthétique renaissante à une esthétique baroque. Les deux visages apparaissant au coin supérieur droit sont tirés d'un tableau de Botticelli (datant environ de 1490) intitulé *Pietà*.
17. « There are themes that are bound to have if not an ideological at least a troubling effect: *Sexuality*, eroticism, homosexuality, lesbianism — something is always at stake with eroticism because it deals with limits, the moral, and the unavowable. »
18. « A creative person has imagination and is able to process ambivalent emotion and contradictions as well as transforming anger, ecstasy, desire, pain, and so on, into social meaning. »
19. « Sodoma's Saint Sebastian, bound to a tree and pierced with arrows, writhes in ostensibly religious ecstasy open to multiple personalized interpretations, from the epitome of sado-masochism to the artist's comment on his own public "martyrdom". »
20. Les comptes rendus des morts par torture des Jésuites comme les pères Brébeuf et Lalemant dans les *Relations des Jésuites* fournissent des détails similaires.
21. Ce tableau, l'œuvre du peintre Georges Delfosse (1869-1939), produit en 1908 et 1909, n'appartient pas, bien sûr, à la période baroque, mais il s'y rattache néanmoins en illustrant un sujet religieux du dix-septième siècle, les martyrs jésuites de la Nouvelle-France.
22. Dans son histoire des Jésuites, Jean Lacouture voit dans l'œuvre de l'historien du dix-neuvième siècle Jules Michelet une critique pertinente de l'art inspiré par les Jésuites et leur « esprit de mort » (2:102). Michelet dit des Jésuites qu'ils désiraient être présentés comme jolis et élégants (plutôt que tordus et torturés) dans le martyre mais que, ironie du sort, ils sont représentés avec « cette coquetterie décrépite qui croit sourire et grimace, ces œillades ridicules, ces yeux mourants, et le reste [...] » (2:102).
23. Daly remercie Brossard dans ses « *Acknowledgments* » en la saluant comme une collègue fidèle et dont elle apprécie les encouragements.
24. « The noble christians do not fight back. »
25. « Although these descriptions of the jesuit "martyrs" do not explicitly name the *sexual* component of asceticism, they obviously reflect the male flight from lecherous obsessions. The fanaticism both of the missionaries and of the over-zealous author of these descriptions belongs to the province of sado-hagiology. »
26. « To be essentially a phallic phenomenon, inherently directed toward the destruction of the other. »
27. Le discours de Daly se rattache à un discours féministe plus large qui considère le sadomasochisme comme intrinsèquement antagoniste aux buts du féminisme (voir Wilton 53). On peut trouver différentes versions de ce discours contre le sadomasochisme, par exemple, dans des œuvres par Robin Linden et al.; Bev Jo, Linda Strega et Ruston; Irene Reti; et Sheila Jeffreys. Gayle Rubin, dans son commentaire innovateur en 1984 sur la lutte entre le groupe « *Women Against Pornography* » et les lesbiennes sadomasochistes, s'inquiète de l'existence d'une rhétorique anti-pornographique qui « critique des actes non-routiniers d'amour plutôt que de s'attacher à des actes routiniers d'oppression, d'exploitation ou de violence » et qui « dirige la rage légitime due au manque de sécurité personnelle des femmes contre des personnes, des pratiques et des communautés innocentes » (28). Traduction de « anti-porn rhetoric which "criticizes non-routine acts of love rather than routine acts of oppression, exploitation, or violence" and "directs legitimate anger at women's lack of personal safety against innocent individuals,

practices, and communities" ». Pour de plus amples informations sur la relation du féminisme avec le sadomasochisme, surtout le sadomasochisme lesbien, voir, par exemple, « *Feminism and Sadomasochism* » de Pat Califia; Susan Ardill et Sue O'Sullivan; Ruby Rich; Julia Creet; et Tasmin Wilton.

28. « When women, whether heterosexual or lesbian […] proclaim themselves pro-sadomasochism, pro-pornography […], they may be exercising "free speech," but they are speaking neither *as* feminists nor *for* feminists. »
29. « Sadosociety » et « sadospirituality ».
30. Pour un aperçu utile et pour une excellente bibliographie sur les relations entre la théorie *queer*, le féminisme et les sexualités gaie et lesbienne, voir « *Signifying "Lesbian"/Strategizing Error* » de Robert Wallace.
31. « Fantasy spectrum ».
32. La réponse de Judith Butler à l'idée « qu'un sujet est passionnément attaché à sa subordination », une des sources de cette anxiété féministe, est que « l'attachement à la subordination est produit à travers des mécanismes de pouvoir, et qu'une partie du fonctionnement du pouvoir est clarifié dans cet effet psychique, une de ses productions les plus insidieuses » (6). Traduction de « The idea "that a subject is passionately attached to his or her own subordination," one of the sources of this feminist anxiety, is that "the attachment to subjection is produced through the workings of power, and that part of the operation of power is made clear in this psychic effect, one of the most insidious of its productions" ».
33. « Charges on both sides of the "sex wars" are strikingly similar: both the charge of repression (by the "pro-sex" side) and the charge of replicating masculine desire (by the "anti-sex" side) carry with them the symbolic weight of the father. The ambivalence in assuming the power of either of these positions has to do with the monopoly that men have held over them. We are afraid of collapsing into the very system from which we struggle to liberate ourselves. »
34. « A movement built on the repudiation of sexual objectification has had a very difficult time re-embracing sex and its inherent complexity without questioning the tenets of the movement itself. »
35. Gayle Rubin anticipe un tel revirement lorsqu'elle suggère que le féminisme n'est pas — et ne devrait pas être — « le site privilégié pour une théorie sur la sexualité » (32) et que les lesbiennes peuvent explorer une théorie sur la sexualité en conjonction avec les hommes gais et des membres d'autres minorités sexuelles tout autant qu'avec des féministes. Traduction de « feminism is not — and should not be — "the privileged site of a theory of sexuality" ».
36. « Toward [gay] men as instructors and playmates in the world of sex practices. »
37. « Obsession with the ideal nude male form ».
38. « In the vacuum of lesbians speaking and writing about sex, the language of sexual excitement used in, for example, *Coming to Power: Writings and Graphics on Lesbian SM*, resonates with a great many women who are not, technically speaking, into SM. »
39. « Love replaces marriage as a prerequisite for sex. »
40. « Unrespectable issue ».
41. « Sexual radicals ».
42. « These overlapping issues ».
43. « The sexual dramatization […] of power relations ».
44. « "Secularization of society" and the erosion of "previously existing forms of communal life that allowed for ritual transcendence" ».
45. « Erotic masochism or submission expresses the same need for transcendence of self […] formerly satisfied and expressed by religion ».

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Vincent Doyle

Lead Us Not Into Temptation: The London, Ontario "Kiddie-Porn Ring" and the Construction of a Moral Panic

Abstract

This essay analyses public discourse about "Project Guardian," a wide-scale investigation of "child exploitation and child pornography" headed by the London, Ontario police force in collaboration with the Toronto police and the Ontario Provincial Police. It begins by tracing the chronology of Project Guardian from its origin as a local investigation of a so-called "kiddie-porn ring" to its eventual expansion into a "crackdown" on various illegal forms of consensual sex between men and male youths above the age of consent. The author investigates how categories like "pedophile," "kiddie porn" and "child victim" are constructed, reproduced and legitimated in the media in the service of a moral panic around questions of gay sexual knowledge, youth and HIV infection. Ultimately, this essay argues that the media coverage of London's "child exploitation" investigations is characterised by what Linda Singer has called "epidemic logic," which understands gay sexuality in the age of AIDS primarily in terms of disease and contagion.

Résumé

Cet article analyse le discours public sur le « Project Guardian *», une enquête ambitieuse sur « l'exploitation des enfants et la pornographie enfantine » qui a été menée par le service de police de la ville de London (Ontario), en collaboration avec la police de Toronto et la Police provinciale de l'Ontario. Il commence en établissant la chronologie du projet* Guardian *depuis ses origines, quand il n'était qu'une enquête sur un réseau local de pornographie enfantine et à travers le processus d'évolution qui l'a transformée en un vaste coup de filet visant diverses formes illégales de relations consensuelles entre des hommes adultes et des jeunes hommes ayant l'âge requis pour consentir à des relations sexuelles. L'auteur étudie la façon dont des catégories telles celles de « pédophile », de « pornographie enfantine » et de « victime enfantine » sont construites, reproduites et légitimées par les médias qui se sont mis au service d'une panique morale engendrée par les questions entourant la connaissance de la sexualité gaie, la jeunesse et l'épidémie du VIH. En dernière analyse, soutient l'auteur, la couverture médiatique des enquêtes sur « l'exploitation des enfants » menées à London se caractérise par ce que Linda Singer a appelé « la logique de l'épidémie », laquelle saisit la sexualité gaie à l'ère du SIDA avant tout sous les espèces de la maladie et de la contagion.*

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This essay is an attempt to come to terms with a series of events in Canada involving the contentious issue of the "sexual exploitation of children."[1] One major difficulty in writing about this topic is that our culture is loathe to publicly discuss complex issues pertaining to the sexuality of children and teenagers. When circumstances dictate such public discussion, we avoid a complex exploration of the issue. The sexuality of young people stirs up strong fears and emotions, especially in the adults who care for them and wish to protect them from harm. These fears and emotions are political weapons in the war against sexual deviants of all kinds, the raw materials used to forge powerful alliances between cultural conservatives and well-meaning liberals. As Gayle Rubin has written: "For over a century, no tactic for stirring up erotic hysteria has been as reliable as the appeal to protect children. The current wave of erotic terror has reached deepest into those areas bordered in some way, if only symbolically, by the sexuality of the young" (Rubin, 1993, p. 6).

This essay analyses mainstream newspaper coverage between 1993 and 1995 of efforts by police in London, Ontario to enforce laws dealing with the involvement of minors in prostitution and pornography. It proposes that this coverage was a key component in the construction of a moral panic whose ostensible object was a "kiddie-porn ring" but whose actual target was adult gay men involved with teenage male hustlers. The public discourse generated by mainstream journalists, the police, the judges and social workers involved in the events in London is characterised, this paper argues, by what Linda Singer has called an "epidemic logic" (Singer, 1993) which understands gay sexuality in the age of AIDS primarily in terms of disease and contagion.

Sources

The findings herein are based on a review of more than 70 articles published by the mainstream Canadian press between November 1993 and May 1995. Sources included the *Toronto Star*, *The Globe and Mail*, *The Ottawa Citizen*, *The Montreal Gazette*, *The Vancouver Sun* and *The Calgary Herald*. Articles published by Joseph Couture in the gay and lesbian press were also examined as well as a four-part radio documentary, to which Couture contributed, that aired in October 1994 on CBC Radio's *Ideas*. That radio documentary, along with an essay by Gerald Hannon in *The Globe and Mail*, and John Greyson's video documentary for CBC Newsworld, *After the Bath*, gave gay activist voices temporary expression in the mainstream media. The texts analysed, then, can be broadly characterised within the following categories: 1) short, descriptive articles documenting the long string of arrests made in connection with the London investigations (from all press sources); 2) longer, "explanatory" pieces trying to come to terms with how/why such events happen and with the reactions of "the community" (from *The Globe and Mail* and *The Toronto Star*); 3) a series of articles which reveal the HIV-positive status of two of

the men arrested in the case (from all press sources); 4) gay community responses in the gay press which eventually found their way into *The Globe and Mail* and the CBC.

Summary of Events

Between November 1993 and July 1995, 57 men in London, Ontario were arrested and charged with 2,674 counts of breaking a variety of Canadian sex laws. Most of the men, under advice from their lawyers, have pleaded guilty. One has contested his treatment by the London police and launched a civil law suit. Many are serving or have served time in Ontario prisons as a result of their convictions. All of the charges relate to the sexual involvement of adult men with male youths.

The media reported the first two arrests on November 11, 1993. Two men were charged with 75 counts of breaking sex-related laws, including provisions of the child pornography law. Police reported the seizure of 230 videotapes, discovered in September 1993 after they had been dumped in a river. These tapes, which contained scenes of men having sex with teenagers, became the basis for "Operation Scoop," London's investigation of an alleged "child pornography ring." Police used the tapes to identify some of the men and teenagers filmed, which led them to other men and teenagers, and so on. In July 1994, the Ontario government provided additional funding to the investigation to form "Project Guardian," a province-wide task force made up of London, Toronto and provincial police mandated to seek out "child exploitation and child pornography."

A closer inspection of the activities of the police, however, reveals that "child pornography" was not a significant factor in the London investigations. Altogether, "kiddie porn" was invoked only 21 times: One charge of making child pornography and twenty charges of simple possession. The provision of the child pornography law that criminalises simple possession (i.e., not for the purpose of distribution) has since been struck down by two British Columbia courts. The Supreme Court of Canada is expected to rule on the constitutionality of the child pornography law sometime in the year 2000. As it stands, then, in every province except British Columbia, the Criminal Code of Canada prohibits the possession of any sexually explicit "visual representation" that "shows a person who is *or is depicted as being* under the age of eighteen" (emphasis added). This means that the "kiddie-porn" law criminalises the depiction of sex that is otherwise perfectly legal (see below); and since an actor in a pornographic video, for example, need only *look* under 18 for the material to be considered illegal, the London police were able to charge two men with the possession of a video that was commercially available and had been cleared by the Ontario Film Review Board (OFRB), based on the police's own determinations of how old the subjects seemed in the video. One of the

actors, they claimed, lacked body hair and muscle development (Couture, "You're Under ...," October 13, 1995, p. 15).

The overwhelming majority of the charges laid in connection with the London investigations, then, fell under a variety of other provisions that have nothing to do with child pornography, two of which are especially ambiguous and contradictory:

1. **Anal Sex**: In Canada, the age of consent for most sexual activities is 14 years, except for anal sex, for which it is 18 years. Despite the fact that a municipal judge had already declared this different age of consent for anal sex unconstitutional at the time of the investigations, police persisted in laying over 50 charges of "anal intercourse," an action they considered justified because the Ontario government had decided to appeal the lower courts' decision. This appeal was eventually lost, in May of 1995, rendering the charges of anal intercourse invalid (the decision only applies to Ontario, but constitutes a precedent elsewhere in the country).

2. **Child Exploitation**: Since January 1, 1988, the Criminal Code has criminalized *consensual* sexual activity *if* one of the people taking part is between the ages of 14 and 18 *and* receives payment (or in legal terms, "consideration") in *any* form: cash, certainly, but also lodging, food, clothes, bus tickets, a trip to Disney World, whatever. The greatest number of charges in the London investigations, just under half, pertain to this particular law. By comparison, only about 12% of the charges concerned the more serious offence of "sexual interference," which involves minors under the age of 14.

When the numbers are added up, it appears that most of the men charged in the investigations were arrested, as gay community journalist Joseph Couture has argued, "not for kiddie porn or acts of pedophilia, but on charges that were based on technical violations that made otherwise legal sex illegal" ("London's Trials," July 1995, p.16). As Couture and other gay community activists have pointed out, the boundaries between "child exploitation" and "consensual sex" are sometimes difficult to draw, in both moral and legal terms, a situation that leaves police forces with the discretionary power to impose their vision of the world upon the communities over which they have jurisdiction.

The Construction of a Kiddie-Porn Ring

In *Policing the Crisis*, the classic study of "mugging" in Britain in the early 70s, Stuart Hall provides a theoretical account of the process by which excessive, repressive measures come to be directed at an exaggerated threat to public safety. His argument stresses the importance of symbolic

processes in securing public consent for the actions of police. It is appropriate to speak of a "moral panic," he writes, when "'experts', in the form of police chiefs, the judiciary, politicians and editors, *perceive* the threat in all but identical terms, and appear to talk 'with one voice'" (Hall, 1978, p. 16). He suggests that events like the London investigations cannot "be understood apart from the social processes by which such events are produced, perceived, classified, explained and responded to" (p. 18). For Hall, there is no independently existing "event" that we might come to understand apart from the process by which it is represented. The act of representation itself, then, is partly *constitutive* of the event it claims to represent. It matters, therefore, who has the power to define the public meanings of such terms as "children," "exploitation," and "predators" and by what means these definitions are deployed.

The historian of sexuality, Jeffrey Weeks, further explains that two of the characteristics of moral panics are the "stereotyping of the main actors as peculiar types of monsters" and "the taking up of panic stations and absolutist positions"(Weeks, 1986, p. 97). In an interview segment featured in John Greyson's documentary about the London investigations, *After the Bath*, London Police Chief Julian Fantino asserts: "Whether they're kids of 17 years of age or whether they're kids of 8 years of age, in my terminology they're all victims, they're all young victims who deserve better. And certainly they deserve to be protected from predators" (Greyson, May 13, 1995). This rhetoric is typical of the language of moral panic: it refuses to make crucial distinctions, in this case on the basis of age, and it constructs a "peculiar monster" in the figure of the "predator" looking for young "victims." This rhetoric was consistently employed by the mainstream media which acted almost without exception as a mouthpiece for the views of officials connected to the London investigations.

The mainstream media coverage of the events in London relies consistently on the testimony of representatives from three main institutions: the police, child welfare agencies and the judicial system. These institutions, along with the media, were largely responsible for constructing the public perception of the events of Operation Scoop and Project Guardian. The police played a particularly significant role in this regard. Drawing upon an emotionally charged set of discourses, they successfully supplied the media with a definitional context for interpreting the meaning of their activities and the activities of the men they arrested.

In the mainstream media, the category "child pornography ring" functions as a unitary frame of reference, a way to impose coherence and continuity onto events and activities whose relationship to one another is not always clear. As the CBC radio documentary *The Bedrooms of the Nation* states: "There is said to be a child-porn ring, but most of the men who've been arrested don't know each other, and only two of them made any porn, none of which was ever distributed to anyone else. If anything it's a child-porn duet" (Allen, 1994). Yet, even when it was brought to the

media's attention that the "child pornography investigations" involved almost no child pornography, the media persisted in using this misnomer out of "sheer journalistic laziness" and because of the tendency of headline writers to employ "easy labels" (Allen, 1994).

Another explanation for the persistence of the child pornography label concerns the success of the police in providing the media with the definitional context for the interpretation of their activities. In news conference after news conference, the London police continually referred to their investigations as "child pornography" investigations. In one particularly eventful news conference held May 30, 1994, the London police called for a provincial investigation to be launched to address the wider scope of what their efforts were supposedly uncovering. As Police Chief Julian Fantino spoke to reporters, he was surrounded by a mountain of literally hundreds of videotapes that had been seized following the arrest of one of the men charged under Operation Scoop. As Joseph Couture reported, these tapes turned out to be nothing more than a "magnificent collection of Hollywood movies and European art films" ("London's Trials," July 1995, p. 19). Some 70 commercial gay pornographic videos were also seized, but contained nothing deemed inadmissible under Canadian law. No charges relating to these videotapes were ever laid by police.

By implication, however, each of the tapes exhibited at the news conference was an example of the kind of despicable child pornography the London police were leading the public to believe could be found almost anywhere, a powerful argument in favour of Police Chief Julian Fantino's contention that a "province-wide police task force should be set up immediately to combat the burgeoning child pornography trade in Ontario" (Duncanson, "London Police," May 31, 1994). When it was learned that the videotapes were in fact no more than an impressive collection of films ranging from *Abbott and Costello Go to Mars* to *Zorro the Gay Blade* (Couture, "London's Trials," p. 19), most media outlets did nothing to rectify the misperception they had a hand in creating. With this episode, the London police succeeded in mounting what was perhaps the greatest public relations coup of their campaign to combat "child pornography." Less than a week after the news conference, Ontario's Solicitor General David Christopherson announced that "Queen's Park will make every effort to eliminate the kind of sickening child pornography being uncovered in London and elsewhere" (Brennan, June 7, 1994, p. A5).

The strategy employed by the London police was successful in winning governmental and public support for its plan to lead a province-wide investigation of "child pornography." Within days of the "mountain of videotapes" conference, the Toronto Star published two lengthy articles, one of them on page one, that essentially presented as journalistic fact the version of events advanced by police and social workers, thus laying the groundwork for the coming announcement of a province-wide investigation.

The page-one article begins with a retelling of the events that supposedly "sparked the largest child pornography probe in Canadian history": the discovery of videotapes in a London area river. This story, told numerous times over the course of the coverage, functions, here as elsewhere, as a myth of origin, the event from which all subsequent events are supposedly derived. To invoke this origin is to conjure up the "true" meaning of the London investigations because, as the media continually pointed out, the river contained the videotapes that belonged to the men who were convicted of making the child pornography that led to the arrests of the other men. This myth of origin, and the associative chain it produces, allows the *Toronto Star* to state quite boldly, and within a single article, that London is a "hotbed of child pornographers," haunted by a "pedophile underground," a "once-secretive club of child molesters and kiddie pornographers," a "loosely knit—but highly secretive—group of pedophiles," described as a "highly predatorial" group of "abusive animals" "[who] will often travel from city to city looking for young victims," "like dogs in heat [...] who don't care about the children they victimize" (Zwolinski and Duncanson, June 4, 1995, p. A1).

The companion piece to the page-one article in the *Toronto Star* establishes the necessary counterpart to the image of the predatory, child-molesting (gay) man: the innocent victim. It is titled "Pedophiles left trail of victims: Counsellors say years of therapy may be ahead for troubled kids." The article quotes from "victim impact statements" submitted by social workers at the trials of the two men responsible for making the tapes that began the London investigations. According to these statements, one victim feels "no guilt or personal responsibility, and denied having nightmares," another suffers from "low self-esteem and long-term estrangement from his family," two victims are afraid that their peers will reject them, and one fears contracting AIDS (Zwolinski, June 4, 1994, p. A10). This last victim, according to the counsellors, "has completely lost the innocence of his childhood and has now a distorted and untrusting view of relationships" (p. A10).

The trope of the "innocent victim" versus the "predator" runs throughout the coverage of the London investigations. The first article published by the *Toronto Star*, on November 11, 1993, quotes police sources as saying that child pornography is a "big business operated by predators," that children should be warned about adults who might "try to recruit them," that police are "dealing in essence with people … with no morals … with an enterprise whose whole purpose is to corrupt children" (p. A10). Other articles refer to kids being "loaned out" or "passed around like pieces of meat" (Herbert, January 2, 1994, p. A5; Hess, February 18, 1994, p. A16) and describe the two men charged with making child pornography as the "ringleaders" or "masterminds" of the alleged "ring" (Michaels, February 9, 1994, p. A18; and February 26, 1994, p. A28).

The presence in the media coverage of testimony from court proceedings somewhat complicates the trope of the "innocent victim." Many articles describe the teenagers as "streetwise" kids from "broken homes" and "poor economic backgrounds" who "deny their own victimization." These "victims," according to one judge's sentencing statement, were "nonetheless vulnerable because of their age, their intellectual limitations, their lack of supervision at home and their economic background" (Michaels, April 13, 1994, p. A18). In statements such as these, the figure of the innocent child co-exists with the repressed image of the streetwise hustler making the best of a difficult situation, creating a tension and a potential for contradiction in the official interpretations of the police, the courts and child welfare agencies.

Faced with teenagers who, for the most part, deny their own victimisation, the only recourse of state-sanctioned experts is to explain proleptically this reluctance to speak out as an effect of the victimisation itself. In other words, dominant constructions of the "victim" banish outright the possibility that a male teenager who has never been sexually abused might willingly seek out sexual relationships with men and derive pleasure from such interactions. Dominant interpretations of the "victim" also deny the possibility of explaining the hardships faced by the youth in any other terms than their subjection to "sexual exploitation." As Shannon Bell argues, the "straight mind" insists "that youth are directly harmed by the sexual involvement itself rather than the social and cultural contextualization of this sexual involvement" (Bell, 1995, p. 317):

> In the straight story, there is not space for the many young persons who have never been abused in any way, who arrive at sex with adults from many different starting points, possibly including their enthusiastic sex lives with other young people. (Bell, 1995, p. 317)

To raise these possibilities is not to deny that exploitation does occur, or that some men are manipulative, sometimes even coercive or violent, or that some vulnerable youth are taken advantage of, but to affirm the probability that some gay teenagers, faced with few other choices, might have preferred their lives as hustlers to the options (or more pointedly, the *lack* of options) available to them in straight society or the gay mainstream.

In the dominant discourse of the "victim," the possibility that some teenagers might willingly engage in sex with men, sometimes for money, sometimes not, becomes reinterpreted as a threat leading to a possible identification with their "abusers." This "victim impact statement" prepared by a court-appointed psychologist makes this fear of identification quite obvious: "A danger for a boy like Jason is that he could identify with [his abusers] and assume similar emotional attitudes and characteristics ..." (Allen, 1994). Compare this with the words of police chief Fantino, as quoted in an article in the *Star*:

> It is terribly unfair to characterize, as some have, these kids as "street hustlers." These were vulnerable kids who were corrupted into a certain activity and lifestyle. You can see on the tapes how mechanical they were. Obviously, they'd stepped outside of their being. (Zwolinksi and Duncanson, June 4, 1994, A1)

This passage is revealing for its image of previously unspoiled youth "corrupted into" a certain kind of "activity and lifestyle," echoing the rhetoric of the religious right about the supposed recruitment of young people into the homosexual "lifestyle." The "being" which is left behind in Fantino's characterisation is presumably a young heterosexual robbed of his destiny as a decent, law-abiding, future family-man.

The "problem," according to Fantino, is the existence of those who would recruit such innocent (heterosexual) flesh. The "solution" to the problem is to guard children against such "predators," hence, Project Guardian. Underlying the efforts of London police is a desire to protect children from the corrupting influence of gay sexual knowledge. That police were exclusively concerned with gay sex is illustrated by the fact that they demonstrated no interest at all in the sexual exploitation of female minors: either it does not occur in London, or the police were not looking for it.[2] In their fight to round up gay "predators," the police employed every legal recourse: the contradictory child pornography law, which criminalises the depiction of sexual activity that is otherwise legal; the arbitrary child exploitation law, which renders consensual sex illegal under certain, ambiguously defined circumstances; and the discriminatory anal sex law, which imposes a higher age of consent on certain sexual practices.

Gay Community Counter-Discourses

While it is true that the police, the courts and child welfare agencies played a dominant role in constructing the public meaning of the London investigations, they did not necessarily exercise a monolithic control over all aspects of the public discourse surrounding the events. Indeed, the coverage of the London investigations is also marked by the emergence of alternative perspectives that emphasise very different ideological commitments. According to Stuart Hall, one of the roles of the mass media is to relay and amplify the perspectives of those institutions that are granted legitimacy in Western democracies (Hall, 1993, p. 88), thereby facilitating the reproduction of dominant ideologies. However, Hall warns against the tendency to theorise the reproduction of ideology as something which is controlled by a single institution or social grouping, insisting instead on the "social praxis through which [ideologies] renew themselves" (p. 81) and on the "polyvocal" nature of "ideological systems" (p. 82). Hall is interested in the *process* by which ideologies renew themselves, even as the "normative definitions" of dominant groups are contested from the margins (p. 87):

> In crisis moments, when the *ad hoc* formulas which serve, "for all practical purposes" to clarify the political world meaningfully and

> within the limits of legitimacy are rendered problematic, and new problems and new groupings emerge to threaten and challenge the ruling positions of power and their social hegemony, we are in a special position to observe the work of persuasive definition in the course of its formation. (p. 85)

For a short period of time, the coverage of the London investigations was characterised by one such "crisis moment" as the dominant constructions of meaning categories related to adult-child sexuality were challenged by a few gay activists who succeeded in gaining some access to the mainstream media. The rhetoric of "victims" and "predators," then, was countered by an attempt to shift the media's focus away from the category "child pornography," about which there can be little debate, toward the more complex question of the moral and ethical implications of male teenagers above the age of consent engaging in sexual activities with older men in exchange for money or other forms of "consideration."

Much of the "gay community" counter-discourse about the London investigations was concerned with pointing out examples of teenagers in control of their lives and of their choices. Gerald Hannon writes:

> I know from experience that most young men who hustle are wise in the ways of the world. ... It's a complicated, messy world, with its own rules and rituals, with its good times and its catastrophes. It is *not* the simple, black-and-white picture painted by the London police—that of an organized ring of older men preying on innocent children. (Hannon, March 11, 1995, p. D5)

But the rise to prominence of such alternative descriptions of the sexual networks formed by men and teenagers is necessarily short-lived and subject to ideological reappropriation. The publication of Hannon's article in the *Globe and Mail* was met by enormous controversy[3] and followed, some three months later, by a long article in the *Toronto Star* intended to "set the record straight" (Hurst, June 4, 1995, p. A1).

This *Toronto Star* article, by Lynda Hurst, is most notable for the systematic fashion in which it summarises the positions taken by gay activists and London police, only to thoroughly discredit the former. Hurst refutes Gerald Hannon's thesis of a "police-constructed moral panic" with police claims that, "There's a conspiracy all right, but of gay activist-slash-journalists hellbent on undermining a legitimate investigation." The claim that the gay community has been targeted for harassment is met with reassurances from the editor of the local London newspaper that the matter was looked into and no evidence showed that gays were being singled out. Hurst poses the rhetorical question: "Do they seriously think London police are homophobic?" She follows this by quoting Fantino: "We have never, ever, ever, directly or indirectly connected this investigation with the gay community." As for the competing definitions of "victimhood," Hurst writes: "About the only aspect both police and critics do agree on is the reluctance of the youths to define themselves as victims. The gays say it's

because they aren't victims, plain and simple, and they strongly resent any attempt to make them say they are." She follows this characterisation of the "gay position" on the matter with this statement: "Police, social workers and family court psychologists argue that denial is a well-known phenomenon in sexual abuse," in effect asking her reading audience to choose between the interpretations of "gay critics" and "police, social workers, and family court psychologists." Hurst's article at least succeeds in incorporating some of the complexities generated by the gay activist responses to the London investigations. But in pitting these marginal voices against the authority of the very institutions initially responsible for constructing the public meanings of the London investigations (the triumvirate of police, social work and the judicial system), Hurst discredits the views of the gay activists she cites, re-marginalises their voices, and re-instates the "authorities" in their role as the only legitimate arbiters of meaning.

Sexual Knowledge and the Logics of Infection

The media coverage of the London investigations points to a number of larger questions about the state of sexual politics in Canada since the advent of AIDS. The events in London cannot simply be explained as resulting from the actions of one over-zealous police chief.[4] Nor is the rhetoric of police, judges, psychologists, journalists and social workers in this case an isolated phenomenon attributable to the small-minded ways of a provincial city. Rather, the events in London suggest the dominance of a particular way of making sense of the world in the age of AIDS, in which cultural fears about sexuality, youth and infection have intensified and proliferated.

Linda Singer suggests a way of understanding the events in London that accounts for the contradictions and ambiguities of many of Canada's sex laws, the growing tendency to infantilise teenagers, as well as the fervour with which London police, judges, social workers and many journalists, both in London and on the national scene, have pursued the issue. According to Linda Singer, Western societies are in the throes of an "epidemic logic" that

> … depends on certain structuring contradictions, proliferating what it seeks to contain, producing what it regulates. The logic of epidemic depends upon the perpetual revival of an anxiety it seeks to control, inciting a crisis of contagion that spreads to ever new sectors of cultural life which, in turn, justify and necessitate specific regulatory apparatus which then compensate—materially and symbolically—for the crisis it has produced. Although epidemic logic is not unique to the social construction and approach to questions of disease and health, the emergence of AIDS has provided, or has become an occasion for, its reinvigoration and spread to areas far afield. Now there are "epidemics" of child abuse, pornography, teenage pregnancies. (Singer, 1993, p. 29)

Indeed, throughout the newspaper coverage of the London investigations, the repetition of the label "child pornography" conveys the threat of contagion, each new arrest suggesting the spread of an uncontainable disease that demands ever more funds and human resources to prevent it from "spreading to other communities." In this way, the London police were able to discursively produce the child pornography that in fact eluded them, but which provided the justification for an ever-increasing repression of sexual contact at the margins of gay life. During the "mountain of videotapes conference," a police spokesman claimed: "We had plans in place to wind this down … but with this latest arrest any plans for quick resolution have been destroyed" (Duncanson, May 31 1994, p. A1). That the tapes did not contain a single image of child pornography did not matter, for the logic of epidemic demands that more and more of what police seek to regulate be produced in order to "justify and necessitate specific regulatory apparatus," such as the province-wide task force that was announced a few days later, which in turn "compensates... for the crisis it has produced."

The Teleology of AIDS

> The really significant item may not be the one which continually recurs, but the one which stands out as an exception to the general pattern—but which is *also* given, in its exceptional context, the greatest weight. (Stuart Hall quoted in Gitlin, 1980, p. 305)

The question of AIDS is not a recurring feature in the coverage of the London investigations. It did, however, form a very significant part of the coverage during a four-week period in March-April of 1994 when it was learned that one of the "victims" in the "child pornography" case is also HIV-positive, and that he has been in "contact" with 80 youth in a correctional facility where he is serving time. All of a sudden, newspapers asserted, the "child pornography ring is turning into a potential AIDS epidemic. ... The investigation resulting in some 400 charges has become even more ominous with the startling revelation that some ringleaders are either suspected of having the AIDS virus or have admitted to testing positive"(Brennan, April 9, 1994, p. A12). The *Vancouver Sun* quotes a "source close to the corrections ministry" as saying: "'They go in for a minor offence and come out with a death sentence" (Brennan, April 8, 1994, p. A12). Health authorities are then called on board to perform HIV tests on the 80 youths who may have been in contact with the infected youth. A member of the Ontario Legislature calls for inmates to be routinely tested for the "AIDS-virus."

The rhetoric in these alarming (and alarmist) articles slips effortlessly from "child pornography" to "AIDS epidemic," as though the two terms were somehow naturally connected, two parts of the same teleological trajectory that also links gay sex with certain death. This presumed linkage is never actually established beyond the panic-stricken statements of a London health officer. It is eventually reported that only two of the nearly 80

youths have tested positive for HIV antibodies. As for the youth whose HIV-status sparked the panic, it was never established, nor could it possibly be established with absolute certainty, what the source of his infection was. The furor only died down when the new Chief Medical Officer for the London region, just two days into his new position, called a press conference to "clarify any misunderstandings" ("Two Linked...", April 13, 1994, p. A18). The CTV television network, which had broadcast the original story about the "kiddie-porn ring turned AIDS epidemic," did not follow-up its first report with a story which might have clarified the initial report's misconceptions (Allen, 1994), nor did any of the newspapers I examined, with the exception of the *Toronto Star*. It is interesting to note that less than one month prior to the media accounts that linked the London "kiddie-porn ring" to an "AIDS epidemic," the U.S. Centers for Disease Control had released new, and widely reported, data about the spread of AIDS to heterosexuals. The *Globe and Mail* titled its story: "AIDS spreading faster among heterosexuals: Biggest increases hit teen-agers and young adults" ("AIDS Spreading ...", March 11, 1994, p. A11).

Conclusion

Perhaps the concept of "moral panic" does not sufficiently account for the state of "erotic terror" Gayle Rubin might say we are currently experiencing. Perhaps the concept is too tied to the notion that panics are momentary lapses in which a society fails to see its way clearly through a crisis brought on by particular, time-bound circumstances. As Simon Watney has said, the advent of AIDS has radically shifted the ground of sexual discourses, such that it is no longer appropriate to speak of moral panics relating to sexuality as autonomous "political moments." We are living in a state of permanent crisis, an enduring state of moral panic, especially when it comes to the sexuality of young people (Watney, 1994, p. 14).

The events in London might be understood, then, as a scapegoating of gay men for legitimate worries about the spread of HIV among teenagers. In the logic of the London moral panic, gay men are not simply sexual predators, they are *infectious* predators threatening the lives of those who are said to be the most vulnerable. Therefore, the arrests of gay men who have sex with teenagers, justified by the label "kiddie-porn ring," serve the symbolic function of reassuring the public that something is being done to prevent the recruitment of young men into a potentially deadly "lifestyle": they propose an imaginary solution to the dramatised "problem" of young males' access to gay sexual knowledge in the age of AIDS.

Clearly, some of the young men involved in the events in London are victims, though not necessarily of the adult men who "corrupt them into a certain activity and lifestyle" as Police Chief Fantino has said. They are victims of a society that does not know how to care for young people who

are not served well by the institution of the family and the state apparatuses that support it. The gay community is beginning to realise the urgency of this issue, and taking concrete steps to address it, but the fear of being labelled a pedophile for reaching out to gay youth is preventing many people from engaging in much needed work. That consequence of our society's inability to deal with the sexuality of the young, fairly, openly and rationally may be the biggest unacknowledged tragedy of London's deeply felt, but ultimately misguided, attempts to "protect" its young.

Notes

1. The author wishes to acknowledge the helpful suggestions and comments of Lisa Henderson, two anonymous reviewers and audience members at two conferences: Forms of Desire: 7th Annual Queer Graduate Studies Conference (CLAGS/CUNY), New York City, April 1997, and the International Communication Association, Montreal, May 1997.
2. In fact, a London "massage parlour" was raided by police during the time of the investigations. Despite the fact that girls between the ages of 14 and 17 were providing sexual services to men in exchange for money, only the establishment's owner, a former Toronto police officer, was charged. The clients were not pursued (see "London's Trials" in *The Guide*, July 1995, p. 20, for more on this).
3. Hannon's article, along with his admission that he engages in prostitution himself, led to his departure from Ryerson Polytechnic University, where he taught journalism. When the University refused to renew his contract, Hannon filed a grievance and won a settlement for an undisclosed sum of money, some of which he used to set up a fund to protect academic freedom at Ryerson. The settlement specified that he was not to teach at the University again, but did not prohibit him from giving guest lectures.
4. Julian Fantino left his job in London to become Police Chief of the York Region, just outside of Toronto, on August 4, 1998. On April 3, 2000 he became Chief of the Toronto police force, a job he had sought for many years.

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Miriam Smith

Political Activism, Litigation and Public Policy: The Charter Revolution and Lesbian and Gay Rights in Canada, 1985-99[1]

Abstract

In recent years, substantial and sweeping changes to Canadian public policy have affected the rights of lesbians and gay men. In part, these policy changes result from the entrenchment of the Charter of Rights and Freedoms in Canada's Constitution, which greatly strengthened the legal position of lesbian and gay rights claimants. The paper argues that the impact of the Charter in this policy area cannot be understood without considering the broader environment of social movement activism in which these policy changes occurred. It surveys the main changes in law and public policy from 1985 to 1999 and demonstrates that the dialogue between courts and legislatures on lesbian and gay rights has been shaped by the sustained political mobilization of lesbian and gay rights organizations (through lobbying and court action), by trade unions, which have supported lesbian and gay rights litigation, and by individual litigants themselves, who have often been movement activists. The paper argues for a more concerted approach among the disciplines of law, sociology and political science in understanding the interconnections among social change, the rise and shape of the lesbian and gay rights movements and the impact of the Charter on this important area of public policy.

Résumé

Depuis quelques années, des changements profonds et fondamentaux apportés à la politique publique canadienne ont eu une incidence sur les droits des hommes gais et des lesbiennes. En partie, ces changements de politique résultent de l'enchâssement de la Charte des droits et libertés dans la Constitution canadienne, une mesure qui a beaucoup contribué à renforcer la position juridique des personnes qui revendiquent les droits des gais et des lesbiennes. L'article soutient qu'on ne peut comprendre l'incidence de la Charte sur ce domaine de politique sans tenir compte du contexte plus large de l'activisme du mouvement social à l'intérieur duquel se sont produits ces changements de politique. Il passe en revue les principaux changements apportés au niveau du droit et de la politique publique pendant la période de 1985 à 1999 et démontre que le dialogue entre les tribunaux et les assemblées législatives en matière de droits des gais et des lesbiennes a été modelé par une mobilisation soutenue des organisations de défense des droits des gais et des lesbiennes (au moyen d'actions et de poursuites en justice), grâce à l'action des syndicats, qui ont appuyé les gais et les lesbiennes dans les litiges qui ont permis d'établir leurs droits, et grâce aux plaideurs individuels

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eux-mêmes, qui étaient souvent des activistes au sein de ce mouvement. L'article plaide en faveur d'une approche plus concertée de la recherche, dans les secteurs du droit, de la sociologie et de la science politique, afin de mieux comprendre les interconnexions qui existent entre le changement social, l'essor et la forme prise par les mouvements de défense des droits des gais et des lesbiennes et l'incidence de la Charte sur cet important secteur de politique publique.

In the last few years, Canadian public policy has changed its treatment of lesbians and gay men substantially. From the perspective of the lesbian and gay rights movement, its modern origins only three decades old, these changes now reflect such a radical departure from the *status quo ante* that they constitute a veritable revolution in the state's approach to its lesbian and gay male citizens. In the 1970s, federal and provincial governments (with the exception of Quebec) were reluctant to prohibit discrimination against lesbians and gay men in such basic areas as housing and employment. By 1999, for the first time, every jurisdiction (federal, provincial and territorial) except the Northwest Territories had prohibited discrimination on the basis of sexual orientation. At the same time, federal and provincial policies are rapidly changing to prohibit discrimination across the range of public policies in which marital status is defined as exclusively heterosexual. In the wake of the Supreme Court's *M v. H* decision,[2] which recognizes spousal obligations in lesbian and gay relationships, this process of revolutionary policy change seems bound to continue over the years to come.[3] This revolution is uneven — much slower for public policies that directly affect sexuality (censorship, for example) than for basic human rights protection and for relationship recognition. Nonetheless, the relatively sudden nature of these changes calls for exploration and examination.

To assert that the main reason for these changes has been the impact of the Charter of Rights seems obvious. Indeed, the changes in public policy affecting the equality rights of lesbians and gay men[4] were undoubtedly driven by the Charter in that court decisions have wielded the heavy hammer that forced governments to recognize such rights. Most of the scholarship on the Charter's impact has come either from political scientists who are openly hostile to the use of litigation as a political strategy by equality-seeking groups[5] or from legal scholars who naturally tend to focus on the legal issues raised by the cases rather than the wider political environment in which litigation occurs.[6] The political science literature is notoriously polarized between camps that Richard Sigurdson has characterized as the left- and right-wing "Charterphobes."[7] The right-wing Charterphobes are not only skeptical about the benefits of an entrenched bill of rights because they fear that minority groups will be able to advocate their interests at the expense of the democratic process, but they are also openly hostile to lesbian and gay equality rights as a substantive political issue. The left-wing Charterphobes are simply opposed to the use of the law

for political gain by progressive groups, for fear that such groups will be conservatized by involvement with a fundamentally individualistic legal structure. However, these literatures are curiously apolitical, neglecting any empirical examination of relationships between political activism and the Charter's impact.

Yet when the Charter was entrenched in the Constitution in 1982, no one could have predicted its substantial impact on public policy in the area of lesbian and gay rights. After all, sexual orientation was not even listed as a prohibited ground of discrimination in the Charter's equality rights clause (Section 15). This paper contends that the Charter's impact on law and public policy in this area must be situated in the broader political environment of social movement activism. Litigation and policy change do not occur in a vacuum. The dialogue between courts and legislatures on lesbian and gay rights has been shaped by the substantial and sustained political mobilization of lesbian and gay rights organizations over the course of the nineties, a mobilization that has targeted the courts and the provincial and federal governments.[8] The entrenchment of the Charter provided a legal opening which has enhanced the possibilities of legal victories by lesbian and gay rights organizations and the legitimacy of lesbian and gay rights in Canadian society while forcing governments — albeit hesitantly — to recognize lesbian and gay rights in certain areas. Most of the legal literature on lesbian and gay rights cases analyze judges and court decisions for the patterns of inclusion, exclusion, homophobia (or not), and "progress" (or not) which they demonstrate.[9] While this is a valid approach for legal scholars, this paper aims to provide a contrasting political science approach to the debate on the Charter's impact. The Charter's impact on public policy — public policy defined as the decisions of governments and legislatures as well as the decisions of courts — is not just a question of what judges decide. Social movement organizations can use litigation as a political strategy and tactic to achieve social and political change. Indeed, the Charter's impact in this area has been enhanced and in part made possible by the concerted pressure of a network of lesbian and gay rights activists.

The political mobilization of the lesbian and gay rights movement has a number of intertwined yet analytically distinct dimensions. First, lesbian and gay rights groups, led at the federal level by Equality for Gays and Lesbians Everywhere/*Egalité pours les gais et lesbiennes* (EGALE) and, at the provincial level, by key actors such as the Coalition for Lesbian and Gay Rights in Ontario, the Foundation for Equal Families (Ontario) and the December 9th Coalition in British Columbia, have mounted a consistent public campaign for lesbian and gay rights and brought pressure to bear on governments through lobbying and media campaigns. While this paper will focus on the federal level, some provincial groups such as the Foundation for Equal Families have played a part in federal policy change. Second, lesbian and gay rights groups have intervened in key court cases concerning

sexual orientation and Section 15 (equality rights) of the Charter, and have supported litigants bringing sexual orientation cases before the courts. For example, EGALE has intervened in four Supreme Court cases (*Mossop, Egan*, *Vriend* and *M v. H*) and one Ontario Court of Appeal case (*Rosenberg*). EGALE's executive director has also testified at several human rights tribunals. Third, some trade unions have supported their members in bringing Charter challenges to the courts.[10] For example, CUPE played a major role in bringing the *Rosenberg* case (1998),[11] which challenged the income tax treatment of pension plans which recognize lesbian and gay male couples. Fourth, individual litigants in sexual orientation cases are not faceless atoms who emerge out of nowhere to challenge what they view as unequal laws. On the contrary, many litigants were either activists in their own right before undertaking cases or became activists as a result of their cases.[12] The activist histories and futures of litigants constitute the tendrils that connect the decisions of judges to the changing values and cultures of civil society. In examining the reasons for recent public policy changes affecting lesbian and gay rights, it is not enough to say that the Charter made it happen. In this, as in other areas of equality-seeking under the Charter, litigation is entwined with, and inseparable from, political activism.

The following discussion of these dimensions of lesbian and gay political activism and federal policy change is divided into three sections. After briefly addressing the types of equality rights issues raised by rights organizations, the paper provides a survey of political struggles and policy change at the federal level, divided into two periods. From the initial period following the coming into force of Section 15 of the Charter in 1985 until the election of the Liberal government in 1993, very little change occurred, whether on such basic human rights issues as the inclusion of sexual orientation as a prohibited ground of discrimination in the federal Human Rights Act or in the area of relationship recognition. Partly in response to the slow pace of change, existing lesbian and gay rights organizations regrouped and new organizations emerged in the early nineties which focussed on Charter-based activism. During the second period from 1993 to 1999, policy change occurred much more rapidly across a range of issues, including relationship recognition.

The Meanings of Equality

In examining the politics of lesbian and gay rights claims since the advent of the Charter, we will briefly survey the meanings of equality as advocated by lesbian and gay rights organizations. Three types of issues animate movement organizations. The first and most basic area concerns freedom from discrimination based on sexual preference in areas such as employment and housing. Freedom from such discrimination has been a central goal of the gay liberation movement from its inception in the early 1970s. In most cases, provincial and federal human rights legislation

prohibits this type of discrimination. Although the Charter does not directly regulate relationships between private citizens (such as the landlord-tenant relationship), it indirectly shapes human rights legislation at both the federal and provincial levels. During the first period (1985-93) of Charter-based, political activism discussed below, freedom from this type of discrimination was the central goal of lesbian and gay rights organizations.

The second type of equality-seeking concerns claims for relationship recognition, such as the right to same sex benefits in the public and private sectors, the right to adopt, the right to receive support upon breakdown of a relationship, and, for some activists, the right to marry. Relationship recognition can be characterized as freedom from discrimination in the sense that lesbian and gay rights organizations are demanding that lesbian and gay relationships receive the same treatment as straight relationships under law and public policy. However, such spousal rights potentially involve a much deeper level of recognition of lesbians and gay men as citizens. In the lesbian and gay male communities, relationship recognition is controversial in ways that the first type of equality issue is not. Some members of the lesbian and gay communities oppose relationship recognition as contrary to the original goals of the gay liberation movement — sexual freedom — and a sign of the movement's conservatization.[13] Others oppose relationship recognition because they share the feminist critique of family as a patriarchal institution. Some supporters of relationship recognition have engaged these critiques to argue that relationship recognition will radicalize and transform the traditional family and signal the full recognition of lesbians and gay men as citizens.[14] If judged by their actions and political effort, the main organizations of the lesbian and gay rights movement at the federal level currently view relationship recognition as the main goal of their political activism. Although such organizations recognize the lively debates on the legitimacy of relationship recognition within the gay male and lesbian communities, in general, rights based organizations are caught up in a political dynamic which demands the articulation of a clear-cut, almost "ethnic" identity in order to make their rights claims legible for the Canadian public, the media, the courts, the governing caucus and policymakers. In a similar vein, lesbian and gay rights organizations, as we will see below, usually present an equality rights argument based on the moral and political equation of lesbian and gay male couples with straight couples.[15] Nonetheless, underlying these presentations, in the grass roots of lesbian and gay communities, debates exist. As Carl Stychin has put it, "tension exists between, on the one hand, the queer 'desire' to deconstruct the categories of identity and render them problematic; and, on the other, the necessity of asserting coherent categories as a strategy of political reform and transformation…the tension between the assertion and deconstruction of identity categories is irresolvable and should be understood as a continuing contestation."[16]

Furthermore, even the debates between lesbian feminists and gay liberationists have been partly mitigated by the effects of recent Charter-centred activism. In the current organizations of the lesbian and gay rights movements, lesbians have played an important role as political leaders, litigaters and lawyers. This is not to say that the feminist critique of family is irrelevant; rather, in the current activism of the mainstream lesbian and gay rights movements as represented by political organizations such as EGALE and the Foundation for Equal Families, a political rapprochement has taken place between *some* lesbian women and *some* gay men along with a new-found consensus on rights issues.[17] This consensus is the one most often presented as the public face of lesbian/gay rights claims through the media, the courts, governments and legislatures.

A third area of equality-seeking concerns sexual freedom. Sexual freedom was the central characteristic of the gay liberation movement which, in turn, formed part of the counter cultural revolt of the sixties. Sexual freedom continues to be a live issue in lesbian and gay politics. For some, sexual freedom is the movement's main goal and a key dimension of lesbian and, especially, gay political identity.[18] This third area of equality-seeking includes issues such as the censorship of lesbian and gay bookstores, pornography, the criminalization of anal sex, police attempts to regulate public sex and age of consent laws. To some extent, organizations such as EGALE have avoided such issues both because the relationship between the police and the gay community has usually been treated as a local concern and for fear that such issues would tarnish their public image and drive away potential supporters.[19] As a type of equality-seeking, sexual freedom tends to emphasize differences between lesbians and gays on the one hand and straights on the other hand, while the first two types of equality-seeking — freedom from basic forms of discrimination and relationship recognition — tend to emphasize the similarities. Moreover, sexual freedom issues have the potential to openly challenge the line between "good sex" and "bad sex," and between sexual order and sexual chaos, in Gayle Rubin's terms.[20] While the second type of equality-seeking would fit the lesbian and gay couples into an acceptable "family" model (precisely the point of the feminist and gay liberationist critiques of "family" in the lesbian and gay communities), the political issues in the third category (e.g. pornography) threaten this cozy picture of middle-class and monogamously-coupled respectability by pushing at the line between "good" and "bad."

The Beginnings of Charter-Based Activism, 1985-93

When the Charter was entrenched in the Constitution in 1982, it was far from evident that lesbians and gay men would ever gain much by it. While a broad range of social groups participated in the parliamentary committee hearings on the Charter in 1980-81, the incipient lesbian and gay rights movement was conspicuous by its absence from the debate. This is

especially striking given the fact that, arguably, Section 15 (equality rights) of the Charter has produced more legal changes for lesbians and gay men than for any other group in Canadian society. And yet, the equality rights section of the Charter does not enumerate sexual orientation as a prohibited ground of discrimination. When Svend Robinson of the NDP attempted to raise this issue during the parliamentary deliberations on the proposed Charter in 1980-81, the Liberal government of the day indicated its preference to leave the grounds of discrimination in Section 15 open-ended, thus passing the political hot potato of lesbian and gay equality rights from legislatures to courts.[21] At the time of the Charter hearings, the gay liberation movement was preoccupied with the 1981 Toronto bath raids, the prosecution of the gay liberation journal *The Body Politic,* and the dissolution of the 1970s-era, pan-Canadian gay liberation coalition, the Canadian Lesbian and Gay Rights Coalition.[22] A decade of rights demands by the gay liberation movement had failed almost entirely to secure even the most basic public policy changes, except in Quebec, where sexual orientation was included as a prohibited ground of discrimination in the provincial human rights code in 1977. The lack of interest in the 1980-81 Charter deliberations is evidenced by the fact that the only representation by the lesbian and gay male communities before the parliamentary committee on the proposed Charter came from the Canadian Association of Lesbians and Gay Men, a short-lived organization that lacked representative legitimacy, and by Gays of Ottawa, a locally based group. *The Body Politic*, the newspaper of record of the Toronto-based gay liberation movement, barely mentioned the committee hearings at all.[23]

Three years after the Charter's entrenchment, the Mulroney government released a policy paper, *Equality Issues in Federal Law*, in anticipation of the coming into force of the equality rights section (Section 15) of the Charter, and held parliamentary committee hearings in response to the government paper. In contrast to the hearings on the proposed Charter in 1980-81, a broad range of lesbian and gay groups responded to the call and the hearings received much more coverage in the lesbian and gay press.[24] The three-year delay had given lesbian and gay rights activists, as well as members of the legal community interested in lesbian and gay rights, time to consider the impact of the Charter and to mobilize to take advantage of the new provisions. Moreover, by 1985, the longer range sociological changes in the lesbian and gay male communities were surfacing – the tremendous growth of visible lesbian and gay communities in Canada's major urban areas, the development of a broad variety of community institutions ranging from cultural and sports organizations to community centres, and changing public attitudes towards sexual preference, including growing public support for rights protections in federal and provincial law. The picture was not entirely rosy: the onset of the AIDS crisis decimated the ranks of gay male activists who had formed the base of the gay liberation movement during the seventies. Activist energies had been diverted to AIDS organizing while right-wing opponents of the gay liberation and

women's movements mobilized to counter the partial successes of the seventies' movements. The mobilization of the political right would eventually result in the establishment in 1987 of the Reform Party, a determined opponent of lesbian and gay rights.

The parliamentary sub-committee on equality rights reported to the House of Commons in October 1985 and was favourable to some of the demands made by the lesbian and gay groups, including similar treatment in age of consent laws and support for the bill introduced by Svend Robinson to include sexual orientation as a prohibited ground of discrimination in the Canadian Human Rights Act. However, the committee's report was not as favourable on immigration or benefits issues.[25] A group of activists in Ottawa saw the need for an Ottawa-based group to keep up the pressure on the federal government. The Equality Writes Ad Hoc Committee was formed to conduct a letter writing campaign, to network with other human rights groups and to lobby MPs and the Mulroney government on its response to the parliamentary committee report.[26] The government's response to the committee's report came in the form of a statement by Justice Minister John Crosbie, who suggested that the government would interpret Section 15 of the Charter as including sexual orientation and stated that the Tory government would take "whatever means are necessary" to ensure that sexual orientation was a prohibited ground of discrimination in federal jurisdiction.[27] The government's positive response was viewed as a result of the Equality Writes campaign and the broad range of lesbian and gay groups which had appeared before the parliamentary committee.[28] In the wake of these small successes, the Equality Writes Ad-Hoc Committee transformed into EGALE, with 35 members attending its first meeting in May 1986.[29] In this way, the 1985 parliamentary committee hearings on the equality rights provisions marked the beginning of Charter-centred political activism by gay and lesbian groups.

From this period until the election of the Liberal government in 1993, some policies concerning relationship recognition and basic human rights protections changed, although much progress remained incomplete from the perspective of lesbian and gay rights organizations. EGALE itself was in disarray for much of this time. After a strong start, the organization floundered, unable to build beyond its Ottawa base. Unlike other equality-seeking groups, EGALE received no core organizational funding from the federal government and lacked the money to build its organization. As a group based on individual membership, it did not effectively enlist the resources of provincial groups, as had the earlier Canadian Lesbian and Gay Rights Coalition, which had been based on group membership. Nonetheless, EGALE did receive litigation funding from the Court Challenges Program to intervene in two cases concerning sexual orientation and Section 15 of the Charter: *Mossop*[30] and *Egan*.[31] In addition, EGALE continued to pressure the federal government to keep John Crosbie's promise in the wake of the equality rights committee — to amend

the federal human rights act to include sexual orientation as a prohibited ground of discrimination.

Over this period, several important cases began to generate legal pressure for relationship recognition. Of these, the most important were: *Veysey*,[32] *Haig and Birch*,[33] and *Mossop*. Both the *Veysey* and *Haig and Birch* cases concerned the exclusion of sexual orientation from the federal Human Rights Act. In the *Veysey* case, the Federal Court (Trial Division) recognized the inclusion of sexual orientation as an analogous ground of discrimination under Section 15 of the Charter. This decision was followed by the Ontario Court of Appeal in *Haig and Birch* (1992) which ruled that the exclusion of sexual orientation from the Canadian Human Rights Act violated the rights guaranteed under the Charter. This decision was never appealed and, thus, the federal government implicitly accepted the *de facto* inclusion of sexual orientation in the federal act and the court's finding that sexual orientation is included in the Charter.[34] As a result of these decisions, the legal community widely understood that sexual orientation had been "read into" the Charter of Rights and into the Canadian Human Rights Act through court decisions, despite the lack of a formal, federal legislative amendment to the Act or a ruling by the Supreme Court of Canada. The Canadian Human Rights Commission strongly supported the inclusion of sexual orientation within its ambit and immediately recognized the implications of the *Veysey* and *Haig and Birch* decisions by accepting over two hundred complaints based on sexual orientation after 1992.[35]

Another important case from this earlier period which indicated the court's possible direction on the issue of sexual orientation and Section 15 of the Charter was that of Brian Mossop. Mossop was a federal government translator denied bereavement leave to attend the funeral of his partner's father. EGALE was one of the interveners in *Mossop*, along with a coalition of equality-seeking groups, including the National Action Committee on the Status of Women and the Canadian Disability Rights Council.[36] Mossop lodged a complaint with the Canadian Human Rights Commission after a grievance supported by his union had been denied. As a federal employee, Mossop's case fell under the jurisdiction of the federal Human Rights Act. In considering the broader political context of the Mossop case, it is important to note that Mossop was a long-time gay activist, a member of Gay Alliance Toward Equality (GATE - Toronto), the Coalition for Gay Rights in Ontario and *The Body Politic* collective, and he had written frequently for *The Body Politic* on gay liberation issues. Into the eighties, Mossop continued to advocate a gay liberation perspective. Furthermore, Mossop's partner was Ken Popert, also a long-time gay activist, member of *The Body Politic* collective, frequent contributor to *The Body Politic* and, in the eighties, the publisher of *Xtra* and its associated publications *(XtraWest* and *Capital Xtra)* which succeeded *The Body Politic* (which closed in 1987) as the mainstay of the Canadian gay and lesbian press. Mossop's case was based on the "family status" clause of the federal Human Rights Act.

While Mossop lost his case, in its 1993 ruling, the Supreme Court invited him to reframe his case as a challenge to the exclusion of sexual orientation from the federal Human Rights Act, an invitation which indicated that the Court would be favorably disposed to such a challenge.[37]

By 1993 then, the legal and political pressures had been building for amendment of the federal Human Rights Act and for relationship recognition. By the time the Liberals were elected in 1993, there had been fourteen cases concerning sexual orientation under the Charter.[38] Of these fourteen cases, the majority were brought by those who had either been lesbian and gay activists before their cases or who became activists as a result of their cases.[39] Cases concerning the inclusion of sexual orientation as a prohibited ground of discrimination in the federal Human Rights Act — *Veysey* and *Haig and Birch* — had been successful, while cases concerning relationship recognition had not. In addition, cases that concerned discrimination in the Armed Forces (*Douglas*)[40] and immigration (*Morrissey and Coll*)[41] — the right of lesbians and gay men to sponsor their partners for immigration to Canada — had been settled out of court by the federal government. The Tory government was reluctant to openly commit itself to change, but recognized that such discrimination was unlikely to survive a Charter challenge. In addition to its legal interventions, EGALE used these cases to pressure the federal government and draw media attention to its issues. In this way, Charter decisions provided ammunition for movement demands and made it more and more difficult for the government to ignore the issues of relationship recognition and amending the Human Rights Act. These cases, and the favourable stance of key federal actors such as the Canadian Human Rights Commission gave EGALE strong grounds for arguing that the federal government should amend the federal Human Rights Act to include sexual orientation as a prohibited ground of discrimination. After all, the change had already been made by the courts. Therefore, there could be no legal objection to amending the federal act. In this sense, EGALE could argue that changing the Canadian Human Rights Act — aside from making human rights complaints in federal jurisdiction easier to make and more widely known — would constitute a symbolic change in recognition of lesbians and gay men as full citizens.

The Tide Turns, 1993-99

The nineties were a turning point for relationship recognition and lesbian and gay activism. With the election of the Liberals in 1993, lesbian and gay rights organizations faced a party in power which had authored the Charter and which might have been expected to display a more open attitude toward lesbian and gay rights. However, the federal Liberals, like the Tories before them, include a small, but vocal group that vociferously and sometimes viciously opposes lesbian and gay rights and, in particular, relationship recognition. Furthermore, the strong showing by Reform and the Bloc in

the 1993 election had mixed effects on groups like EGALE. On the one hand, the Bloc, led by one of its MPs, the openly gay Réal Ménard, has supported lesbian and gay rights; on the other hand, the Reform Party has strongly opposed any changes in this area. The Reform Party, along with the Liberal party's *de facto* Family Caucus, have been able to draw on public opposition to lesbian and gay rights by skilfully using the media. Although polling evidence suggests that a majority of Canadians support relationship recognition,[42] the opponents have been vocal and often effective in pressuring the Liberal government to proceed slowly with lesbian and gay rights issues.

However, the courts have forced the government to act in the areas of human rights and relationship recognition. In several key cases, culminating in the landmark *M v. H* (1999), the Supreme Court has finally moved towards the legal recognition of lesbian and gay spousal rights. The sheer number of cases before courts and human rights tribunals increased substantially over this period.[43] Moreover, lesbian and gay rights organizations at the federal level developed a more effective presence in the mid and late nineties. EGALE reorganized during this period, formally adopting by-laws, developing new organizational structures, including a regional structure for elections to the board of directors to ensure cross-Canada representation and hiring a dynamic executive director. These organizational changes have substantially increased EGALE's membership and influence.[44]

In addition to EGALE, a number of lesbian and gay rights groups were established over this period. Of these, the most important for federal policy change have been LEGIT, the Foundation for Equal Families and the December 9th Coalition. LEGIT was formed after a 1992 Charter challenge in the area of immigration when Christine Morrissey brought a case against the government claiming the right to sponsor her partner, Bridget Coll. Morrissey argued that discrimination on the grounds of sexual orientation conflicted with Section 15 of the Charter and that the definition of spouse in the immigration sponsorship provisions was discriminatory. Soon after, Andrea Underwood and Anna Carrot filed a case on similar grounds. The Mulroney government settled both cases out of court by allowing the partners of the Canadian citizens to immigrate.[45] As a result of these cases, Morrissey and law professor Douglas Sanders founded the Lesbian and Gay Immigration Task Force (LEGIT) in Vancouver, in December 1991, to lobby for changes to the Immigration Act and to support lesbians and gay men who were attempting to bring their partners into Canada.

Like EGALE, the December 9th Coalition was formed in reaction to Charter politics. In the wake of the *Haig and Birch* case, in which an Ontario court read sexual orientation in the Canadian Human Rights Act using Section 15 of the Charter, the federal government faced strong political and legal pressures to amend the Act. The Family Caucus of MPs in the governing Progressive Conservative party opposed the amendment. The

Tory government crafted a compromise between the legal and political pressure to amend the federal human rights code and the anti-lesbian and gay faction in its own caucus. This compromise, announced by Justice Minister Kim Campbell in December 1992, proposed to amend the Canadian Human Rights Act to add sexual orientation as a prohibited ground of discrimination at the expense of spousal rights by defining spousal relationships as exclusively heterosexual.[46] This compromise aimed to forestall the Family Caucus's objection to spousal benefits. The December 9th Coalition was established to lobby against the Campbell amendments, which, if passed, would certainly have been contested in the courts under the Charter.[47] The Coalition included members from various groups in the lesbian and gay communities such as veterans, parents and friends of lesbians and gays, LEGIT, the Lesbian and Gay Rights Section of the B.C. Branch of the Canadian Bar Association, PFAME (a social services group), Vancouver Lesbian Connection, Hominum (a group for formerly married gay men) and Outspoken (a media watch group). Like EGALE, December 9th was formed in direct reaction to federal Charter politics and, like EGALE, some of its key leaders are lawyers.[48] Unlike other provincial coalitions and groups, December 9th often focuses on federal-level changes as well as provincial policy.

The Foundation for Equal Families is an indirect offshoot of one of Canada's oldest gay liberation groups, the Coalition for Lesbian and Gay Rights in Ontario (CLGRO). During the 1994 debate over Bill 167 in Ontario, which would have recognized same sex relationships in provincial law, CLGRO formed a committee on relationship recognition, which eventually became a separate organization — the Campaign for Equal Families. The Campaign for Equal Families was a major player in the campaign to promote Bill 167.[49] When the bill was defeated, the Campaign transformed into the Foundation for Equal Families, whose mandate is to intervene in legal cases specifically concerning relationship recognition, to provide funding to litigants, to educate the lesbian and gay community about legal issues and to raise funds for such cases. The Foundation thus defines its own mandate as an exclusively legal one centred only on relationship recognition cases rather than other types of lesbian and gay rights cases.[50] At least one former Charter litigant, Michelle Douglas, sits on the Foundation's board.

Another important aspect of political activism in this area in recent years has been the role of lesbian and gay caucuses within trade unions, which have pushed for relationship recognition through collective bargaining and litigation.[51] Within CUPE, Canada's largest union, which organizes public sector workers, lesbian and gay organizing was partly inspired by the onset of Charter litigation.[52] In 1991, the Pink Triangle Committee was established within CUPE with representatives from Ontario, B.C., Quebec, Saskatchewan and Alberta to explore educational, policy and political action.[53] CUPE was involved in one of the key cases on relationship

recognition — the *Rosenberg* case — as we will see below. Lesbian and gay activism within unions has heightened awareness of collective bargaining issues, homophobia in the workplace and public policies on relationship recognition.

Some overlap also exists between organizations with provincial and federal mandates. The Foundation for Equal Families is Ontario-based, although its litigation focuses on both provincial and federal laws. The December 9th Coalition in Vancouver has been involved in issues under federal jurisdiction concerning relationship recognition, and several Quebec groups have recently developed regular contacts with EGALE. EGALE has often participated in provincial battles over human rights issues, especially when invited to do so by provincial organizations or lesbian and gay rights activists in provinces with weaker lesbian and gay rights organizations or small populations which make lesbian and gay rights organizing difficult. For example, EGALE has presented briefs to the legislatures of Newfoundland and PEI supporting the inclusion of sexual orientation in the human rights codes of those provinces, and has participated in consultations in the Northwest Territories on reforming family law legislation.[54]

The period from 1993 to 1999 witnessed rapid policy change at the federal level. These changes included: the passage of the hate crimes bill which includes sexual orientation as a ground in hate crime sentencing, the amendment of the Canadian Human Rights Act to include sexual orientation as a prohibited ground of discrimination, changes to immigration policy which will permit lesbians and gay men to sponsor their partners, and the extension of certain types of same sex benefits in federal jurisdiction.

In 1995, the Liberal government undertook an amendment of the Criminal Code to increase the sanctions for crimes motivated by hate, including hate based on the victim's sexual orientation.[55] EGALE called for the inclusion of sexual orientation as part of the amendment, arguing that criminal law defines acceptable conduct in society and that penalizing hate crimes based on sexual orientation would send a signal that targeting lesbians and gays is unacceptable behaviour. EGALE pointed out that "Lesbians, gays and bisexuals are subject to hatred, persecution and violence in Canadian society" and that "[this] calculated and deliberate violence against a segment of the Canadian population is unacceptable and deserving of increased penalties."[56] EGALE appended a sizeable list of criminal cases in which the sexual orientation (or supposed sexual orientation) of the victim had been a motivating factor, including five murders.[57] The Liberals agreed to include sexual orientation among the grounds for hate crimes.

Bill C-41 provoked a furore in the Liberal caucus, led by MPs Roseanne Skoke and Tom Wappel. Skoke claimed that, "The rights of families in my

opinion are being undermined and are being eroded because of the ten per cent of the population that is promoting special rights and interests for homosexuals."[58] In the House, Skoke said, "We're talking about imposing upon and insisting that all Canadians condone what in my opinion is immoral and unnatural."[59] In response to Skoke's remarks, Bloc québécois MP Réal Ménard came out as a gay man. Ménard and openly gay NDP MP Svend Robinson called on the Prime Minister to eject Skoke from the Liberal caucus. Chrétien refused to do so and replied that, "We're in a democracy. Everyone has a right to express an opinion."[60] Opponents of the amendment in the Liberal caucus, led by Skoke and Wappel, called on the government to hold a free vote on both the Criminal Code amendment and the proposed amendment to the Canadian Human Rights Act. The Liberal dissidents were supported by Reform MPs who feared that the amendment would lead to measures such as same sex benefits and adoption rights for same sex couples.[61] Max Yalden, the federal human rights commissioner, called on the government to resist the expression of resentment against vulnerable groups and not only to pass the Criminal Code amendment but also the amendment to the Human Rights Act. The government stood by its commitment to push through the Criminal Code amendment without a free vote. Four Liberals voted against the measure along with the entire Reform caucus and Elsie Wayne (PC). Jean Charest absented himself from the vote. The NDP and the Bloc unanimously supported the government.[62]

The conflict within the Liberal caucus over the hate crimes issue was soon overshadowed by the question of the amendment of the Human Rights Act. While the Liberals had not specifically promised to amend the Canadian Human Rights Act in the Red Book, the Prime Minister had stated in a letter to EGALE during the 1993 election campaign that, "The Liberal Party is firmly committed to banning discrimination on the basis of sexual orientation"[63] and, after the election, Justice Minister Allan Rock specifically promised to amend the Act by the end of 1994.[64] In the wake of the controversy caused by the hate crimes bill, EGALE, along with other equality-seeking groups including B'Nai Brith, the Canadian Jewish Congress and representatives of ethnic minority and Aboriginal communities called upon the government to keep its commitment. EGALE met with the Prime Minister's Office in an effort to keep the issue in the forefront of the government's agenda. Meanwhile, Conservative Senator Noel Kinsella introduced the Human Rights Act amendment in the Senate, where it passed and was referred to the House, further embarrassing the government.[65] Finally, Max Yalden lambasted the government for its lack of commitment, stating that the government's decision to back off was "unworthy" and that "the Canadian Human Rights Act says that all human beings are equal in their rights — all. That doesn't mean all minus homosexuals."[66]

Almost immediately following Yalden's comments, the government decided to go through with the human rights amendment. Once again,

lesbian and gay rights opponents in the Liberal caucus condemned the move and called on the government to hold a free vote. This time, it was a Reform MP's comments that caused a public controversy. Reform MP Bob Ringma said that, if he had black or gay employees that were driving away customers, he would move them to the back of the shop or fire them.[67] In the end, the government put the bill to a free vote and it was passed by 153-76 with 29 Liberals voting against. Once again, the Bloc and the NDP supported the amendment. One Reform MP voted in favour and the rest of the Reform Caucus voted against.[68]

As John Whyte has pointed out, the government's policy on the amendment seems to suggest that protection against the most obvious forms of discrimination (e.g. employment discrimination) was as far as it was willing to go on the lesbian and gay rights issue. The government attached a preamble to the bill specifying that the amendment was not intended to undermine the family. Since the term "family" (in legal terms) has traditionally excluded lesbian and gay families, the preamble could be read to mean that discrimination in family status (such as the provision of benefits conferred on the basis of conjugality) or the ability to marry was still permitted. This was reinforced by the preamble's clear statement that the change was not intended to allow same sex benefits.[69] The preamble itself sparked much debate in the Commons. Opponents of same sex benefits claimed that the inclusion of the term "family" in the preamble would lead to the extension of same sex benefits. Lesbian and gay activists were sceptical about the inclusion of the term "family" in the preamble, especially since it was not specifically defined to include same sex relationships. When asked if the preamble could lead to same sex benefits, Justice Minister Rock replied, "We'll have to see what the courts and tribunals decide."[70]

And, indeed, courts and tribunals were deciding the issue, pushed by individual litigants who brought cases before them. Over the 1993-99 period, five key cases wended their way through the courts, threatening the government's passivity on lesbian and gay rights issues. These cases were: *Egan*, (1995), *Rosenberg* (1998), *Vriend* (1988),[71] *Little Sisters* (ongoing) and *M v. H* (1999). *Egan* concerned an application by a gay man, James Egan, for spousal benefits for his partner, Jack Nesbit, under Old Age Security (OAS). Like Mossop, Egan had been an activist prior to his case; he had undertaken to dispel homophobia during the fifties and early sixties by writing for the newspapers long before the rise of the gay liberation or even the organized homophile movement. The question before the courts was: is the restriction of the OAS spousal benefit to heterosexual couples a violation of Section 15 of the Charter and, if so, is such a violation justified under Section 15 of the Charter as a reasonable limit in a free and democratic society?[72] In its intervention, EGALE argued that sexual orientation was an analogous ground of discrimination under Section 15 and that lesbians and gays constituted an historically disadvantaged group

which, in its previous decisions, the court had declared to be one of the criteria for defining analogous grounds of discrimination. The EGALE intervention cited relationship recognition as a particularly relevant aspect of discrimination for the *Egan* case and raised the whole range of Canadian law that exclusively recognized heterosexual relationships as well as the general invisibility of lesbian and gay relationships in Canadian society. EGALE argued that the government's position — that the ground of discrimination is spousal status, not sexual orientation — in itself constituted discrimination on the basis of sexual orientation, as it implied that lesbian and gay relationships were non-spousal.[73]

In *Egan*, the court ruled that Jim Egan's partner was not entitled to spousal benefits under Old Age Security. Significantly, the court held that sexual orientation was implicitly included in the equality rights section of the Charter (confirming the earlier decisions in *Veysey* and *Haig and Birch*), although the Court ruled that the restriction of the OAS to opposite sex couples was a reasonable limit on the rights guaranteed under Section 1 of the Charter. This immediately raised concerns among a plethora of equality-seeking groups that Section 1 of the Charter ("reasonable limits") would be used to restrict Section 15 equality rights, and sparked the formation of a litigation coalition comprising EGALE and other equality-seeking groups.[74] This litigation coalition intervened in the case of Rosenberg, a challenge to the federal Income Tax Act that prohibits tax advantages for pension plans that grant benefits to same sex couples.[75] In 1989, Nancy Rosenberg, a lawyer at CUPE's national office in Ottawa, requested benefits, including pension rights for her partner, from CUPE. CUPE agreed to provide the benefits but was prevented from extending pension rights because of the Income Tax Act provisions defining spouses as opposite sex. If CUPE had extended pensions benefits to same sex employees, its tax deferral would have been eradicated for all pension plan members.[76] Rosenberg launched a court challenge under Section 15 of the Charter, arguing that the Income Tax Act provision violated Section 15.[77] In 1998, the Ontario Court of Appeal ruled that the Income Tax Act was unconstitutional because it excluded same sex couples from the same treatment for pensions under the tax rules as heterosexual couples. The *Rosenberg* case illustrates the myriad ways in which political activism and litigation are intertwined. CUPE's very active lesbian and gay rights group, the Pink Triangle Committee, was critical to raising the issues within the union, while a litigation coalition, led by EGALE, intervened in the case.

Ottawa declined to appeal the *Rosenberg* decision and the result seemed to indicate that the federal government would be forced to change the Income Tax Act unless it wanted to invoke the notwithstanding clause of the Charter. *Rosenberg* was swiftly followed by another case in the Ontario Court (General Division) which was brought by the Ontario Public Service Employees Union (OPSEU) on behalf of its pension plan. Once again, the court affirmed the *Rosenberg* ruling, ordering OPSEU to bring its separate,

non-registered pension plan for lesbian and gay couples together with its registered pension plan, and adding that the exclusion of same sex couples from the Ontario Pension Benefits Act was in contravention of Section 15 of the Charter.[78] In January 1999, the Ontario government announced that it would appeal this decision.

The *Vriend* case (1988) concerned the constitutional validity of Alberta's human rights code, which did not prohibit discrimination on the grounds of sexual orientation. Delwyn Vriend, a college teacher who had been dismissed from his job for his homosexuality, argued that the failure of Alberta's human rights code to prohibit such discrimination was a violation of the Charter's equality rights guarantees.[79] The Supreme Court agreed. Despite the outcry in Alberta by lesbian and gay rights opponents, the Klein government chose not to invoke the notwithstanding clause of the Charter to override the Court decision in Vriend's favour. EGALE played a key role in the media campaign surrounding the Vriend decision and in supporting Alberta's lesbian and gay community to bring pressure to bear on the Klein government. In addition, EGALE, along with a number of other groups, ranging from the Canadian Labour Congress and the Canadian Bar Association through the Women's Legal Education and Action Fund (LEAF) and the Foundation for Equal Families, intervened in the *Vriend* case.

Another important case (or, more accurately, series of cases) that has been ongoing since 1986 is *Little Sisters*.[80] This case concerns the seizure and censorship of lesbian and gay materials shipped from the U.S. to the Little Sisters Bookstore and Art Emporium in Vancouver. In the latest stage of the court battle led by lesbian and gay male activists in Vancouver, EGALE has applied for leave to intervene in *Little Sisters*' appeal to the Supreme Court of Canada.[81] Once again, in the *Little Sisters* case, the question of limiting Charter rights (in the case, freedom of expression) under the "reasonable limits" clause (Section 1) of the Charter will be the key issue. *Little Sisters* is quite different from the other cases considered here because it does not concern entitlement to government benefits or relationship recognition but, rather, the issue of freedom from censorship. Again, as in the other cases, *Little Sisters* is the fruit of a long history of local activism combined with the deployment of litigation as political strategy. EGALE is a newcomer to the case, but, as in other Charter cases, EGALE's Ottawa-based presence, legal expertise and media savvy has helped draw national attention to the issue of censorship.

The landmark *M v. H.* case concerned the question of spousal support upon the break-up of a relationship under Ontario's family law. M and H were a lesbian couple whose relationship ended in the early nineties. M sought spousal support from H and her application was denied because Ontario family law does not recognize a support obligation between same sex couples. The case was decided in favour of M in the lower courts[82] and the Ontario government decided to appeal the decision of the Ontario Court

of Appeal to the Supreme Court of Canada. Although M and H had reached a settlement, the Supreme Court agreed to rule on the constitutional issues at stake in the case. In the wake of *Egan*, the court had clearly indicated that lesbian and gay equality rights fell within the ambit of Section 15. However, in *Egan*, the court had used Section 1 of the Charter (the reasonable limits clause) to find against Egan's claim for spousal benefits. Moreover, in Egan, the court was considering the extension of public benefits, while *M v H* concerned spousal obligations upon relationship breakup, a classic "private" issue. In *M v. H*, the court again considered the relationship between Section 1 and Section 15 of the Charter, in this case ruling that the discrimination suffered by lesbian and gay couples could not be considered a "reasonable" limit on equality rights. Because the court was considering a broader legal issue of concern to all equality-seeking groups — the relationship between Section 1 and Section 15 — ten groups intervened in *M v. H*., both for and against M. In its intervention in *M v. H*, EGALE argued that lesbians and gay men "should have access to the same range of relationship options as heterosexuals."[83] The Supreme Court ruled in *M v. H* that Ontario's family law act violated the Charter by excluding same sex couples and ordered that the law be changed. This decision not only forced the revision of Ontario's family law, but has also forced the federal government to consider a broad extension of same sex benefits in recognition of the new legal realities.

Human rights tribunals have also played an important role in shaping government policy. Several key complaints before the Canadian Human Rights Commission resulted in tribunal hearings which eventually forced the federal government to extend certain benefits to its lesbian and gay employees. For example, in *Moore and Ackerstrom*, two federal government employees claimed that they had been denied family benefits that would have been extended to heterosexual employees. In Stanley Moore's case, he had been denied living quarters suitable for a couple on his posting as a foreign service officer. Dale Ackerstrom's case concerned health benefits for his partner. In 1996, the Canadian Human Rights Tribunal ruled in favour of Moore and Ackerstrom and ordered the government to extend such medical, dental, moving and housing benefits and to inventory all of its benefits to ascertain the ways in which they discriminate against lesbians and gays and to design proposals for eliminating such discrimination.[84] The government decided to challenge the Tribunal's ruling on the benefits inventory and, in the meantime, created separate benefit plans for lesbian and gay workers. Once again, Moore and Ackerstrom lodged a human rights complaint and the Tribunal ruled that separate benefit plans violate lesbian and gay equality rights, and that benefit plans could not discriminate between same sex and opposite sex relationships.[85] While employment benefits such as moving and housing allowances and bereavement leave were not expected to generate significant financial costs, the extension of medical and dental benefits to the same sex partners of federal employees was expected to cost $1.85

million per year.[86] Private sector experience has demonstrated that less than one per cent of employees will usually claim same sex benefits.[87] Fortunately for the government, the workings of federal tribunals are sufficiently invisible to the public that opponents of lesbian and gay rights were not able to capitalize on the issue to generate opposition. Even here, the government can claim that it challenged the *Moore and Ackerstrom* decision and dragged its feet on the full extension of benefits by establishing a separate plan for lesbian and gay employees that was sure to discourage federal employees from applying for same sex benefits. This "one step forward, one step back" approach permits policy change in increments, with the government attempting to transfer responsibility to courts or tribunals every step of the way. Once again, these cases became part of EGALE's lobbying and media efforts. EGALE not only publicized the cases, but EGALE's executive director also testified as a witness in Moore and Ackerstrom and other human rights tribunal cases.

Immigration is another important area of recent policy change. The Immigration Act prevented lesbians and gays from sponsoring their partners for entry into Canada. LEGIT presented several briefs to the Mulroney government and encouraged lesbians and gay men who had been separated from their partners by Canadian immigration law to file complaints with the Canadian Human Rights Commission. Twenty such complaints had been filed by 1993.[88] In the Liberals' first mandate, the government went one step further by instructing Immigration Canada's field offices to admit same sex partners under the humanitarian provisions of the Immigration Act provided that the relationships were bona fide, although the criteria for determining the validity of the relationship were not established in the new policy. This change constituted the government's reply to the human rights complaints.[89]

LEGIT and EGALE have actively participated in the government's recent Immigration Advisory Review. In 1996, LEGIT presented a brief to the Review, highlighting sponsorship under current immigration policy from the point of view of lesbians and gay men. The government's decision to permit lesbian and gay partners to immigrate on humanitarian grounds does not alter the family class definition of the Immigration Act which excludes same sex couples. Aside from the symbolism of exclusion, this means that there is no formal process for determining applications and no appeal from decisions that are made on humanitarian grounds. In contrast, LEGIT recommended that Canadian immigration law include a category for relationships of emotional interdependency which would apply to all couples and their dependant children and argued that all partnership applications should be processed following the same criteria for establishing the bona fides of a relationship.[90] The Immigration Advisory Panel's report recommended the inclusion of same sex partners in the family class.[91] In January 1999, the government announced that it was considering changing the immigration regulations to permit same sex

partners to sponsor their partners as part of the "family class" of immigrants.[92] However, the government seemed to be hesitating over how to define the regulations, given that some of the material that would normally be used to established the bona fides of a relationship for immigration purposes might not easily be available to lesbian and gay couples, whose relationships lack legal sanction in most parts of the world and who, in some cases, may face persecution for living openly in a gay or lesbian relationship. The classic litmus test of the bona fides of a relationship for sponsorship in the case of straight couples is marriage, a policy possibility which the federal government does not seem to be ready to extend to lesbian and gay couples. Once again, the government feared that the immigration changes would encounter problems in the House, especially from Reform.[93] The courts and the Charter clearly play a major role here: when the courts decide the issue, as they did so clearly in *M v. H*, they allow the government to claim its proposed policy changes will save taxpayers' money by avoiding litigation, which, given the direction of recent court decisions, is likely to favour lesbian and gay equality rights.

The most recent federal lesbian and gay rights issue concerns the idea of undertaking a comprehensive review of federal legislation on relationship recognition. In January 1999, the Foundation for Equal Families, in tandem with other equality-seeking groups, including EGALE, undertook an omnibus Charter challenge to discriminatory federal legislation. The Foundation filed a challenge to fifty-eight federal statutes that discriminate against lesbians and gays covering such areas as pension and survivor benefits, conflict of interest provisions and citizenship.[94] The purpose of the case was to force the government to comprehensively review and change the offending statutes by threatening long and expensive litigation.[95] EGALE worked with the Foundation to publicize the case, calling on the government to make a firm commitment to amend all discriminatory federal legislation and organizing Pride in Ottawa for 1999 around the issue of the Foundation's legal challenge.[96] In March 1999, the federal government announced that it would change the Income Tax Act and the Canada Pension Plan to permit same sex couples to be treated the same way as heterosexual couples. Apparently, the federal government also considered an omnibus approach, but felt that it would attract too much opposition from the Reform Party.[97] In May, 1999, the government slipped a small change into the Public Service Superannuation Act amendments, that extended survivor benefits to same-sex spouses.[98] This bill was controversial for other reasons because it would have permitted the government to gain control of the pension plan surplus, a move which was naturally opposed by the public sector unions and by the opposition. Once again, the government has shown its willingness to move when the issue can be camouflaged by other issues, as in this case, or when it can claim that "the courts made us do it."

Reaction to these changes was swift. The Reform Party tabled a motion in the House of Commons designed to forestall future policy change by defining marriage as exclusively heterosexual. Incredibly, the Liberals voted with the Reform Party on the motion, which shows how vulnerable the Liberals are to pressure from within their own caucus on the lesbian and gay rights issue.[99] Reform's motion must be read in light of the crescendo of recent calls in the academic and popular press for more scrutiny of judicial appointments.[100] It seems clear that opposition to lesbian and gay rights is one of the most important reasons that Reform wants to limit the power of judges. Ironically, the power of judges with regard to Section 15 of the Charter, which is where lesbian and gay equality rights are litigated, is already limited by the notwithstanding clause, which allows legislatures, including the federal Parliament, to opt out of the equality rights provisions of the Charter. The Liberal government is on solid ground in refusing to deploy notwithstanding. The clause has barely been used since the advent of the Charter. Notably, the Bourassa government used it in 1988 in Quebec to craft legislation concerning the language of signage. In that case, Bourassa had solid support from Quebec public opinion, although the furore that occurred outside of Quebec may have played a part in the PQ government's subsequent decision not to renew the declaration of notwithstanding after its five-year term had expired. This example demonstrates that public support for the suspension of equality rights must be very strong indeed for governments to risk using the clause. Given that most Canadians support the kind of relationship recognition represented in cases such as *M v. H* and *Rosenberg*, the Liberal government would not receive strong support for using an unpopular Charter loophole to deny the rights of a minority group.

Conclusions

In each of the important lesbian and gay rights cases from *Mossop* and *Egan* to *Little Sisters*, *Rosenberg*, *Vriend* and *M v. H*, political activism was entwined with the litigation. In all of the cases listed above except *M. v. H.*, the litigants were either activists before undertaking their cases or became activists as a result of their cases. In every case, EGALE and other players such the Foundation for Equal Families intervened in support of the lesbian or gay litigant. EGALE has not only intervened, but has constantly lobbied the Justice Department and central agencies, has appeared before parliamentary committees and has maintained a constant Ottawa-based media presence on lesbian and gay rights issues. Each case has drawn further attention to the cause of lesbian and gay equality rights and has served the pan-Canadian activist network both to pressure Ottawa and to effect changes in provincial jurisdictions. Without the broad social and political support for lesbian and gay equality rights, epitomized by a movement that now exists in some form in every province and territory, the equality rights guarantees of the Charter would be a dead letter. The case of

Quebec is instructive on this point. Although Quebec included sexual orientation as a prohibited ground of discrimination in its human rights legislation in 1977, very few human rights complaints were brought until the late eighties and early nineties.[101] It is unlikely that Quebec's lesbians and gays have only recently discovered their discrimination. Rather, in the changed political atmosphere of the later period, they likely feel more comfortable in coming forward to the Quebec human rights commission. The Charter itself is no guarantee that rights will exist in the reality of Canadian society. Rights on paper are meaningless without broad social and political support. This support has grown gradually from the early years of the gay liberation and feminist movements in the seventies through to the work of groups such as EGALE in the nineties.

This seemingly simple point is often lost in the debates over the Charter's impact. Generally, the Charter is treated as if its legal guarantees were the "cause" of the recent changes.[102] And, indeed, the Charter is the proximate "cause" of the changes. Yet the meaning of equality rights for lesbians and gay men under the Charter has changed substantially from the first days of the Charter's entrenchment. In the beginning, it was not even clear that sexual orientation would be included in Section 15. Today, it is undisputed. The words on paper have not changed, but Canadian society has. The decisions of the court have reflected and followed the political and social values of the day. Despite Reform's critique of judges, the court does not step out very far in advance of the dominant values of Canadian society. All polling evidence suggests that a clear, although not overwhelming, majority of Canadians support the court's stance on lesbian and gay equality rights as epitomized by the recent cases. And, the fact that governments of the right such as those led by Klein and Harris have not dared question this new orthodoxy by declaring notwithstanding in turn suggests the solidity of this emerging consensus. The political mobilization of the lesbian and gay rights movement through EGALE, the Foundation for Equal Families, LEGIT, the December 9th Coalition, lesbian and gay caucuses within trade unions, and individual litigant-activists has played a major role in shaping the legal and policy impact of the Charter. Although the focus on Charter-centred equality-seeking is contested as an ideology and strategy within the lesbian and gay communities, in their public presentation to governments and through the media, the organizations of the movement have advocated the straightforward and politically palatable argument that lesbians and gay men and, by extension, lesbian and gay male couples, are similar to heterosexuals and deserve to be treated in the same way as heterosexuals under law and public policy. This type of equality-seeking fits into the dominant political norms of the Charter era, which support equality-seeking and rights-claiming within an essentially liberal, legal framework. This liberal model of equality-seeking cuts against many of the values of the gay liberation and lesbian feminist movements of the late sixties and seventies which, in many ways, advocated distinctive gay and lesbian identities. Similarly, it also cuts against the notion of a

distinctive "queer" identity. Tellingly, the word "queer," which might appear to water down or destabilize a clear cut, categorical, and comprehensible lesbian and gay male identity, is eschewed by mainstream lesbian and gay rights organizations.[103]

Finally, the story of Charter-centred, political activism told in this paper suggests the need for a more interdisciplinary approach to understanding the impact of the Charter on public policy, understanding the politics of social movement organizations, and understanding the complex web of interrelationships between the two. In particular, political scientists should be more cautious in their sometimes sweeping claims about the Charter's impact on public policy and pay more nuanced attention to particular empirical cases. Legal scholarship, which has provided the richest analyses of both feminist and queer Charter issues, could potentially deepen its perspective by paying more attention to the political claims and alliances that are part and parcel of lesbian and gay rights organizing and mobilizing in the litigation process. The dimensions of political activism which have helped to shape Charter litigation and federal public policy — lobbying and media campaigns by lesbian and gay rights organization, intervention in Charter cases by lesbian and gay rights organizations, trade union involvement in lesbian and gay rights cases and the activism of individual litigants themselves — need to be connected to sociological changes over the last twenty years in lesbian and gay communities.[104] Much more work is needed on organizing at the local level, which is where most lesbian and gay activism occurs. The multiple diversities of the lesbian, gay and bisexual communities — the role of gender, ethnicity, language, region and class — have barely been empirically examined. As this work is undertaken in the years to come, we can hope for a richer and more empirically grounded picture of queer politics in Canada.

Notes

1. This research was funded by the GR-6 Fund of Carleton University. I would like to thank Deborah McIntosh and the readers and Editorial Board of the Journal for their helpful comments on the previous drafts of this paper.
2. *M v. H* [1999] S. C. J. No. 23.
3. There are few systematic surveys of recent events, although McCarthy and Radbord have provided a timely overview of the state of family law and same sex couples. See Martha McCarthy and Joanna L. Radbord, "Family Law for Same Sex Couples: Chart(er)ing the Course," *Canadian Journal of Family Law* 15 (1998): pp. 101-177.
4. While organizations such as EGALE have included bisexuals and the transgendered as part of their mandate, to date, Charter cases and policy demands have focused on lesbians and gay men. Because of this policy focus, I will not deal with the equality rights claims of bisexuals or the transgendered in this paper.
5. Rainer Knopff and F.L. Morton, *Charter Politics* (Scarborough, Ont.: Nelson, 1992).

6. Didi Herman, *Rights of Passage: Struggles for Lesbian and Gay Legal Equality* (Toronto: University of Toronto Press, 1994).
7. Richard Sigurdson, "Left- and Right-Wing Charterphobia in Canada: A Critique of the Critics." *International Journal of Canadian Studies* 7-8 (Spring-Fall, 1993): pp. 95-116.
8. On the dialogue between courts and legislatures, see Janet Hiebert, "Wrestling with Rights: Judges, Parliament and the Making of Social Policy," *Choices* 5: 3 (August 1999).
9. Two very fine recent examples of such work which are sure to become classics in the field are: Kathleen A. Lahey, *Are We "Persons" Yet?: Law and Sexuality in Canada* (Toronto: University of Toronto Press, 1999) and Bruce MacDougall, *Queer Judgments: Homosexuality, Expression, and the Courts in Canada* (Toronto: University of Toronto Press, 2000).
10. For a survey of union activity on lesbian and gay rights issues, see Gerald Hunt, "Sexual orientation and the Canadian labour movement," *Relations Industrielles/ Industrial Relations* 52: 4 (1997): pp. 787-809.
11. *Rosenberg v. Canada (Attorney General)* [1998] 38 O. R. (3d) 577.
12. Most litigants were activists before undertaking their cases but a small minority (e.g. Christine Morrissey of LEGIT) became activists as a result of their cases.
13. For example, Philip Hannon, "Sexual outlaws or respectable in-laws?" *Capital Xtra* 71 (June 1999): p. 3.
14. Classic contributions to this debate in the legal literature are: Brenda Cossman, "Family Inside/Out," *University of Toronto Law Journal* 44 (1994): pp. 1-39 and Didi Herman, "Are We Family?: Lesbian Rights and Women's Liberation," *Osgoode Hall Law Journal* 28: 4 (1989): pp. 789-815.
15. One can find legal cases in which EGALE's facta have pointed out the debate on relationship recognition within the lesbian and gay male communities. In M *v. H*, EGALE attempted to make the argument that "diversity" of lesbian and gay family forms must be recognized. However, at the legal end of the day, EGALE had to make a choice between supporting M and, in so doing, supporting state regulation of lesbian and gay male relationships in ways that are functionally similar to the ways in which straight relationships are regulated by the state *or* agreeing with H, who argued that lesbian relationships are not the same as straight relationships and who contested the domestication of such relationships. In my view, it is impossible to argue *against* the repressive consequences of domesticating lesbian and gay relationships *and* for state regulation in the same breath. In this sense, you are either with H or against her and it is incontestable that all the main lesbian and gay "rights" organizations were not only with M and intervened in her support, but that they have been crowing with glee ever since *M v. H* was decided in M's favour. The death of the diversity represented by H has been celebrated as a "victory" for "lesbian and gay rights." This episode demonstrates that it is important to distinguish the debate at the grass roots level and debates among academics from the public positions that are taken by lesbian and gay rights organizations. In this paper, I am mainly concerned with public rights claims through the media and lobbying efforts, not with the internal debate within lesbian and gay communities or with the nuances of the presentation of the case in the court (which is lost on the grass roots of the lesbian and gay communities in any case). However, I have written extensively about these internal debates elsewhere. See Miriam Smith, *Lesbian and Gay Rights in Canada: Social Movements and Equality-Seeking, 1971-1995* (Toronto: University of Toronto Press, 1999).

16. Carl F. Stychin, *Law's Desire: Sexuality and the Limits of Justice* (London and New York: Rutledge, 1995): p. 140.
17. Deborah McIntosh and Miriam Smith, "Warming Up to Rights: Early Lesbian Charter Strategies," in Radha Jhappan (ed.), *Women's Legal Strategies* (Toronto: University of Toronto Press, forthcoming).
18. Brenda Cossman, Shannon Bell, Lise Gotell and Becki Ross, *Bad Attitude/s on Trial: Pornography, Feminism, and the 'Butler' Decision* (Toronto: University of Toronto Press, 1997).
19. For example, EGALE has recently been criticized for failing to take a stand on age of consent issues: Andrew Griffin, "EGALE abandons queer teens," *Capital Xtra* 78 (February 18, 2000): p. 7.
20. Gayle Rubin, "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality," in Carole S. Vance (ed.), *Pleasure and Danger: Exploring Female Sexuality* (Boston: Routledge and Kegan Paul, 1984): pp. 267-319.
21. Special Joint Committee on the Constitution of Canada, *Minutes of Proceedings and Evidence, 1980-81*: pp. 36: 17. See the interpretations of this episode: Bruce Ryder, "Equality Rights and Sexual Orientation," *Canadian Journal of Family Law* 9: 1 (Fall 1990): pp. 39-97 and James E. Jefferson, "Gay Rights and the Charter," *University of Toronto Faculty of Law Review* 43 (1985): pp. 70-89.
22. See Ed Jackson and Stan Persky, *Flaunting It!: A Decade of Journalism from the Body Politic* (Vancouver and Toronto: New Star Books and Pink Triangle Press, 1982).
23. Smith, *Lesbian and Gay Rights*: pp. 78-83.
24. Of 550 submissions to the sub-committee from across Canada, over 40 were from lesbian and gay groups. See Patrick Boyer, Chairperson, *Equality for All: Report of the Parliamentary Committee on Equality Rights* (Ottawa, 1985): pp.161-176. Examples of press coverage are: *The Body Politic* 122 (January 1986): p. 19; Blair Johnston, "Equality hearings delayed," *Goinfo* 79 (July/August 1985): p. 1.
25. Roger Roome, "Parliamentary committee recommends equal rights for gays and lesbians," *Goinfo* 82 (November 1985): p. 3.
26. *Goinfo* 85 (March 1986): p. 6.
27. C.H., "Tory government will offer gays protection," *Goinfo* (April 1986): p. 2; See also, Canada, Department of Justice, *Toward Equality: The Response to the Report of the Parliamentary Committee on Equality Rights* (1986).
28. James Robertson, "PM's office getting inundated with anti-gay mail," *Goinfo* (July/August 1986): p. 3; "Editorial," *The Body Politic* 125 (April 1986): p. 8.
29. C.H. "Tory government will offer gays protection," *Goinfo* 86 (April 1986): p. 2; Christine Jean-François, "New gay rights group pushing for government action," *Goinfo* 90 (September 1986): p. 1.
30. *Canada (A.G.) v. Mossop* [1993] 1 S.C.R. 554.
31. *Egan v Canada* [1995] S.C.J. No. 43, File No. 23636.
32. *Correctional Services of Canada v. Veysey*, (1990) 109 N.R. 300.
33. *Haig and Birch* (1992), 9 O.R. (3d) 495 , 94 D.L.R. (4th) 1, 16 C.H.R.R. D/226, 57 O.A.C. 272, 10 C.R.R. (2d) 287.
34. Geoffrey Yorke, "Ottawa accepts court ruling on gay rights," *Globe and Mail* (October 31, 1992): p. A10.
35. Karen Patrick, "Spousal benefits," *Capital Xtra* 37 (September 20, 1996): p. 7.
36. Jody Freeman, "Defining Family in Mossop v. DSS: The Challenge of Anti-Essentialism and Interactive Discrimination for Human Rights Litigation," *University of Toronto Law Journal* 44 (1994): pp. 41-96.

37. Nitya Iyer, "Categorical Denials: Equality Rights and the Shaping of Social Identity," *Queen's Law Journal* 19: 1 (Fall 1993): pp. 179-207; Douglas Sanders, "Constructing Lesbian and Gay Rights," *Canadian Journal of Law and Society* 9: 2 (Fall 1994): p. 359.
38. Deborah McIntosh, "Appendix I: Court cases in which sexual orientation arguments under section 15 of the Charter were raised," in Smith: pp. 157-163.
39. This is based on personal interviews with some of the litigants and on publicly available information about their activist careers.
40. *Michelle Douglas v. The Queen*.
41. *Morrissey and Coll v. The Queen*.
42. Anne McIlroy, "Most in poll want gay marriages legalized," *Globe and Mail* (June 10, 1999): pp. A1, A8.
43. Smith, pp. 157-164.
44. Interview, Lawrence Aronovitch, Vancouver, February 5, 1996; Suzanne Desaulniers, "Reflecting on renewal, preparing for growth," *Capital Xtra* (April 22, 1994): p. 1; EGALE, *By-laws* (adopted by the membership on January 21, 1993, amended in 1994 and 1995).
45. Court Challenges Program, *Court Challenges Program Funds Lesbian Couple*, Press Release, January 14, 1992; Dan Gawthrop, "BC couple challenges immigration," *Xtra* (March 6, 1992): p. XS 5.
46. Interview, Alan Herbert, Vancouver, February 13, 1996; Interview, Barbara Findlay, Vancouver, February 6, 15, 1996.
47. For discussion of these events, see David Rayside, *On the Fringe: Gays and Lesbians in Politics* (Ithaca and London: Cornell University Press, 1998): pp. 110-111.
48. Findlay interview.
49. Rayside, pp. 141-178.
50. Foundation for Equal Families, *Organizational Objectives* (http://www.ffef.ca, March 29, 1999).
51. Michael Battista, "Planes, trains and automobiles," *Xtra* (May 26, 1994): pp. 14-15.
52. Interview, Máire Kirwan, Vancouver, February 14, 1996.
53. CUPE, *Winning Out at Work: Partner Benefits, Why and How?* (CUPE, n.d.).
54. For example, EGALE, *Equal Measures: Written Submissions to the Standing Committee on Social Programs, Government of the Northwest Territories on Behalf of Equality for Gays and Lesbians Everywhere* (June 11, 1997) and EGALE, *Written Submissions to the Prince Edward Island Standing Committee on Social Development on Behalf of Equality for Gays and Lesbians Everywhere* (October 24, 1997).
55. See David Vienneau, "Gay rights furor clouds hate bill," *Toronto Star* (March 13, 1995): p. A2.
56. EGALE, *EGALE Submission to the House of Commons Standing Committee on Justice* and *Legal Affairs re: Bill C-41, Hate Crimes,* December 1994: p. 1.
57. Ibid.
58. Cited in Bob Cox, "Svend retorts as Grit MP blasts homosexuality," *Winnipeg Free Press* (September 21, 1994): p. A3.
59. Cited in "Homosexuals 'immoral and unnatural,' MP claims," *Vancouver Sun* (September 21, 1994): p. A4.
60. Peter O'Neil, "Gay-debate brings second MP out of the closet," *Toronto Star* (September 28, 1994): p. A3.

61. Norm Ovenden, "'Sexual orientation' reference expected to prove time bomb," *Vancouver Sun* (October 4, 1994): p. A8; Tu Thanh Ha, "Dissident Liberals fight bills on gays," *Globe and Mail* (September 24, 1994): p. A1.
62. Yalden's remarks are cited in Tu Thanh Ha, "Fight discrimination, politicians told," *Globe and Mail* (March 22, 1995, A5). See also, Tu Thanh Ha, "Sex orientation dispute," *Globe and Mail* (June 16, 1995): p. A4.
63. "Human Rights Act amendments finally moving forward," *Info EGALE* (Spring 1996): p. 1.
64. John Fisher, Executive Director, EGALE, *Speech to EGALE's 1995 Gala* (Spring, 1995).
65. "Human Rights Act Amendments finally moving forward," *InfoEGALE* (Spring 1996): p. 1.
66. Cited in Anne McIlroy, "Yalden flunks Liberals on gay rights," *Globe and Mail* (March 20, 1996): p. A1.
67. Peter O'Neil, "Reform sticks to back of shop remark," *Vancouver Sun* (May 1, 1996): pp. A1, A8.
68. Brian Underhill, "Gay rights bill passes but divides parties," *Halifax Chronicle-Herald* (May 10, 1996): p. A1.
69. John D. Whyte, "Clouding equality: The rights bill comes with a subtext," *Globe and Mail* (May 9, 1996): p. A23.
70. Cited in Karen Patrick, "Word Games," *Capital Xtra* 33 (May 17, 1996): p. 2.
71. *Vriend v. Alberta* [1998] 1 S. C. R. 493.
72. For the facts of the case and the decision, see Brad Berg, "Fumbling Towards Equality: Promise and Peril in *Egan*," *National Journal of Constitutional Law* 5:2 (June 1995): pp. 263-278 and Debra M. McAllister, "*Egan*: a crucible for human rights," *National Journal of Constitutional Law* 5 (1994): pp. 95-108. For a broad discussion of Charter litigation on sexual orientation in comparative perspective, see Robert Wintemute, *Sexual Orientation and Human Rights: The United States Constitution, the European Convention and the Canadian Charter* (Oxford: Clarendon Press, 1995).
73. EGALE, *Factum in "Egan":* pp. 1-12.
74. For details of this coalition effort, see Avvy Go and John Fisher, *Working Together Across our Differences: A Discussion Paper on Coalition-building, Participatory Litigation and Strategic Litigation* (Ottawa**:** Court Challenges Program**,** 1998).
75. EGALE, Press Release*, Unanimous Court of Appeal Rules: Income Tax Act Definition of "Spouse" Must be Extended to Include Same-Sex Couples for Pension Purposes* (April 23, 1998). The members of the Coalition were: EGALE; Canadian AIDS Society; Canadian Association of Elizabeth Fry Societies; Charter Committee on Poverty Issues; Chinese Canadian National Council; Coalition for Lesbian and Gay Rights in Ontario; DisAbled Women's Network; End Legislated Poverty; Minority Advocacy Rights Council; National Action Committee on the Status of Women; National Association of Women and the Law; Table féministe francophone and the Toronto Chinese and Southeast Asian Legal Clinic.
76. Philip Hannon, "Challenging an archaic system," *Capital Xtra* (November 19, 1993): p. 1.
77. CUPE, *Winning Out at Work: Partner Recognition Litigation* (CUPE: n.d.): pp. C-15-16.
78. EGALE, press release, *Ontario Court Rules: Pension Benefits Act Unconstitutional* (http://www.egale.ca/pressrel/981208.html, December 10, 1998).

79. Margot Young, "Change at the Margins: *Eldridge* v. *British Columbia* (A.G.) and *Vriend v. Alberta*," *Canadian Journal of Women and the Law* 10: 1 (1998): pp. 244-263.
80. Janine Fuller and Stuart Blackley, *Restricted Entry: Censorship on Trial* (Vancouver, Press Gang, 1995).
81. EGALE, *Little Sisters Press Release*, 1999 (http://www.egale.ca/legal/littlsis.htm, March 29, 1999).
82. Susan B. Boyd, "Best Friends or Spouses? Privatization and the Recognition of Lesbian Relationships in *M. V. H*.," *Canadian Review of Family Law* 13 (1996): pp. 321-341.
83. EGALE, *M v. H: An EGALE Backgrounder* (www.egale.ca/legal/backgrd3.htm, May 20, 1999). See also note 15.
84. Margot Gibb-Clark, "Same-sex health benefits ordered," *Globe and Mail* (June 14, 1996): p. A1.
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Marie-Blanche Tahon

La parité n'est pas une revendication féministe

Résumé

La parité politique, qui vise l'égal accès des hommes et des femmes aux mandats électoraux et aux fonctions électives, est une revendication politique, qui est énonçable lorsque sont admises deux conditions : 1) la reconnaissance par la loi du droit des femmes à contrôler elles-mêmes leur fécondité élimine la possibilité de prétendre qu'elles sont marquées par les « déterminations de leur sexe » et 2) c'est l'état civil qui institue le peuple en deux catégories sexuées. Il est dès lors envisageable que le peuple soit représenté par autant de femmes que d'hommes sans céder sur le caractère universaliste de la représentation démocratique. Cela suppose que la parité ne soit pas envisagée comme une représentation corporatiste des femmes.

Abstract

Political parity, which aims at ensuring equality of access of men and women to election mandates and elected office, is a political claim that can be made if two conditions are recognized as being valid: 1) A recognition in law of the right of women to have reproductive control over their own bodies that would obviate any possibility of contending that they are marked by the "determinants of their gender" and 2) The people are categorized as being made up of male and female individuals by virtue of their civil status. It is therefore conceivable that people would be represented by as many women as men without compromising the universalist nature of democratic representation. This supposes that parity not be viewed as a corporatist representation of women.

L'émergence de la revendication de la parité dans des démocraties occidentales – où le nombre de députées dans les Parlements, par exemple, est faible ou très faible, à l'exception des pays scandinaves – classe spontanément la parité comme une revendication féministe. Or, envisager la parité comme une solution destinée à résoudre un problème qui se poserait aux femmes « en tant que femmes », c'est permettre que puissent se déployer, en toute mauvaise foi, des critiques en termes de « biologisation du social » (Rosanvallon, 1998), d'« intrusion de la biologie dans la politique » (Ferry, 1999) ou de « régression naturaliste » (Lipovesky, 1997). Évidemment, ces critiques ne font pas avancer la « cause des femmes » et encore moins la réflexion sur les aléas de la démocratie contemporaine. Envisager la parité comme une solution destinée à résoudre un problème

« spécifique » aux femmes permet également d'entériner la perspective selon laquelle il est souhaitable de combler le « retard des femmes » à intégrer l'espace politique, comme si ce retard était imputable à elles et non à la trame même du tissu politique. Dénier à la parité cette capacité de solution, en restant sur ce terrain de la spécificité des problèmes des femmes « en tant que femmes », ne déjoue pas ces pièges.

Rappelons que la revendication de la parité vise à ce que 50 p. 100 des candidats soient des candidates. Il ne s'agit pas de revendiquer que 50 p. 100 des députés soient des députées. Dans une perspective démocratique, la parité ne peut remettre en cause la liberté du vote. Il incombe à chaque électeur et à chaque électrice de désigner le candidat de son choix, qu'il soit homme ou femme. Aucun promoteur ni aucune promotrice de la parité n'a envisagé, par exemple, que les femmes devraient voter pour des femmes et les hommes pour des hommes, ni que le Parlement serait dorénavant divisé en deux assemblées, un Parlement féminin à côté d'un Parlement masculin. Mais s'il s'agit de prôner une « égalité des chances » et non une « égalité des résultats », des mesures doivent être prises pour que les « chances » des uns et des autres se situent effectivement sur le terrain de l'égalité[1].

La revendication de la parité a été critiquée par des féministes françaises (Tahon, 1998), le plus souvent, en raison de son défaut prétendu d'universalisme. Au Québec, les (encore) rares échos qu'elle a reçus à ce jour semblent indiquer d'autres réticences qui tiendraient à son défaut de féminisme. Proposer au débat que « la parité n'est pas une revendication féministe » suggère que les femmes sont aujourd'hui placées en situation de déjouer les paradoxes de la citoyenneté qui les concernent et qui se sont déployés avec la démocratie (moderne).

Le parti pris de limiter le débat au Québec s'impose par le manque de matériaux dont je dispose pour pouvoir élargir le questionnement au Canada et aux autres provinces canadiennes. Ce manque résulte partiellement de la manière dont j'appréhende l'émergence et la teneur de cette revendication. À mes yeux, il s'agit moins d'une question de nombre que d'une question de principe. L'intérêt de la revendication de la parité réside moins dans la visée d'accroître le nombre de femmes au Parlement que dans celle de faire admettre qu'il est juste que le peuple y soit représenté par autant de femmes que d'hommes.

La première partie illustrera rapidement, en se basant sur le Québec et la France, que l'accès au suffrage universel, en lui-même, n'ouvre pas la porte à une citoyenneté des femmes comparable à celle des hommes. La deuxième partie exposera très succinctement l'argumentation[2] qui me permet présentement d'énoncer que la parité s'inscrit dans l'universalité. La troisième partie, la plus longue puisque la plus novatrice dans mon cheminement de recherche, tentera de faire le point sur ce qui éloigne ma perspective de celle de Micheline de Sève (1999), qui est exposée en réponse à mon article sur la « démocratie paritaire » (1998) et aussi de celle

de Dominique Masson (1999). De longues citations tirées de leur article permettront aux lecteurs et aux lectrices de poursuivre leur propre réflexion à ce sujet. Il va sans dire que ces articles ont contribué à m'obliger à creuser ma réflexion sur ce thème. Réflexion qui, bien sûr, reste inaboutie et est ici soumise à la critique.

L'accès des femmes aux droits

L'expression de la revendication de la parité a sans doute été rendue possible par le rôle politico-institutionnel que joue, depuis une dizaine d'années, la Communauté européenne (Vogel-Polsky, 1994), mais force est de reconnaître que c'est en France qu'elle a suscité les plus âpres débats, qui ne sont pas clos, même si elle y a été formellement rencontrée dans ses grandes lignes par un amendement à la Constitution ratifié en juin 1999 et par des arrêtés d'application qui lui donnent de la substance.

Pour que le principe selon lequel il est juste que le peuple soit représenté à l'Assemblée nationale par autant de femmes que d'hommes puisse être conceptuellement entériné, il est nécessaire d'historiciser l'entrelacement des droits civiques et des droits civils qui a singularisé la situation des femmes par rapport à celle des hommes. En effet, si ce principe est juste, pourquoi a-t-il fallu attendre si longtemps pour l'admettre? Cette lenteur tient, au moins partiellement, au fait que les femmes n'ont pas accédé de manière concomitante aux mêmes droits politiques et aux mêmes droits civils que leurs concitoyens. Cet état de fait est voisin en France et au Québec : c'est tardivement que les Québécoises et les Françaises ont participé au suffrage universel; et elles y ont accédé en n'ayant pas les mêmes droits civils que leurs concitoyens respectifs.

Les Québécoises ont été les dernières Canadiennes à accéder au droit de vote au niveau provincial, en 1940, alors que ce droit avait été octroyé, au niveau fédéral, à toutes les Canadiennes en 1918. Les Françaises ne l'ont obtenu qu'en 1944, par un Décret du gouvernement provisoire installé à Alger. Elles faisaient partie du dernier bataillon des Européennes[3] à y accéder, longtemps après les « Nordiques » et les « Anglo-saxonnes » (voir Sineau, 1992, p. 474). Il importe aussi de souligner que l'un des héritages malencontreux que la France a transmis indirectement au Québec réside dans l'établissement d'un Code civil qui, inspiré du Code napoléonien (1804), a longtemps affecté l'accès des Québécoises aux mêmes droits civils que les Québécois.

Le droit de vote n'ouvre pas la porte à une même citoyenneté pour les femmes et pour les hommes. En effet, si elles ont obtenu le droit de vote respectivement en 1940 et en 1944, les Québécoises et les Françaises devront attendre 1964 et 1965 pour que leur mari ne puisse plus s'opposer à ce qu'elles aient un travail rémunéré et pour qu'elles puissent ouvrir un compte en banque; elles attendront 1977 et 1970 pour que l'« autorité parentale » remplace la « puissance paternelle » (d'après Sineau et Tardy,

1993, p. 143). Ce n'est qu'en 1980 au Québec et en 1985 en France que le Code civil est si profondément remanié qu'il finit par établir l'égalité entre hommes et femmes et entre pères et mères.

Enregistrons ici, on y reviendra, que parallèlement à ces déblocages successifs prenaient de l'ampleur le débat à propos de l'avortement et les luttes pour qu'il soit laissé à la femme concernée la liberté d'en décider en conscience. En France, la « loi Veil » passe, grâce aux voix de l'opposition de gauche, en 1975. Au Québec, la saga est plus longue, mais elle débouche sur une décision plus tranchée. Avec l'arrivée au pouvoir du Parti québécois, sont mises en place, dans la seconde moitié des années 70, les « cliniques Lazure », du nom du ministre des Affaires sociales de l'époque. Ces cliniques pratiquent le « planning des naissances », y compris des services d'interruption de grossesse selon les normes prévues par le Code criminel canadien, soit l'existence d'un comité d'avortement thérapeutique. Des avortements sont également pratiqués dans des CLSC (centre local de services communautaires) et dans des « centres de santé des femmes ». L'État ferme les yeux sur ces pratiques sans toutefois les autoriser (Collins, 1987, p. 313). Il faudra attendre le « jugement Morgentaler » de la Cour suprême en 1988 pour que l'intervention de la conscience de la femme dans cet acte entre en ligne de compte, ce qui se donne à lire dans la suppression des comités d'avortement thérapeutique. Et, le 8 août 1989, l'« affaire Chantal Daigle » permet à la Cour suprême du Canada, à l'encontre d'une décision d'une Cour québécoise, d'affirmer que « les droits du fœtus et les droits du père en puissance [...] n'existent pas. » Depuis lors, les femmes québécoises (comme les femmes canadiennes) sont formellement reconnues comme des « individus à part entière » puisque cette reconnaissance intervient à propos de la plus haute des libertés : celle de décider si un enfant viendra à la vie, en l'occurrence, dans l'espèce humaine à l'heure de la modernité démocratique, à la « communauté des citoyens » (Schnapper, 1992).

Si les Québécoises et les Françaises ont dorénavant les mêmes droits civiques et civils que les Québécois et les Français, elles demeurent néanmoins largement à l'écart du « second étage de la citoyenneté » (Kriegel, 1998a), celui qui concerne la représentation du peuple. À l'Assemblée nationale à Québec, la députation est composée de 96 députés et de 29 députées. À Paris, la situation présente est encore plus calamiteuse, mais la République la plus farouchement universaliste a été la première à admettre et assez rapidement[4], que des mesures devaient être prises pour viser la parité. Comment le Québec a-t-il pu être pris de vitesse sur ce terrain? Lui qui, par exemple, est le premier de la classe en francophonie en matière de féminisation de la langue ou encore de la lutte anti-sexiste en matière de publicité, sans parler de son avant-gardisme en matière de lutte contre le harcèlement sexuel?

Parité = universalité

Que ce soit la République la plus farouchement universaliste qui soit la première à instaurer la parité ne relève pas du « génie civilisationnel de la France », pas plus que de sa prétention à être, par excellence, « la patrie des droits de l'homme », mais d'une ruse de l'universalité. Pour rompre avec tout recours à la « spécificité française » (Rosanvallon, 1992; 1993), il faut prendre acte de la rencontre de deux conditions pour admettre la parité.[5]

L'une de ces conditions est indirecte et elle a été rencontrée récemment tant en France qu'au Québec. L'autre est directe et elle a été rencontrée il y a plus de deux siècles en France et également au Québec, même si elle y avait moins de publicité. Mais, comme souvent dans l'histoire de l'argumentation relative à l'égalité des hommes et des femmes, la condition indirecte devait probablement être satisfaite pour que la condition directe puisse apparaître pour ce qu'elle est.

La revendication de la parité peut être formulée, en s'en tenant au registre de l'universalité, grâce à la reconnaissance par la loi du droit des femmes à contrôler elles-mêmes leur fécondité. Avec cette reconnaissance par la loi, les femmes sont reconnues comme des individus qui exercent leur volonté et leur responsabilité; elles sont reconnues comme des individus doués de raison. Tant que les hommes exerçaient le contrôle de la fécondité des femmes, il était possible de considérer celles-ci comme le jouet de la nature ou de la volonté de Dieu. L'équation « femme = mère » a été systématiquement utilisée pour tenir les femmes à distance de l'espace politique et de la citoyenneté, que ce soit dans l'Athènes démocratique, dans la République romaine ou lors de la Révolution française (Tahon, 1997 et 1999). Très longtemps dans la modernité politique encore, les femmes n'accèdent pas à la même citoyenneté que leurs concitoyens parce que la figure de mère est mise à contribution pour rendre représentable ce qu'est la citoyenneté. Ce ne serait pas en tant que femmes mais en tant que mères, au moins potentielles, qu'elles n'étaient pas citoyennes. S'il s'agissait des femmes, on ne voit pas au nom de quoi d'exclues, elles auraient fini par être incluses. Avec la désassimilation de la femme et de la mère, rendue représentable par la reconnaissance du droit des femmes à contrôler elles-mêmes leur fécondité, surgit la femme comme un individu qui dit « je ». Alors, chaque femme partage enfin formellement[6] le droit de l'homme moderne selon lequel « mon corps m'appartient ».

La reconnaissance par la loi du droit des femmes à contrôler elles-mêmes leur fécondité constitue la condition pour que les femmes poursuivent jusqu'à la concrétisation « la lutte réelle pour la jouissance de droits *déjà déclarés* » (Balibar, 1997, p. 24 ; c'est lui qui souligne) : les droits civils et les droits politiques dont jouissent les hommes. Ces derniers ne se limitent pas à l'exercice du suffrage universel, tardivement acquis par les Québécoises comme par les Françaises, mais encore à la représentation du peuple. Avec la reconnaissance par la loi de leur droit à contrôler

elles-mêmes leur fécondité, qui elle-même préside à l'élimination de toute inégalité formelle au plan des droits civils entre femmes et hommes, les femmes peuvent prétendre, en conformité avec l'universalité, représenter le peuple puisqu'elles ne sont dorénavant plus marquées par les « déterminations de leur sexe » (Rosanvallon, 1992) – déterminations qui concernent la maternité et qui ne sont plus des déterminations quand la maternité est reconnue comme le résultat d'une décision volontaire, libre et responsable d'une femme.

Cette condition indirecte à la formulation de la revendication de la parité étant rencontrée, son bien-fondé peut immédiatement être justifié, dans le registre de l'universalité, par l'institution de l'état civil. En effet, dans l'humanité, la « venue au monde » d'un enfant est signifiée par son inscription à l'état civil. Cette « seconde naissance » (Legendre, 1985; 1992), la seule qui importe à la communauté des citoyens[7], lui permet d'y faire son apparition et d'y être admis comme membre[8]. Par ce « rite d'institution » (Bourdieu, 1982) – rite inaugural entre tous et qui, parce que rite, sépare le nouveau-né, le nouveau-venu du physiologique (un enfant n'est pas un humain parce qu'il sort du ventre de sa mère) –, un enfant est immédiatement présent à la communauté des citoyens ou bien comme de « sexe masculin » ou bien comme de « sexe féminin ». Ce que corrobore son prénom. Dans les registres d'état civil, il y a *deux* sexes, pas un, pas trois. L'état civil[9] institue donc le peuple en deux catégories sexuées. Là est la condition nécessaire et suffisante pour revendiquer la parité dans la représentation politique formelle du peuple.

Toutefois, pour que cette condition, sans être nouvelle, devienne visible dans le champ de la politique, il fallait que la condition (formelle) de pouvoir affirmer « mon corps m'appartient » soit rencontrée par les femmes. Il était invisible que l'état civil institue le peuple en deux catégories *sexuées* tant que l'appartenance de sexe était renvoyée – par le discours médical ou politique ou par les théorisations sociologiques (voir respectivement, entre autres, Laqueur, 1992; Fraisse, 1992; Mathieu, 1991) – à une seule catégorie *sexuelle* : les femmes. Ce renvoi devient logiquement impraticable depuis que la loi leur reconnaît le droit de contrôler elles-mêmes leur fécondité. Avec la reconnaissance de ce droit il n'est plus concevable de considérer que les femmes sont marquées par les « déterminations de leur sexe ». Toute référence, dans l'espace politique moderne, à une catégorie *sexuelle*, pour insensée qu'elle y ait toujours été, est devenue inapplicable, et l'on peut dès lors voir ce qui était caché par son évidence même : le peuple est composé de deux catégories *sexuées* instituées par l'état civil. C'est donc dans le respect total de l'universalité que la parité peut être légalisée.

Pour le dire en d'autres termes, rien ne s'oppose plus à ce que, l'« individu abstrait » puisse être conçu, dans le registre de la politique, comme un homme ou comme une femme : l'appartenance de sexe, parce qu'elle est instituée par l'état civil, n'intervient pas dans le caractère abstrait

de l'individu abstrait. Un homme, tout comme une femme, dans l'espace politique, est censé pouvoir faire abstraction de ses déterminations sociologiques (riche/pauvre; manuel/intellectuel; croyant/athée; noir/blanc; hétérosexuel/homosexuel, etc.) pour penser le bien commun. Aussi, la représentation du *peuple* peut-elle aléatoirement être le fait d'une femme ou d'un homme. Être une femme ou être un homme ne constitue pas une détermination sociologique puisque l'état civil institue cette identité et forge l'existence de deux catégories sexuées. Il devient alors inconcevable de considérer que l'une des deux soit plus « concrète » – ou moins « abstraite » – que l'autre.

Malgré l'institution de l'état civil, cette concrétude pouvait pourtant être exhibée – et l'a été à satiété – tant qu'il était possible de prétendre que les femmes étaient dépendantes de la nature, ou du hasard, ou de la volonté de Dieu ou de celle d'un homme dans leur destination : devenir mères. À partir du moment où le devenir-mère d'une femme relève de sa volonté, elle est un « individu » et l'opposition abstraction/concrétude ne peut plus servir à départager hommes et femmes. Les femmes, tout comme les hommes, peuvent se prévaloir d'être des individus.

Le primat du communautaire

Si, en France, le républicanisme, y compris parmi des féministes (i.e. Badinter, Pisier, Sallenave, 1999) a résisté et continue à résister[10] à la possibilité de penser de concert « individu abstrait » et « différence des sexes », en achoppant sur le caractère *abstrait* de l'individu, se pourrait-il qu'au Québec la réticence à l'égard de la parité, quand elle s'exprime, provienne de la difficulté de se représenter l'*individu*? Ce qui n'est probablement pas étranger à la non-existence ou au non-statut d'un État québécois, ou plus précisément à la tergiversation interne à la société québécoise quant à son positionnement sur l'existence ou non d'un État. Tergiversation qui est le fait tant des hommes que des femmes québécois.[11]

La difficulté de se représenter comme individu est illustré, par exemple, dans une différence de slogans. Au début des années 1970, les Françaises manifestaient en criant : « un enfant, si je veux, quand je veux » et les Québécoises, tout aussi mobilisées, scandaient : « nous aurons les enfants que nous voulons ». Le slogan québécois illustre incontestablement la force collective du mouvement des femmes – une force collective sans doute plus agissante et plus imaginative que celle du mouvement français. Reste que la volonté est une capacité qui s'exerce individuellement, qui plus est lorsqu'elle s'incarne dans la décision d'« avoir » ou non un enfant. La teneur du slogan est sans doute restée sans conséquence dans la pratique : c'est « chaque-une » qui, en France comme au Québec, a pris et prend cette décision, mais n'a-t-il pas forgé, au Québec, un imaginaire empreint d'une perspective « collectiviste » ou « communautaire » peu compatible avec des

revendications formulables dans l'espace de la politique? Les droits de la personne ne sont-ils pas des droits individuels?

De plus, ainsi que le remarquent Caroline Andrew et Linda Cardinal (1999, p. 2) dans la présentation du numéro de *Recherches féministes*, « Femmes, État, Société » qu'elles ont dirigé :

> Presque dix ans après la parution du numéro de *Recherches féministes* sur le thème des femmes et de l'État, sous la direction de Diane Lamoureux (1990), nous constatons que la réflexion est marquée par cette présence des groupes de femmes dans le débat public. Toutefois, dans la continuité du débat des années 90, nous rejoignons les propos d'alors de Lamoureux selon lesquels les politiques sociales ont constitué le sujet principal de la réflexion féministe sur les rapports entre l'État et les femmes. Nous retrouvons les mêmes préoccupations aujourd'hui, et pour cause, étant donné que ces politiques sont l'objet de changements importants dont les répercussions sur la vie des femmes doivent être davantage mesurées, évaluées et analysées qu'elles ne le sont actuellement au Québec et au Canada.

Ce constat ne permet-il pas aussi de se demander si « la présence des groupes de femmes dans le débat public », puisqu'elle se donne essentiellement à lire à propos des politiques sociales, ne ferait pas écran à la possibilité de revendiquer que les femmes soient représentantes du peuple à égalité avec les hommes? Pour le dire plus positivement : se pourrait-il que le mouvement des femmes ait à ce point réussi à se structurer en « groupes de femmes » qu'il ne verrait pas la nécessité de formuler une revendication sur le terrain de la politique? Politique qui n'est pas totalement déliée de l'intervention individuelle : comment penser l'égale aptitude de chacun des citoyens – que rend la formule « un homme, une voix » –, si abstraction est faite de ce que le citoyen est aussi une unité distincte (*un* individu)?

Mais y a-t-il lieu de choisir entre revendication de la parité et intervention des groupes de femmes dans le débat relatif aux politiques sociales? La parité ne constitue certainement pas la formule magique qui résoudra les problèmes sociaux auxquels sont confrontées « les femmes » (pour ne rien dire de ceux auxquels sont confrontés « les hommes »). On voit toutefois mal comment le fait qu'il y ait 63 ou 62 députées à l'Assemblée nationale à Québec (plutôt que 29 actuellement) pourrait aggraver la situation présente en matière de « politiques sociales », par exemple. Pourtant, Micheline de Sève (1999, p. 175) considère que :

> [...] le principal danger lié à la démocratie paritaire [...] résiderait [...] dans l'absorption vers le haut, au service des femmes politiques en exercice – dont la majorité ne partage pas forcément des convictions féministes [...] – d'énergies qui seraient employées plus efficacement dans des actions extraparlementaires au profit de catégories de femmes spécifiques, dont les organisations féministes défendent les revendications.

La référence à l'absorption d'énergies qu'exigerait la mobilisation pour la parité est éclairée dans un paragraphe précédent (1999, p. 174) :

> Le danger, si l'on gagne [la revendication de la parité], est de favoriser l'accès à la députation d'ennemies aussi bien que d'alliées du féminisme. Il est surtout de délaisser, au nom d'une union fictive entre femmes de classes et d'appartenances diverses, des batailles autrement prioritaires. La lutte contre la pauvreté et les discriminations de tous ordres, de même que les tentatives d'élargir le champ d'action de catégories de femmes spécifiques risqueraient de passer au second plan, faute de ressources suffisantes pour atteindre des objectifs jugés moins rassembleurs.

Il est fort probable que parmi les 62 ou 63 députées à Québec, certaines seraient des alliées du féminisme, d'autres des ennemies du féminisme et d'autres encore des indifférentes au féminisme. Et il est également probable que les partis politiques, contraints de présenter autant de candidatures féminines que masculines, ne s'empresseraient pas de proposer de nombreuses alliées du féminisme parmi les premières. On peut certes le regretter en tant que militante féministe. Tout comme, d'un autre point de vue, on peut regretter la rareté des députés de gauche à l'Assemblée nationale. Mais ces regrets, pour légitimes qu'ils soient, devraient-ils aboutir à renoncer à chercher à concilier l'exigence du contrôle et du pouvoir du peuple avec la délégation des pouvoirs? S'agit-il de prétendre qu'« il appartient à la société civile ou à la démocratie associative d'exercer directement la décision politique » (Kriegel, 1998a, p. 73)? Pour rester sur le terrain des « intérêts des femmes », comment garantir que cette solution leur serait plus favorable? La philosophe y répond indirectement dans un autre livre (Kriegel, 1998b, p. 225 ; c'est moi qui souligne) :

> Combien de temps peut-on imaginer que dans une démocratie où elles partagent toutes les responsabilités professionnelles et sociales, les femmes vont éternellement accepter d'être écartées de la vie politique? Il ne s'agit donc pas qu'une femme prenne la place d'un homme mais, au nom du principe d'égalité, d'inscrire dans la loi électorale l'égalité du droit à la candidature des hommes et des femmes. Et qu'on ne nous dise pas que ce que la loi ne fera pas, l'autogestion ou la société civile le feront mieux, nous qui savons depuis longtemps que, *pour les exclus, c'est la loi qui libère et la liberté qui opprime*.

Micheline de Sève semble persuadée que la revendication de la parité suppose une « unité fictive entre femmes ». Il est vrai que la formulation de la revendication suppose sans doute une adhésion de femmes qui appartiennent à des horizons politiques et philosophiques différents, ainsi que le *Manifeste des dix pour la parité*, signé par dix femmes de droite et de gauche et paru dans *L'Express* du 6 juin 1996, l'illustre en France ou encore la parution, en 1999, du livre de Roselyne Bachelot et de Geneviève Fraisse. Ce dernier a précisément le mérite de mettre en évidence que deux partisanes de la parité peuvent avoir une opinion différente sur divers

problèmes politiques et sociaux et être capables d'en débattre, dans le respect du point de vue de l'autre. N'est-ce pas là un exemple de pluralité en acte?

Mais l'unité entre femmes différentes requise par la formulation de la revendication[12], qui dénonce un état de fait assez intolérable pour réunir des sensibilités politiques et philosophiques plurielles, ne dépasse pas ce stade. La parité n'est synonyme ni de corporatisation de l'électorat ni de corporatisation de la députation. Personne, parmi les partisanes et les partisans de la parité, n'a jamais proposé que les femmes soient obligées de voter pour des femmes, ni non plus que les élues au Parlement devraient se constituer en un bloc parlementaire. C'est pourtant ce que de Sève (1999, p. 175) semble transmettre quand elle écrit :

> Sur le plan proprement politique, les femmes ne sauraient former un bloc sur la scène publique que si l'on nie la distance entre le sexe et le genre, ralliant aussi bien les Lise Payette que les Margaret Thatcher autour d'un objectif prétendument commun, comme si les femmes, contrairement aux hommes, constituaient un corps politique unifié.

Cela dit, de Sève semble considérer qu'il y a des femmes qui sont plus dignes d'être des représentantes que d'autres. Mais représentantes de qui? Le glissement entre « représentantes du peuple » et « représentantes des femmes » n'est-il pas à l'œuvre dans ce paragraphe (1999, p. 176-177)?

> L'identité-femme ne saurait se rabattre sur la seule identité de sexe. Si des femmes aspirent à une citoyenneté active, c'est parce qu'elles ont des idées en tête, des projets à formuler, des programmes à débattre. Une représentation symbolique ne saurait les satisfaire si elle occulte derrière l'apparente égalité des sexes la marginalisation du « genre » de questions qu'elles privilégient et qui relèvent de leur point de vue particulier, un point de vue dont elles entendent démontrer la pertinence pour l'ensemble de la société dont elles sont membres. En ce sens, s'il est souhaitable que de plus en plus de femmes se retrouvent en force autour des tables où il se décide des politiques communes, l'on est en droit d'espérer que ces femmes soient des mandataires, qu'à travers elles des visions particulières, plurielles, en provenance de toutes les couches de la population féminine obtiennent voix au chapitre.

Si l'on peut concéder que des députées féministes auront probablement à coeur de défendre les « intérêts des femmes », quelle garantie a-t-on qu'elles exprimeraient des visions « en provenance de toutes les couches de la population féminine »? Quelle serait leur position, par exemple, à l'égard de l'opposition aux « garderies à 5 $ » émise par des mères au foyer qui ne sont probablement pas toutes des femmes qui « affichent leur soutien à des programmes inspirés du néolibéralisme » (de Sève, 1999, p, 175)?

La parité n'impose pas d'opter pour le parlementaire au détriment de l'extraparlementaire pour servir les intérêts des femmes. Elle est au-delà

des intérêts des femmes. C'est en ce sens qu'elle m'apparaît « symbolique ». Mais il ne recouvre sans doute pas celui que lui attribue de Sève. Elle y fait référence à deux reprises. On vient de le lire, elle écrit (p. 177), à propos « des femmes qui aspirent à une citoyenneté active, [...] parce qu'elles ont des idées en tête, des projets à formuler, des programmes à débattre » :

> Une représentation symbolique ne saurait les satisfaire si elle occulte derrière l'apparente égalité des sexes la marginalisation du « genre » de questions qu'elles privilégient et qui relèvent de leur point de vue particulier, un point de vue dont elles entendent démontrer la pertinence pour l'ensemble de la société dont elles sont membres.

Et quelques lignes plus haut, elle écrivait (1999, p. 176), concernant les électrices :

> Les femmes commencent à peine à explorer la richesse des expériences diverses qui les poussent à exiger une représentation différenciée sur la place publique. L'électorat féminin ne saurait se satisfaire d'une représentation symbolique indifférente à ses aspirations spécifiques, fût-elle portée par une députation de sexe féminin.

Il est difficilement contestable que l'espace politique et l'espace publique soient, dans la modernité démocratique jusqu'à ce jour, des espaces où le symbolique est presque exclusivement masculin. Il suffit de penser, par exemple, au nombre de rues ou de stations de métro qui portent le nom d'un homme public ou politique et le nom d'une femme politique ou publique (abstraction faite au Québec de sa sainteté) ou encore au sexe des statues de personnages reconnus... La parité porte un coup à l' « hommosexuation » de l'espace politique en revendiquant un nombre égal de députés masculins et féminins. Elle le revendique dans l'enceinte qui symbolise le peuple en représentation.

Il est donc fort inconcevable que la présence de 50 p. 100 de femmes à l'Assemblée nationale soit assimilable à une « apparente égalité des sexes », à moins de considérer que l'égalité des sexes, pour ne pas être seulement « apparente », suppose que les femmes élues soient féministes... Il est vrai que de Sève intitule son article « Les féministes québécoises et *leur* identité *civique* » (je souligne). Les féministes ont-elles une identité civique qui diffère des autres? Quels autres? Les hommes? Les femmes pas féministes? Est-ce compatible avec la représentation démocratique?

Dans « Repenser l'État. Nouvelles perspectives féministes », Dominique Masson, apparaît plus ouverte à envisager la participation à la représentation politique formelle. Elle écrit en conclusion de son article (1999, p. 20) :

> En s'engageant sur le terrain de la représentation politique formelle, les représentantes des femmes entrent dans des rapports

> de forces et des négociations dont elles ne peuvent présumer les résultats ni les retombées. S'il y a des inégalités dans ces rapports de forces, si elles doivent compter avec les discours hégémoniques et le poids des représentations et pratiques déjà institutionnalisées, si, en bref, « tout n'est pas possible », les limites de l'action politique des femmes, bien qu'elles soient souvent imposantes, ne sont pas données ni fixées une fois pour toutes. Elles sont le produit de l'histoire et du politique, et donc ouvertes à la contestation.

La référence aux « représentantes des femmes » – pour légitime qu'elle soit concernant des groupes de pression de tous ordres – paraît pourtant peu compatible avec l'acception classique de la « représentation politique formelle ». Masson renvoie cette acception, au « courant libéral », l'un autre des quatre courants des « théories féministes classiques » auxquelles elle oppose les « nouvelles perspectives féministes ». C'est à ce courant ainsi présenté (1999, p. 6-7) qu'est associée la revendication de la parité :

> Une conception libérale de l'État se trouve souvent à la base des textes féministes qui, reconnaissant le caractère sexué des politiques et le traitement inéquitable accordé aux femmes, croient néanmoins qu'une représentation plus effective des femmes dans un pluralisme politique dès lors plus inclusif est la clé du changement [...]. D'inégalitaire, l'État pourra être rendu égalitaire si les intérêts des femmes y sont représentés, typiquement à travers un accroissement de leur participation ou par la mise en place d'institutions idoines. Bien que le chemin soit long et que s'y expriment à la fois des résistances des hommes ainsi que les réticences des femmes elles-mêmes à « faire de la politique », le pouvoir de l'État peut être saisi par les femmes et mis au service de celles-ci.

En effet, Masson écrit en note :

> Parmi les exemples récents de ce type de position, on peut compter les revendications des féministes canadiennes et québécoises – et leur pendant dans les discours officiels – à l'égard de la promotion de l'égalité des femmes chez les parlementaires, dans les partis et dans les institutions politiques. Ces stratégies de « masse critique » ou de « parité » des féministes libérales soulèvent des questions importantes en ce qui a trait à la représentation des femmes.

Même si l'on peut souligner le caractère par trop optimiste de cette formulation – la notion de « parité » est rarement utilisée dans les discours officiels et même dans les textes des féministes canadiennes et québécoises –, on s'en tiendra ici à « la représentation des femmes ». Masson semble avoir moins en vue le fait que 50 p. 100 des représentants du peuple pourraient être des femmes que les problèmes particuliers que poserait la représentation de 50 p. 100 du peuple, en l'occurrence des femmes. La suite de la note se lit ainsi :

> Aux débats sur les limites de la démocratie formelle et sur le couple « femmes-féministes » qu'ont traditionnellement suscités ces

> stratégies, Anne Phillips[13] ajoute une réflexion particulièrement pertinente sur les enjeux que constituent, pour la représentation féministe des femmes, les questions de la diversité, de la formation des intérêts collectifs et de la responsabilité des représentantes envers les représentées.

Sans dénier l'importance du nombre, Masson ne fait pas de la parité – qu'elle associe d'ailleurs à une stratégie de « masse critique » – un objectif susceptible de faire admettre que le peuple est représentable par autant de femmes que d'hommes. Cela ne tient-il pas, comme chez de Sève, au souci de privilégier « la représentation féministe des femmes », de faire valoir « la responsabilité des représentantes envers les représentées »? Cette féminisation de la députation et du corps électoral ne s'écarte-t-elle pas de la position de Joan W. Scott (1994, p. 12) qui écrit :

> L'histoire du féminisme est l'histoire des femmes qui n'ont que des paradoxes à offrir non parce que – comme le voudraient les critiques misogynes – leur capacité de raisonnement laisse à désirer ou que leur nature est fondamentalement contrariante, non parce que le féminisme d'une manière ou d'une autre n'a pas pu aboutir à une théorie et une pratique satisfaisantes, mais parce qu'historiquement le féminisme moderne occidental est issu d'une politique démocratique avec laquelle il entretient des rapports paradoxaux, et que cette dernière est enracinée dans l'individualisme abstrait. Autrement dit le féminisme est un des paradoxes produits par et pour l'individualisme abstrait.

Rejoignant le point de vue de l'historienne américaine, il me semble que la parité constitue la mesure qui déjoue ce paradoxe. Elle ne peut le faire que dans son cadre, celui de l'individualisme abstrait. Comme j'ai tenté de l'argumenter dans la deuxième partie de ce texte, les conditions sont aujourd'hui réunies pour que rien ne s'oppose à ce qu'une femme, tout comme un homme, puisse prétendre, dans l'espace politique, être un individu abstrait. Y renoncer – en circonscrivant, par exemple, la responsabilité des représentantes aux représentées – revient à concéder que les règles du jeu changent dès que les femmes rencontrent, malgré tous les obstacles qui avaient parsemé la voie afin qu'elles ne les rencontrent pas, les conditions pour jouer. Est-ce au moment où les femmes peuvent enfin entrer de plain-pied dans le second étage de la citoyenneté qu'elles devraient le dédaigner ou préférer une représentation corporatiste des femmes (représentation des femmes par des femmes, fussent-elles féministes)? N'est-ce pas, après avoir admis que, dans une démocratie moderne, le peuple institué en deux catégories sexuées par l'état civil doit pouvoir être représenté aléatoirement, selon le choix de chaque citoyen, aussi bien par une femme que par un homme[14], que les féministes et les groupes de femmes pourront, s'ils le souhaitent, peser de tout leur poids afin que les intérêts qu'ils identifient aux intérêts des femmes soient défendus par des représentantes et des représentants les plus performants en la matière? Cela ne signifie pas qu'en soi la parité constitue une formule

miracle – il n'en existe pas en démocratie –, mais elle est une formule démocratique qui élargira le débat sur la représentation qui, jusqu'ici, a consacré un « faux universalisme » (Schnapper, 1998, p. 464), celui qui érige *une* catégorie du peuple en représentante de l'ensemble. Le poids symbolique de la parité ne restera pas sans effets. Il s'agira de les réaliser.

Notes

1. En France, les articles 3 et 4 de la Constitution ont été modifiés le 28 juin 1999 de sorte que l'on puisse y lire que « la loi favorise l'égal accès des femmes et des hommes aux mandats électoraux et aux fonctions électives » et que les partis politiques « contribuent à la mise en œuvre du principe ». Le verbe « favorise », qui remplace le verbe « garantit » proposé par le gouvernement Jospin, résulte d'un compromis avec le président de la République dans une conjoncture de cohabitation.
2. Je reprends ici une partie de la conférence « Citoyenneté et rapports politiques de sexe » prononcée le 8 février 2000 à la Maison méditerranéenne des sciences de l'Homme (MMSH) à Aix-en-Provence. Je remercie Monique Haicault et Martine Lapied de leur invitation. Je remercie également les évaluateurs et évaluatrices de cet article ainsi que le comité de rédaction de la revue pour leurs commentaires. Il se situe à la suite de trois textes antérieurs (Tahon, 1998, 1999 et 2000) qui marquent une évolution dans mon appréhension de la question.
3. À l'exception des Suissesses (1971) et des Portugaises (1976). L'accès extrêmement tardif de ces dernières au suffrage universel s'explique partiellement par le salazarisme et le caetanisme qui ne prendront fin qu'avec la Révolution des œillets en 1974.
4. Le livre pionnier de Françoise Gaspard, Claude Servan-Schreiber et Anne Le Gall, au sous-titre évocateur (en rouge sur la couverture) : *Liberté, Égalité, Parité*, date de juin 1992.
5. Ces deux conditions sont rarement évoquées et plus rarement encore réunies dans l'argumentaire des paritaristes. Kriegel (1998a et b) toutefois évoque l'état civil.
6. La réalité de ce droit pour les hommes était elle aussi sujette à caution tant qu'ils étaient susceptibles d'être appelés à faire le sacrifice de leur vie pour défendre la patrie, la terre des pères. Mosse (1997) et Rauch (2000) fournissent des éléments pour creuser le lien, pour les hommes, entre citoyenneté et guerre.
7. Un enfant non inscrit à l'état civil serait un « incompté », il serait un « sans papiers » partout et toujours. Ce qui lui interdirait, par exemple, d'émarger à la sécurité sociale ou de disposer d'un passeport pour voyager.
8. Est-il nécessaire de préciser qu'un enfant ne devient pas citoyen lors de son inscription à l'état civil? Mais cette inscription rend possible son accès à la citoyenneté lorsqu'il atteint la majorité. Non inscrit, il n'est jamais « majeur ».
9. Si l'institution de l'état civil est moins publicisée au Québec qu'en France, cela indique sans doute une difficulté de se représenter l'État – et pour cause. Toutefois, concernant le rite d'institution qui constitue le peuple en deux catégories sexuées, le baptême remplit le même office : le « peuple de Dieu » est lui aussi divisé en deux catégories sexuées. On sait d'ailleurs qu'au moment de la Révolution française, les registres d'état civil remplacent les registres paroissiaux. Ce qui indique une sécularisation du rite mais non sa transformation.
10. Résistance alimentée par l'argumentaire mis de l'avant par certaines ferventes partisanes de la parité. Ainsi, Sylviane Agacinski (1998, p. 80) soutient, dans

l'objectif de convaincre du bien-fondé de la parité, que « la maternité doit être réinterprétée comme une puissance et revendiquée comme une force ». Le caractère régressif d'une telle proposition dans le cadre d'une promotion de l'égalité entre femmes et hommes dans l'espace politique est accentué par la suggestion selon laquelle (1998, p. 145) « la paternité ou la maternité sont peut-être les épreuves vraiment décisives de la différence des sexes, et il n'est pas sûr qu'il y en ait d'autres ». Suggestion qui tient lieu de réponse à une question particulièrement mal posée : celle de savoir (1998, p. 143) « ce qui reste de l'identité sexuelle lorsqu'on a exclu les fonctions maternelle et paternelle, autrement dit le lien naturel et/ou institué avec la descendance ». Or, le lien à la descendance, que l'enfant soit « adopté » ou non, est toujours institué. La cécité à ce principe entraîne Agacinski à ne pas discerner que, dans l'espace public-politique, l'identité n'est pas *sexuelle* mais *sexuée*.

11. Voir Gilles Gagné et Simon Langlois, « Analyse comparative des sondages sur la souveraineté. Sanction d'un gouvernement ou déclin de l'opinion? », *Le Devoir*, mercredi 15 mars 2000, A7.
12. Tout comme le « Manifeste des 343 salopes », qui signaient « je me suis fait avorter », contenait des signatures de femmes qui n'avaient jamais subi d'avortement et ne prônait pas l'avortement comme méthode contraceptive idéale et encore moins exclusive. Voir Picq (1993).
13. Masson cite *Engendering Democracy*, Cambridge, Polity Press, 1991.
14. Ce qui suppose que des mesures soient imposées pour corriger la situation présentes, en particulier en termes de candidatures placées en ordre « utile ».

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"What Does Gender Have to Do with Abortion Law?" Canadian Women's Movement-Parliamentary Interactions on Reform Attempts, 1969-91

Abstract

This article examines the changes in Canadian federal abortion policy undertaken between 1969 and 1991 under two different policy-making systems. In the first such system, when the Liberal Trudeau Government undertook its Omnibus reforms to the Criminal Code in 1969 and officially entrenched the "therapeutic abortion committee" (TAC) framework, Parliament operated mostly unchallenged by the courts on social issues. The second federal policymaking era on abortion began with the 1988 Morgentaler Supreme Court decision, striking down the 1969 TAC framework as unconstitutional under the 1982 Charter. In response, the Mulroney Conservative Government attempted to gain first, a "sense of the House" in 1988, then to reintroduce criminal penalties on abortion in 1989. This article studies the treatment of the abortion issue under two sets of policymaking rules, two different parties at the federal level, and two points in the evolution of the women's movement-federal government relationship. It underscores the challenges and opportunities found in the different time periods for "gendering" abortion policy, where the interests of men and women were portrayed distinctively.

Résumé

Cet article se penche sur les changements subis par la politique fédérale en matière d'avortement entre 1969 et 1991 sous le régime de deux systèmes différents d'élaboration des politiques. Sous le premier système, en place lorsque le gouvernement libéral de Pierre Trudeau a entrepris de mettre en œuvre ses réformes Omnibus au Code criminel en 1969 et qu'il a officiellement enchâssé le cadre des « comités d'avortement thérapeutique » (CAT), le Parlement a pu œuvrer presque sans devoir subir de contestations relatives aux questions sociales devant les tribunaux. La deuxième période d'élaboration de la politique fédérale en matière d'avortement a débuté en 1988, avec la décision de la Cour suprême dans la cause de Morgentaler, une décision qui éliminait le cadre du CAT de 1969 jugé inconstitutionnel en vertu de la Charte de 1982. En guise de réaction à cette décision, le gouvernement conservateur de Brian Mulroney a essayé, d'abord, de s'enquérir du « sentiment de la Chambre » en 1988, avant de tenter de réinstaurer des sanctions pénales visant l'avortement en 1989. Cet article étudie le traitement de la question de l'avortement en vertu des deux ensembles de règles d'élaboration des politiques, aux mains de deux différents partis politiques au

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niveau fédéral et comme deux moments de l'évolution des rapports entre le mouvement des femmes et le gouvernement fédéral. Il souligne les défis et les occasions de « sexualiser » la politique en matière d'avortement qui se sont présentés dans ces différentes périodes, lorsque les intérêts des hommes et des femmes étaient présentés en des termes très distincts.

In keeping with both the special theme of this journal and its location in a larger comparative study, the Research Network on Gender and the State, this article seeks to discern the efforts made to retain gender as the central focus during reform of Canadian federal abortion policy from the late 1960s until 1991.[1] The central concern here is to discern the degree to which women's policy agencies in the federal government, women's movement organizations and parliamentarians have attempted to "gender" the public debates over the policy reforms.[2] The debates occurred both inside and outside Parliament, and in the media. The process of "gendering" occurs when the actors frame the issue as one affecting women and men differently.

This discussion highlights three separate attempts to reform federal abortion policy, only the first of which in 1969 actually altered existing law. The first reform was undertaken in the late 1960s and involved a "decriminalization" of the procedure by specifying conditions under which abortion could be performed with a lowered risk of criminal liability for women and doctors. The second set of attempted reforms followed each other closely in 1988 and 1989 when the federal government tried to reinstate abortion sanctions (for doctors) into the Criminal Code, following the Supreme Court's 1988 finding that the previous system enacted in 1969 was unconstitutional.[3]

The three distinct "reform events" discussed here were embedded in two different eras of policymaking in Canada. The 1969 Criminal Code amendments took place in a period of virtually unchallenged parliamentary supremacy, at least on civil liberties and rights questions.[4] The second period of policymaking began with the implementation of the 1982 Constitution Act, including the Charter of Rights and Freedoms, enabling the Supreme Court to interpret the Charter as striking down federal laws in many cases concerning rights and liberties. In this era, Parliament has sometimes waited for judicial clarification before proceeding on a civil liberties issue. The 1988 and 1989 attempts at reforming Canadian federal abortion policy took place in the newer framework, where Parliament has sometimes been constrained by judicial actions. The first set of differences between the earlier and later reform periods is the changed judicial-parliamentary relationship under the new constitutional order.

The second set of differences concern party representation in Parliament across the time periods. In 1969, the Omnibus bill was passed under a significant Liberal majority in the House of Commons. The 1988 reform attempt was undertaken in a House where the Conservative party

commanded a large majority, but the Liberals still controlled the Senate. In the 1989-1991 reform attempt under Bill C-43, the Conservatives had what was presumably the most auspicious combination of circumstances, control of both the House and Senate. This did not prove to be sufficient to pass the bill, however.

The other set of differences between the earlier and later reform periods relate to the role and strength of the anglophone and francophone women's movements. The Omnibus reform of 1969 took place when feminist organizing was shifting from the more quiescent "first wave" movement to the more vocal second wave which began in the late 1960s-early 1970s. Also, the existence of the federal women's policy machinery largely followed the first reform, arising out of the 1971 Report of the Royal Commission on the Status of Women. In the 1980s, while the women's movement and women's policy offices were more institutionalized than they were in the 1960s, the relationship between the women's movement and the Conservative party had begun to decline given the government's decrease of women's movement funding and access to the government. This was particularly apparent in the 1989 reform attempt of Bill C-43.

On the other hand, a consistent feature of the two policymaking eras was the requirement of Cabinet and opposition solidarity within the House. The Canadian House of Commons has been identified as "one of the most strictly disciplined legislatures in the world."[5] The consequences have been that in addition to Cabinet members, backbenchers across parties are usually more constrained than in the British House of Commons, for example.[6] This is found in the idea that "prime ministers and opposition party leaders manage to treat the overwhelming majority of votes in the House of Commons as matters of confidence," in which each party leader decides for the party the degree of the party constraint, or "whip," to be used in governing the vote.[7] Another feature enabling top-down control in the Canadian House of Commons is the Prime Minister's Office (PMO), which functions as a crucial connector between the Prime Minister's programmatic wishes and the Cabinet in implementing them.[8]

In short, these two periods of the policymaking framework in the 1960s vs. 1980s offer an instructive comparison of the relationship of Parliament to the Supreme Court, and of the women's movement to federal women's policy offices and the federal government in general. They afford a chance to decipher the relative weight of these two sets of shifts in the ability of women inside and outside Parliament to structure the reform discussions along gender lines, particularly where the House functions as an executive-led body, disciplined by party.

As a result of the failed 1988 and 1989 reform attempts, Canada has effectively been without a federal-level abortion policy since 1988. In some ways, this third era, which unfolds in the provinces and centres on the provision of abortion services in hospitals and freestanding clinics and

insurance coverage for women, seems at once de-gendered and de-politicized, since decisions about the level of service provision are being made in hospitals and the provincial health-care bureaucracy.

First Policymaking Era on Abortion and the 1969 Criminal Code Reforms

Canadian law closely followed British law on abortion from the nineteenth century until the mid-twentieth century. Both England and Canada enacted statutes prohibiting women from "procuring" their own abortion (by unlawful administration of poison or instruments) in the nineteenth century, and they remained legal precedent in both countries until the 1960s.[9] The first Criminal Code provisions were enacted in Canada in 1869, providing for the life imprisonment of a person "procuring a miscarriage." Three sections of the criminal provisions concerned abortion: Section 237 made it illegal to "procure and perform" an abortion; Section 209 made it illegal to kill the fetus, but the provision "did not extend to the person who, in good faith, considered it necessary to 'preserve the life of the mother'"; and Section 45 stated that anyone performing a surgical operation, when the health and other circumstances of the operation's subject were taken into account, would not be subject to criminal liability "if the operation were done with reasonable care and skill."[10]

A British judicial precedent, found in the *Bourne* case of 1939, also informed Canadian law. This case established the defense of "medical necessity" (for both the woman and the doctor) if the pregnancy threatened the life or health (including mental health) of the woman.[11] The problem was that "health" was not defined in Canadian law. By the early 1960s, many secular hospitals had set up the equivalent of abortion committees so that doctors could consult each other as to whether they were "medically necessary." Since most doctors would not perform abortions, most of them (estimated at up to 120,000 per year) were done by people without medical qualifications, and outside medical facilities.[12] Based on this lack of clarity in the law, both the Canadian Medical Association (CMA) and Canadian Bar Association (CBA) "began at their annual meetings to question the Criminal Code's regulation of abortion," and launched the impetus for reform.[13]

As Canadian criminal statutes on abortion had followed those of Britain, the time period of reform was similar to that of Britain.[14] The first movement in the House of Commons toward reform came through three private members' bills introduced in 1966 and 1967 not as part of the Liberal Government's legislative program.[15] Two of the bills were NDP-sponsored, and one by a Liberal backbencher. The NDP-sponsored bills were broader in their reform proposals than the Liberal-sponsored bill. The first was "modelled on the British reforms," providing for therapeutic abortion "when the woman's health and well-being, or those of her child or

already living children, were threatened. The second bill sponsored by an NDP member, Grace MacInnis, was "similar to the Canadian Medical Association's resolution," proposing therapeutic abortion availability in the instances of "grave danger to the physical or mental health of the woman, a substantial risk that the fetus would be born disabled, or a pregnancy resulting from a sexual crime," as certified by two doctors.[16] The Liberal-sponsored bill "was a straightforward proposal to use therapeutic abortion committees to determine whether a woman's life or health was threatened."[17] While all three private members' bills liberalized the conditions for women's access, they also all provided structures by which doctors could defend their decision to provide an abortion should they be criminally charged. The Standing Committee on Health and Welfare, which heard all three bills, put forth an interim report which appeared to support some of the contentions in the legislation, concurring that the law was unclear and that Criminal Code amendments should be made to "allow therapeutic abortion under appropriate medical safeguards where a pregnancy will seriously endanger the life or health of the mother."[18]

Those who appeared to have the most input into the committee's considerations were the Canadian Medical and Bar Associations, who stressed the dangers to physicians of prosecution under the Criminal Code.[19] Some have noted the CMA's and CBA's role in the debate as controlling the theoretical frame based on the concepts of hierarchy and scientific and male privilege.[20] Others who made public statements on the necessity for reform were Protestant church organizations, who nevertheless stated that the government "should defer to the professional judgement of doctors."[21] The framework of the 1960s dialogue on the need to reform the Criminal Code and about the proposals was mainly led by doctors. Given that women were also liable to prosecution at that point, it appears strange that their voices were not more apparent in the proceedings.

Jenson offers one suggestion as to why women's voices were not more clearly present in the dialogue, stating that women in the 1960s "had as yet no status as political actors."[22] In the 1960s, the women's movement was transforming from the "older, first-wave" branch, active on suffrage and Progressive issues, into the beginnings of the second wave, centered around the theme of women's liberation. The status of the women's movement at the time was one of emergence and growth, and abortion did not seem to rank very highly on the movement's agenda as a whole.

The main women's movement organization active on abortion legislation in the late 1960s was the National Council of Women, founded in 1893 as a first wave, "social feminist" organization concerned mainly with women's relationship to the family. The NCW was alone among women's organizations in presenting annual resolutions to the government from 1963-66, even before the private members' bills had been introduced. The Council opposed the law for its effects on women and argued that the law was, among other things, "confused, conflicting, outdated, and cruel."[23]

Unlike the National Council of Women, another major, first-wave women's group located in English Canada, the Voice of Women (VOW), largely stayed out of the abortion issue. Founded in 1960 primarily as a peace-based organization, VOW became more overtly concerned with gender by the mid-1960s when it called for a Royal Commission to study the status of women.[24]

The National Council of Women was later joined in parliamentary presentations by groups which would be described as "second-wave" feminist groups that formed in the late 1960s or later and emphasized women's liberation. These included the Women's Liberation Group and Toronto Women's Liberation Group, the latter being the only one to emphasize "women's reproductive control."[25] A student group, the Student Union for Peace Action, linked abortion reform to class struggle and the potential for linkage to the left.[26] The Fédération des Femmes du Québec (FFQ), the largest umbrella women's organization in Quebec, supported "legalization, but still within the Criminal Code."[27]

Opposition (pro-life) groups at the time were rather low-key, confined to some presentations by Catholic groups and some statements by Quebec M.P.'s from the Social Credit (Créditiste) party.[28]

The policy outcome was that the government introduced legislation in December 1967 containing an omnibus proposal to reform the Criminal Code in many areas, and proposed to authorize abortion in cases where the pregnancy would "endanger the life or health of the mother." This legislation did not pass, but after the 1968 election which returned the Liberals to power under the leadership of Pierre Trudeau with a larger majority in the House of Commons (155 of 264 seats), the bill moved quickly through the process and was enacted in August 1968.[29] In this endeavour, the official Liberal defence of the amendments became libertarian, such that the Prime Minister stated that "the state has no place in the bedrooms of the nation," and Justice Minister John Turner said that "we believe that private morality is a matter for private conscience. Criminal law should reflect the public order only."[30] In the House, the social-democratic NDP would oppose the measure, given its consistent disagreement with the inclusion of abortion penalties in the Criminal Code.

At the heart of the reform was the provision that abortions had to be performed in qualified hospitals, and that the request for the abortion had to be approved by the hospital's "therapeutic abortion committee" (TAC), comprising of at least three doctors, none of whom could perform the abortion. The TAC would have to certify its opinion that continuing the pregnancy would endanger the life or health of the mother.[31] The problem with this was that "health" was left undefined. Another was that the control over the decision was left in the hands of the doctor. If a physician were found guilty of "procuring a miscarriage" without the requisite TAC approval, he or she would be liable to life imprisonment. Similarly, a

woman who did not get TAC approval could be liable for two years' imprisonment.

The "decriminalization" basically amounted to a loophole in the Criminal Code by which women could have an abortion in an approved hospital when the procedure was approved by the committee. Women would presumably avoid prosecution under this system, or at least have access to a criminal defence if they were prosecuted by a third party, as would doctors. Some have commented that this reform was far less sweeping than those achieved either judicially in the U.S. or legislatively in Britain.[32] One last problem with the system was that it only provided an outline, without any requirement for TAC's to be distributed in a geographically equitable fashion. Thus, the reform did not bring about equality of access to abortion services.

Growth of the Women's Movement and of Women's State Agencies between the 1960s and 1980s Reform Periods

An early objection of the women's movement against the abortion policy reforms took place in 1970. This was the Vancouver to Ottawa "Abortion Caravan," during which "women offered personal stories of the need for abortion."[33] The Caravan ended at the House of Commons, where some women chained themselves to the House Gallery. This marked the first large-scale, direct action by which women sought to include their stories in the debate and to link these stories to the need for more decisive reform. Unfortunately, the activism occurred in response to the reform, rather than during its consideration.

To describe the overall space within which the Canadian second-wave women's movement has operated since the 1970s, it has been stated that the Canadian women's movement has taken the state-centered end of the activist spectrum (along with those of the Scandinavian democracies, Australia, and New Zealand).[34] For example, these women's movements have received state funding and often concentrate their activism on national or sub-national state policies. As discussed later, the more state-engaged women's movements have found this relationship both a blessing and a curse, for the government can take away as well as give.[35] In general, the movement has been described as "heavily weighted toward liberal feminism," with "equal opportunity and individual rights claims dominating this wing of the movement," including on the abortion issue.[36]

A central representative of the newer abortion-rights organizations in the liberal strand has been CARAL, the Canadian Abortion Rights Action League, founded in November 1974.[37] CARAL was an early member of the coalitions working to support and defend Dr. Henry Morgentaler, charged in the 1970s and 1980s for setting up free-standing abortion clinics which violated the TAC system. On strategy, CARAL emphasizes lobbying techniques, although it will also participate in direct actions. By 1990, it had

30 chapters in Canada with 18,000 individual members and 300 member groups.[38]

Liberal groups such as CARAL also belong to the Anglo-Canadian group, the Toronto-based National Action Committee on the Status of Women (NAC), which was formed in 1972 to "oversee progress on the Royal Commission's recommendations."[39] The largest feminist women's movement organization in Canada, it claimed a membership of "573 groups representing a total membership of 3 million Canadian women in 1990."[40] It is an umbrella group of other organizations linked to the state, and consists predominantly of liberal organizations.

In Quebec, the largest Francophone group has been the *Fédération des femmes du Québec* (FFQ), formed in 1966. It is similar to NAC in structure, an umbrella group with a heavy representation of liberal feminist organizations. The FFQ ultimately championed the complete decriminalization of abortion in 1975, having previously supported some Criminal Code restrictions. One probable influence was that the Parti Québécois (PQ), which first ran in Quebec elections in 1970 and was elected as the Government of Quebec in 1976, supported the decriminalization of abortion. Many FFQ organizations were linked to the PQ.

Other liberal groups which later became active in abortion policy through a more specific focus on women and the law included NAWL, the National Association of Women and the Law and the Women's Legal Education and Action Fund (LEAF), formed in 1985 "to contribute to the goal of advancing women's equality in Canada," as a litigation group to advance the definition of women's equality through the Charter.[41]

Also, a more direct-action, grassroots-based strand of the women's movement began in the 1970s and ultimately fostered both radical and socialist strands. While radical feminists concentrated mainly on violence against women, socialist feminists organized around various aspects of women's work.[42] Some socialist feminists in groups such as the League for Socialist Action viewed abortion as a galvanizing issue which could be specifically linked to the idea of capitalist exploitation.[43] Their issue definition was that women as workers and mothers needed control over their own bodies. In the 1980s, the theoretical linkage between reproductive control, class solidarity and gender was updated by the Ontario Coalition for Abortion Clinics (OCAC), founded in 1982. In OCAC's analysis, reproductive rights were linked to child care, pay equity and new power relations between men and women.[44]

One of the prominent radical groups was the Toronto Women's Liberation Group, which viewed abortion law reform as one of the many legal changes needed to transform women's role in society. Radical feminists often worked to provide services through alternative, women-controlled institutions. Some health clinics currently affiliated

with OCAC function in this way, enabling them to draw from both the socialist and radical traditions.

The principal two national women's pro-life organizations among Anglophone women have been Campaign Life and REAL Women, self-described as "pro-women and pro-life," but not feminist. The former helped provide a springboard for the latter; REAL Women is a multi-issue organization, unlike Campaign Life. REAL Women was formed in 1983 just after the entrenchment of the Constitution, in part based on its opposition to "privileging feminism" through the Constitution.[45]

On the federal government side of women's representation, the women's policy agencies established on the basis of the Royal Commission's recommendations in the early 1970s were the following. The cabinet-level office was the Minister Responsible for the Status of Women, a "junior" post created in 1971 to be partnered with a more senior post held by the Minister.[46]

Other elements of the women's policy machinery included the Department of Status of Women Canada, which began reporting directly to the Minister Responsible for the Status of Women in 1976.[47] It had been created out of the shift in responsibilities from the Coordinator in the Privy Council Office to a more independent department. Its function has been to advise the Minister Responsible for the Status of Women. The Canadian Advisory Council on the Status of Women (CACSW) has been another important actor. The Advisory Council was formed in 1973 "as an independent organization funded by the federal government" and given legal status to bring issues before government and the public as it deems appropriate, and similarly to advise the Minister Responsible on such issues. The Advisory Council was appointed by the Cabinet on the basis of representing geographic, ethnic, linguistic and racial diversity.[48] The final part of the policy machinery having the resources to affect social movement organizations, mainly through its funding priorities, was the Women's Program in the Department of Secretary of State, also formed in 1973. The mechanisms of the "Minister Responsible for the Status of Women" and the Canadian Advisory Council are more political, and those of Status of Women Canada and the Women's Program in the Secretary of State Department are more bureaucratic. Both the head of the bureaucratic Status of Women Department and the head of the Advisory Council, which has had a more arm's-length relationship, bipartisan character and a distinctive research function, are charged with advising the Minister Responsible for the Status of Women.[49]

An account of the federal women's policy offices in Canada, written by a former Director of Status of Women Canada, characterizes the extent of the women's machinery as "thin," not having much of a reach into the activities of line departments, for example. She also cites estimates from governmental sources that the women's policy machinery was outflanked by a

ratio of ten to one when compared to the bureaucracy devoted to official language policy, for example.[50] This feature, combined with the executive-centered nature of Cabinet government (focused on the Prime Minister and Prime Minister's Office), has sometimes challenged the ability of women's policy offices and women's movement organizations to actively "gender" some policy debates. This was at times true of the abortion reforms.

Second Policymaking Era on Abortion: The Effect of the Charter and Attempts at New Laws

This era, dating from the early 1980s with the entrenchment of the Charter of Rights and Freedoms as part of the 1982 Constitution, involved more proactive decisions by the Supreme Court of Canada on civil liberties and rights questions. It also involved a set of attempts by Parliament to discern which legislative actions could be held unconstitutional under the Charter, and thus the permissible scope of its lawmaking functions. One such example was the *Morgentaler* case decided by the Supreme Court in 1988.

The issues of this case, concerning the operation of Dr. Morgentaler's Toronto clinic, followed his earlier prosecutions, since he had founded clinics in Quebec, Ontario and Manitoba. His free-standing clinics, not affiliated with hospitals, violated the TAC system. Identified with the Humanist Association of Canada, Morgentaler has been the most publicly active member of the medical profession to work for changes in the abortion law. By acting through the Humanist Association, he has framed his activities more broadly as working for "human rights," rather than specifically gendered ones. In this appeal, Dr. Morgentaler argued that the Section 251 Criminal Code sanctions on abortion violated a woman's Section 7 rights in the Charter to "life, liberty and security."[51]

The presence of the Charter of Rights and Freedoms gave Dr. Morgentaler a legal underpinning which the Canadian system previously lacked. In a prior case, he had argued the common-law "necessity" defence of "transgressing the law to avoid graver consequences if it were obeyed," as found in Section 45 of the Criminal Code (and based on the earlier *Bourne* decision in Britain).[52] However, the court rejected the argument, stating that Dr. Morgentaler had not proven that establishing free-standing clinics was covered by the defence of "necessity." With the entrenched Charter, a much more powerful legal instrument was available in the 1980s, and the Supreme Court used it in a powerful manner in this 1988 case. Five of the seven justices hearing the case agreed that the operation of Section 251 of the Criminal Code violated a woman's right to "security of the person" as contained in Section 7 of the Charter. Even more noteworthy is that "the decision was founded upon the rights of pregnant women, although the defendants were all physicians."[53]

The five-Justice majority yielded three different decisions, but the common thread was that the operation of the therapeutic abortion committees varied to such a great extent that women's "security of the person" was threatened due to inconsistent access throughout Canada.[54] Specifically, women's access to the "certificate of a therapeutic abortion committee, which provided a valid defence to criminal charges, was not equally available across the country."[55] Some evidence for this argument is found in that between 1975 and 1986, in all provinces except Quebec and New Brunswick, the number of hospitals having either surgical or obstetrical units and thus the capability to perform abortions which also had TAC's in place declined.[56]

One of the majority decisions, written by Madame Justice Bertha Wilson, included the issue of a woman's right to the liberty to be free from state interference. She suggested the possibility of a gestational "stage" approach, where women could make the decision in consultation with only their doctor, during a time period to be determined by Parliament.[57] While the application of the Criminal Code had been overturned, no new regime was suggested in its place. This soon proved troublesome, since "within a few months of the decision, every provincial government except for Ontario and Quebec had announced measures under their health-care jurisdiction to limit the funding and in some cases even the performance of abortions."[58]

The Conservative government of Prime Minister Brian Mulroney was then in its first term, having been elected in 1984 with a considerable majority of 211 of the 282 seats in the House of Commons, with plans to implement sweeping changes in Canada, including federal government downsizing, social policy changes, and free trade. The Government swung into action a few months after the *Morgentaler* decision, insisting that it needed to get a "sense of the House" as to the preferred type of legislation to fill the policy lacuna left by *Morgentaler*. Two different attempts were rolled into this debate; the first was over the preferred form of legislation, in May 1988, and when that failed, the government backed off a bit and held a vote on a series of five, non-binding Resolutions in July 1988.[59] The July attempt is highlighted in the discussion, since it was the main example of the 1988 attempts.

The quickness of provincial action following *Morgentaler* suggested that some form of federal policy would be needed; the question for the Tories was how far they could go in legislating without alienating social conservative members of both their caucus and their public constituency. The Tory caucus was quite divided on social issues, with the nineteen women in the Tory caucus identified as pro-choice.

In July 1988, the Prime Minister announced that the House would vote on a series of non-binding resolutions. The Tory caucus would have a free vote on five options. These possibilities ranged from the least restrictive,

allowing abortion when the woman consulted her doctor (and it was performed by a "qualified medical practitioner," repeating the Criminal Code language), to the most restrictive, taking up in a more constrained manner the language concerning the later stages of pregnancy in the May attempt. In this option, abortion would be prohibited except when "two doctors agreed that continuing the pregnancy would endanger the life of the mother."[60]

In this debate, women's groups relied heavily on the theme of a woman's right to liberty and security as emphasized in *Morgentaler*. Women's movement organizations also emphasized that the Supreme Court decision had overturned the Criminal Code provisions over the unequal basis of access, primarily to the criminal defence furnished by the TAC system. A pro-choice activist stated that they were given a high degree of access to government policymakers in this round of debate.[61] Among the general public, one study showed at the time that 69% of Canadians wanted abortion kept out of the Criminal Code.[62] On the other side, right to life organizations insisted that *Morgentaler* had not codified a right to abortion.

In 1988, the women's movement organizations which dominated the pro-choice side of the debate were CARAL, OCAC, Planned Parenthood and NAC. While parts of the movement, particularly NAC and OCAC considered themselves close to the NDP, its position in the House was marginal, although it also acted as a fulcrum to prevent the most offensive amendment from passing. NAC articulated the position that abortion should concern only a woman and her doctor; similarly, OCAC and CARAL argued against any new law.

In terms of the governmental women's policy offices, two elements of the women's policy machinery appeared to be on the same track on this set of proposals. The Canadian Advisory Council on the Status of Women reiterated its opposition, since its founding, of including abortion sanctions in the Criminal Code, and thus would oppose any proposal to put them back in. The Advisory Council framed its position on reproductive health according to the liberal concept of women as autonomous, rational agents; it stated that "reproductive choice is an equality issue."[63] As with the pro-choice women's movement organizations, it supported the option of allowing reproductive decisions to remain between the woman and her doctor.

In this policy dialogue, the Advisory Council took the same opinion as the Minister Responsible for the Status of Women, Barbara McDougall. Mrs. McDougall had been a financial adviser and analyst in Toronto before her election in 1984, and while given mostly economic portfolios (until she became Secretary of State for External Affairs in 1991), many speculated that she was also given the Status of Women responsibility as the most senior woman in the first Mulroney Cabinet. Her background and interest in economic issues was apparent in her Status of Women duties, given that one

of the other major legislative attempts under her leadership was a childcare proposal. She also identified herself as pro-choice.[64]

In an environment which allowed Cabinet freedom from party discipline, Mrs. McDougall supported the most pro-choice amendment, which enabled women to make decisions free from state strictures:

> I speak to this amendment on behalf of those women who have been faced with bearing a child not of their choosing. …despite all the words, all the edicts, all the laws, over centuries women have made the choice not to bear a child…There has been a lot of talk in this Chamber about the morality of abortion. There is no question that it is a moral issue. ...Why are any of us in a position to make this judgment best? Why is the woman who is carrying the child not the person who can make that judgment best? Do we honestly believe that she who has the life within her will make a worse decision than us?[65]

The weight of the women's policy machinery came down on the pro-choice side, while on the other hand, all of the pro-life statements were made by men.[66] Brodie has noted that the pro-choice speeches in the House centered around the positions of either women needing protection from state interference or of women as autonomous individuals, fully empowered to do what they needed to do (again without state interference). The former view characterized women as disempowered, while latter emphasized women's strength. Conversely, many of the pro-life speeches depicted women choosing abortion for reasons not defined as "therapeutic" and more out of convenience.[67]

The outcome was that all of the five proposed options were defeated. Interestingly, the most restrictive proposal permitting abortion only when the mother's life was at stake was defeated by a coalition of the 28 women House members, including the 19 women Tory caucus members. These votes were key to defeating this amendment, as it lost on a 118 to 105 margin. This also pointed up the Government's described *laissez-faire* attitude during this process, since normally in this strictly-disciplined legislature, government party members would not be free to vote with the other parties.

The women's movement at the time was much stronger and had a more institutionalized relationship with the state than during the debates over the Omnibus reforms of 1969. However, strains were beginning to show between some of the larger Anglophone women's movement organizations and the Tory government, which much of the Anglophone feminist movement did not view as sympathetic to its goals. This was especially due to the Tories' pledges to cut government departments, including those connected to women's concerns. On the other hand, some Francophone organizations agreed with the Tories' plan to revise the Constitution, contained in the Meech Lake agreement, to enhance Quebec's powers to operate as a "distinct society."[68]

While the Mulroney Government may have viewed the defeat of all options in July 1988 as undesirable, the issue of abortion was soon paramount again through actions taken in the courts. The Conservatives returned to power after the "free trade" election of November 1988, although with a smaller majority. Their numbers dropped from 211 seats in the previous term to 169; the Liberals doubled their representation, winning 83 seats, and the NDP gained seats, going from 30 to 43. More pro-life members were elected in both Liberal and Conservative parties, and the previous social divisions in the Tory party magnified.

Two cases in the summer of 1989 provided the government with the next catalyst for trying to effect federal abortion legislation. These cases involved a partner and a former partner who wished to stop women from having abortions, and successfully obtained injunctions. The first case, *Murphy v. Dodd*, was generated in Ontario; the second, *Tremblay v. Daigle*, in Quebec.[69] They took place within a few weeks of each other during July-August 1989, and in each case, upon appeal, the outcome ultimately favored the woman's right to choose. In the *Dodd* case, the Ontario Supreme Court first ruled that the injunction could stand because the "fetus needed the court's protection," but on appeal from Ms. Dodd, overturned this reasoning on a technical, not doctrinal ground.

In the *Daigle* case, the Quebec courts upheld the injunction, including an appeal to the Quebec Court of Appeal which found that the Quebec Charter protected fetal life.[70] Ms. Daigle appealed to the Supreme Court of Canada, which returned from its summer recess to hear the case. During the presentations, her lawyer informed the court that Ms. Daigle had gone to Boston for an abortion. This action effectively mooted the arguments of the case, but the government chose to continue. On the date of the case, August 8, 1989, the Court lifted the injunction against Ms. Daigle, and announced it would issue the rest of its decision later. On November 16, 1989, the Court issued its decision, finding that the fetus was not recognized as a juridical person by either civil or common law.[71] The Court also specified its limitation of findings to the realm of law, and that "decisions based upon broad social, political, moral and economic choices are more appropriately left to the legislature."[72]

In July 1989, CARAL released a poll showing that for the House of Commons, 63 of the MP's were pro-choice, 114 were pro-life, 86 MP's favored some restrictions based on the gestational approach, and 31 refused to identify their position. If even half of the thirty-one non-respondents were pro-life, that still would not form the required 147-member majority. Prime Minister Mulroney identified himself as pro-life, although he also stated that "no one had the right to impose their personal views on others."[73] The pro-life MP's came disproportionately from the Conservative party, but the pro-choice identifiers in the poll came mostly from the NDP, secondly from the Conservatives, and least often from the Liberals.[74] The MP's responses were similar to the opinion of the general public, as figures

from August 1989 showed that 55% of Canadians favoured abortion "for any reason," while 49% favoured it before three months of pregnancy and 31% after 5 months.[75]

Leading into the 1989 legislative year, it was clear that heavy pressure would be exerted on the Government ranks to pass abortion legislation. While some may describe it as the government publicly did, that the desire for legislation was to ensure uniform access across Canada, doubts about that view persist for the following reasons. One is that even when abortion was in the Criminal Code, it did not ensure access. The second relates more closely to the politics of the second Conservative term; it has been suggested that the government did not want to be viewed in history as having failed to pass legislation on abortion. The degree of government control over the process became clear from the summer of 1989 onwards. The following account of Bill C-43 contradicts the view offered in some of the literature, which describes the purportedly "free" votes allowed to the Tory House backbenchers and Senate members on this Bill. Evidence gained primarily through interviews suggests that this was not the case.

In summer 1989, the Prime Minister clarified the likely voting procedures on the abortion legislation to be introduced in the House. Whereas he previously went on record saying he was considering a free vote for his entire Conservative caucus (as in 1988), he began to say in late July that his Cabinet probably would face a party whip on the issue.[76] Similarly, the bill was formulated by a hand-picked caucus committee rather than the usual Cabinet committee, and high-ranking members of the PMO were conspicuously present as they were during legislative committee deliberations later in the process.[77]

Unlike the 1988 legislative exercises, Bill C-43, introduced in the House on November 3, 1989, focused on a single option, and promised to polarize the pro-choice and pro-life forces even further. While this impact was felt at the level of social movements, it was not within the Tory Caucus, for the reason that the 169 member caucus would be heavily constrained to support the bill. The legislation subjected doctors and medical practitioners to a two-year prison term if "performing an abortion on a female person" (unless the practitioner were under the opinion that), "if the abortion were not induced, the health or life of the female person would be likely to be threatened." On the one hand, health was defined even more expansively than it had been in 1988 as physical, mental or psychological. The government also noted that life imprisonment for doctors, as was possible prior to *Morgentaler*, was replaced by a two-year term, and women were no longer targets of prosecution, as they had been prior to that court case. On the other, the legislation would return abortion to the Criminal Code, and promised to produce strengthened feminist activism against it. Similarly, while the Caucus committee was deliberating on the bill, statements had been floated on a possible amendment to the bill to give provincial Attorneys General the power to stop third-party prosecutions (i.e., brought

by someone outside the doctor-patient relationship). This amendment did not make it into the original legislation.

As in 1988, the government's defence was that legislation was needed, and the federal Criminal Code gave the most weighty constitutional power to the federal government to act to ensure national standards. The problem with this argument is that the bill neither addressed the problem of third-party injunctions nor codified access to abortion procedures. Women's movement organizations highlighted this contradiction. For example, OCAC formulated the slogan "women are not criminals" in response to Bill C-43. Along with the other feminist women's groups, OCAC emphasized the Canada Health Act as the proper mechanism for guaranteeing women's access. They shared this emphasis with the NDP. Those who argued for the use of the Canada Health Act to ensure universal access to abortion hoped that this mechanism, as an example of federal spending power, would enable the federal government to ensure access to abortion services. This would occur through the requirement that hospitals offer the procedure to receive federal funding. Those who argued against its use felt that the line where the federal government could intervene to "regulate provincial health care directly" was not clear.[78]

Later in the process, after second reading, when pro-choice and multi-issue feminist groups were submitting briefs to the special legislative committee, they usually framed their arguments about women as having the right and capacity to make their own decisions. The CARAL brief to the legislative committee invoked the equality-based framework of liberal feminism, stating that the "autonomy, integrity, dignity and equality of women" is upheld in the Charter, and that Bill C-43 would contravene it and relegate women to inferior status. The re-criminalization of abortion was claimed to conflict with the Charter, undermine the doctor-patient relationship and ignore the real causes of unplanned pregnancies.[79]

Not surprisingly, the two largest, national, legal rights organizations for women, NAWL and LEAF, discussed their views of the incompatibility of Bill C-43 and the Charter of Rights and Freedoms. LEAF addressed much of its brief to arguments that Bill C-43 would violate Sections 7 (concerned with "life, liberty and security of the person,"), 15 and 28 (containing the gender equality guarantees). It also emphasized its disagreement with "attaching the stigma of potentially criminal conduct to abortion in general," and also that the bill would not help women gain access to services.[80] Similarly, NAWL stated that it would issue a court challenge to Bill C-43 if it were proclaimed into law.

The brief submitted by NAC also stressed the concepts of the lack of access and entitlement, and like CARAL, emphasized that the results gained by the bill would clash with the majority public opinion. The NAC brief also stated that, because of the definitional vagueness of the bill, "the only standard it would enshrine was one of nation-wide dehumanization

and deceit."[81] Like the Canadian Medical Association, NAC called for withdrawal of the bill.

As with the 1969 Omnibus reforms, the Canadian Medical Association became quite involved with the Bill C-43 debate, for it obviously did not wish to see abortion services returned to the Criminal Code. The CMA's position was that Bill C-43 singled out abortion "as the only medical procedure to be labelled a potential crime."[82] Dr. Judith Kazimirski, the CMA President, stated that many of the 375 physicians then performing abortions in Canada would likely stop.[83] By June 1990, reports told of doctors who either had stopped performing abortions or would stop performing them, in anticipation that the bill would continue its passage through Parliament. In Quebec, private and public free-standing clinics claimed that they would defy the new law.[84]

Members of the Opposition parties took very strong stands against Bill C-43, including the Women's Critics of the opposition Liberal and NDP parties. In part, MP Dawn Black of the NDP stated,

> women…think of this issue as one where you cannot be a little bit pregnant, you also cannot be a little bit held under the Criminal Code. You are a full and equal citizen in this country, a citizen who is able to make her own decision under her own priorities and concerns, and not under the criteria established by a criminal law.[85]

This reflected the position expressed by the NDP since the 1960s against putting abortion sanctions in the Criminal Code. Her counterpart in the Liberal Party, MP Mary Clancy, compared women's lack of agency in the legislative debate to what would happen if Bill C-43 were passed:

> We hear, and heard, from men saying: "Women cannot be allowed to do this. Women cannot be allowed to do that." Women are coming to the point where the question of what we are and are not allowed to do will no longer be acceptable…I have listened in the House to some things that truly astound me. …I have heard that most abortions take place for socio-economic reasons, as if the socio-economic reasons being cited were mere fripperies and women resort to abortion because a pregnancy is merely inconvenient.[86]

As with the 1988 debates, pro-life forces were divided on the bill. Some wanted to see the bill passed, but many were against it since they viewed it as insufficiently restrictive.

Unlike the July 1988 "sense of the House" debate, readers are left with the feeling that the stakes surrounding Bill C-43 were much higher for the women's movement, feminists of the Opposition parties and for Tory women. For example, when asked to compare the lobbying framework during the two legislative attempts of 1988 and 1989, one pro-choice lobbyist responded that, "in 1989, the women we had met with in 1988 were shutting the doors in our faces and telling us they could not meet with us."[87]

The differences in the framework in which government women operated in the House of Commons, one year apart, were striking.

In the opposite scenario from 1988, the positions of the Minister Responsible for the Status of Women and Advisory Council diverged. The Advisory Council restated its longstanding opposition to having abortion being made subject to the Criminal Code. The Minister was in a different position than in 1988. While Minister McDougall was required to defend the bill, hints of ambivalence appeared in her statements, for example:

> Under the Canada Health Act, which at first glance to many of us seemed the most appropriate vehicle, the Government of Canada is not in a position to specify abortion as a required service…Second, if we are to have legislation, there will of course be sanctions… Once again, after lengthy discussion our conclusion was that our powers were limited to the Criminal Code. This is not a happy conclusion for me, not by a long way.[88]

While the circumstances surrounding the Minister's scope of action had changed between 1988 and 1989, the Advisory Council had been adamant in its opposition to proposed recriminalization in its brief to the Legislative Committee on Bill C-43. After stating that, "for us, abortion continues to be a health issue," the brief continued in part, that,

> Our recommendations over the years, the first dating from the Council's founding in 1973…all reiterate our confidence in women's capacity to make decisions about their health and well-being…In short, regardless of their political beliefs, this Council has offered the federal government the same advice for the past 17 years. It has been based on conscientious analysis of personal, medical, and political realities; our conclusions seem to point in the direction that is the least divisive. The Council's position is based on profound respect for individual autonomy and individual choice.[89]

The Advisory Council's brief also stated that in December 1989 and February 1990, "Council members told the Minister, 'we feel that our voices on this issue have not been heard'."[90] While this stance showing independence of the government was well within the normal Advisory Council's role, it also showed the different relationship of the Council to the Minister under Bill C-43.

The outcome was that Bill C-43 passed the House on second reading on November 28, 1989, by a 164-114 margin. The "no" votes included pro-life defections from the Conservatives, 60 Liberals and 42 New Democrats.[91] The most surprising outcome under the purported free vote was the polarization by party, not gender. All of the Tory women voted for Bill C-43, and all of the Opposition women voted against it. The only Tories voting against the government bill were the 12 in the strong pro-life group, who considered the bill not sufficiently restrictive. It then passed the House on

third reading on May 29, 1990 and was sent to the Senate, which conducted hearings from October to December 1990.

Two important changes happened between the third reading in the House and the Senate's committee action which would ultimately affect the framework within which Bill C-43 was considered in the Senate. The first was the defeat of the Meech Lake Accord in June 1990, a blow to the Prime Minister's policy program and contributing to a perceived desire to win on other issues. The second was his appointment of eight so-called "GST" Senators in September 1990, a number of whom were pro-choice. The Prime Minister's aim was to appoint enough Senators to secure a Conservative majority in the Senate and therefore win on his proposed new Goods and Services tax. While this ultimately worked to his favour, it also furnished some votes crucial to the defeat of Bill C-43.

By most accounts, the circumstances surrounding the defeat of Bill C-43 on third reading in the Senate were quite dramatic, entailing pressure by all levels of the Tory caucus, including those who had changed their position since 1988. The political negotiations were summed up by a highly-watched event when Senator Pat Carney (Conservative of B.C.), was flown in from B.C. where she was recuperating from surgery, and cast a vote against the bill. This action signified an extraordinarily high degree of tension within the Tory caucus, as Senator Carney had previously functioned in the House as the Trade Minister who helped negotiate the Free Trade Agreement. In short, she was expected to be a "party player" on this issue.

Pro-choice Liberals and Conservatives in the Senate worked diligently to withstand the considerable Conservative party whip to defeat the bill. Some also responded favourably to lobbying by the women's movement and the CMA. The necessity of these alliances, the continual pressure for votes and the consequences faced by some Tory Senators who broke ranks on the issue, contradict the oft-provided description of a "free vote" for the Government party in both chambers. Bill C-43 was defeated by a tie vote of 43-43 in the Senate on January 31, 1991. This was the first time the Senate had defeated a Government bill in thirty years.[92] This must have surprised the Government, which had made last-minute appointments to ensure a Tory-dominated Senate.

Conclusion

The policy cycle at the federal level that began with the "decriminalization" of abortion procedures by altering the Criminal Code in 1969 seems to have ended with the defeat of Bill C-43 by a tie vote in the Senate in 1991. In some ways, an interesting symmetry can be traced between the first and third debates, although they took place under different party control.

Officially, the women's movement appears to have had its largest degree of input into the 1988 debate, given that it could work fairly well with both the Advisory Council and the Minister Responsible for the Status of Women. This was also a time when the policy system was most open to the feminist movement's input, but perhaps partially because the results of the debate were not binding.

The policy proposals during first and second debates were multi-faceted. In the 1969 instance, abortion was only one of many changes to the Criminal Code. In 1988, MP's were asked to vote on many policy options. This could have hindered women's movement organizing in 1969, although without the institutionalization of the groups, it is nearly impossible to tell. The multifaceted nature of the proposal in July 1988 and its lack of a binding outcome undoubtedly helped open the doors to women's access and enabled women's movement strategizing with all three parties. While in 1989, the single issue contained in the legislation provided women's movement groups with a more tangible target on which to focus, it would prove nearly impossible to defeat a government bill with all the party whips in place for voting. However, persistent efforts with the Senate seemed to have worked by defeating Bill C-43.

In assessing the changes wrought in the two policymaking eras on abortion, 1960s vs. 1980s, the outcome is somewhat ironic. As identified in the introduction, one set of changes concerned the institutionalization of the women's movement and its relationship to the state, and the second concerned the rise of the courts as a countervailing policymaker. The largest formal changes in existing law, although recognizing existing practices, predated the second wave women's movement and governmental women's policy offices. While the women's movement was certainly more embedded in society by the 1980s, it was also denied its desired degree of influence over Bill C-43 by the extraordinary control exercised over this legislative scenario by the Prime Minister and Prime Minister's Office. With respect to the rise of the courts' influence, the Supreme Court decision in *Morgentaler*, essentially posing a challenge to the Mulroney Government, remains in effect today. While both sets of changes across the policymaking eras have affected the way that parts of the legislative process have worked, other parts, such as executive dominance, are still present.

The outcome of having "no new law" means that the situation in Canada remains about the same or worse as it did in the late 1980s in the wake of the *Morgentaler* decision. Provinces have continued to push at the margins of their jurisdiction over the management of hospitals, and thus over the availability of abortion. The cases of Prince Edward Island and Nova Scotia have been among the most egregious.[93] Thus, the "checkerboard system of justice" decried by Prime Minister Mulroney in 1989 still exists, to a greater degree. For example, the percentage of Canadian hospitals equipped to handle abortion services that actually provide them declined by nearly one-third between 1986 and 1990.[94] In 1995, hospitals were performing

two-thirds of all abortions in Canada. Furthermore, funding across the provinces for health clinics performing the procedure still varies greatly.[95]

Note

1. I acknowledge, with great thanks, the receipt of a Faculty Research Grant from the Government of Canada in 1999 which enabled me to pursue this research, and the significant help offered by the office of the Canadian Consulate General in Boston, MA, particularly that of Mary Clancy, Canadian Consul General.
2. The Research Network on Gender and the State, or "RNGS" project, was initially developed by Professor Dorothy Stetson, Associate Dean, Department of Political Science, Florida Atlantic University, and Professor Amy Mazur, Department of Political Science, Washington State University. It seeks to highlight the interaction of women's movements and women's policy offices in various governmental systems, to discern whether different models of legislative-executive relations, party systems and party control have helped or hindered women in "gendering" the four following policy issues: job training, formal representation in government, abortion and prostitution.
3. The Supreme Court case was Morgentaler, Smoling and Scott v. the Queen (1988), 37 C.C.C. (3d) 449 (Supreme Court of Canada).
4. On the other hand, the courts had over the years been more proactive in their interpretation of proper spheres of federal and provincial action in other areas; see Christopher Manfredi, *Judicial Power and the Charter* (Toronto: McClelland and Stewart, 1993).
5. Sylvia Bashevkin, *Women on the Defensive: Living through Conservative Times* (University of Toronto Press, 1998), 197.
6. David Docherty, *Mr. Smith Goes to Ottawa: Life in the House of Commons* (Vancouver: UBC Press, 1997), 138-143.
7. Ibid., 34.
8. Ibid., 106-110.
9. Raymond Tatalovich, *The Politics of Abortion in the United States and Canada: A Comparative Study* (M.E. Sharpe, 1997), 29-30.
10. As cited in Tatalovich, *The Politics of Abortion*, 30.
11. Jane Jenson, "Getting to *Morgentaler*: From One Representation to Another," in Janine Brodie, Shelley Gavigan and Jane Jenson, *The Politics of Abortion* (Toronto: Oxford University Press, 1992), 24.
12. Alphonse de Valk, *Morality and Law in Canadian Politics: The Abortion Controversy* (Dorval, Que.: Palm, 1974), cited in Jenson, 25, n. 20.
13. Jenson, 25.
14. Ibid., 32.
15. Robert Campbell and Leslie Pal, *The Real Worlds of Canadian Politics* (Peterborough, Ont.: Broadview Press, 1989, 174), cited in Tatalovich, 32.
16. Jenson, 33.
17. Ibid., 33.
18. Tatalovich, 33.
19. Jenson, 40.
20. Ibid., 24-26.
21. Ibid., 30.
22. Ibid., 25.
23. As cited in Jenson in Brodie, Gavigan and Jenson, 31.

24. Sylvia Bashevkin, *Toeing the Lines: Women and Party Politics in English Canada* (University of Toronto Press, 1992), 19-21; VOW's initial issue focus was opposing the purchase and testing of U.S. nuclear missiles in Canada.
25. Ibid., 31.
26. Ibid., 43.
27. Ibid., 161.
28. Jenson in Brodie, Gavigan and Jenson, 32-35.
29. Tatalovich, 33-34.
30. Ibid., 34.
31. Criminal Code, C. 38, s. 18, as cited in Mandel, 408.
32. For example, Jenson in Brodie, Gavigan and Jenson, 26; and Tatalovich, 34.
33. Nancy Adamson, Linda Briskin, and Margaret McPhail, *Feminist Organizing for Change* (Toronto: Oxford University Press, 1988), 201-202.
34. L. Pauline Rankin and Jill Vickers, "Locating Women's Politics," in Manon Tremblay and Caroline Andrew, eds., *Women and Political Representation in Canada* (University of Ottawa Press, 1998), 342-343. The authors place the women's movements of the U.S., United Kingdom and France at the other end of the spectrum, being less politically engaged with the state.
35. For example, Sue Findlay, "Problematizing Privilege: Another Look at Representation," in Linda Carty, ed., *And Still We Rise: Feminist Political Mobilizing in Contemporary Canada* (Toronto: Women's Press, 1993), 207-224; and Sue Findlay, "Facing the State: The Politics of the Women's Movement Reconsidered," in Heather Jon Maroney and Meg Luxton, *Feminism and Political Economy* (Toronto: Methuen, 1987), 31-50.
36. Jane Jenson, in Brodie, Gavigan and Jenson, 47; also, Adamson, Briskin and McPhail, 190-1.
37. Catherine, Dunphy *Morgentaler : A Difficult Hero* (Toronto: Random House of Canada, 1996), 127, 191.
38. "CARAL Executive Summary of Brief to Legislative Committee on Bill C-43," 1.
39. Tatalovich, 189.
40. NAC, "Submission to the Parliamentary Committee on Bill C-43: An Act Respecting Abortion," February 7, 1990.
41. Women's Legal Education and Action Fund, *Equality and the Charter* (Toronto: Emond Montgomery Publications Ltd., 1996), xi.
42. Adamson, Briskin and McPhail, 71.
43. Jenson, in Brodie, Gavigan and Jenson, 45.
44. Ibid., 52.
45. Brodie, in Brodie, Gavigan and Jenson, 66.
46. For example, Linda Geller-Schwartz, "An Array of Agencies: Feminism and State Institutions in Canada," in Dorothy McBride Stetson and Amy Mazur, eds., *Comparative State Feminism* (Sage, 1995), 44.
47. When the office was formed in 1971, it began as the position of the Coordinator for the Status of Women in the Prime Minister's administrative office, the Privy Council Office (PCO). Mrs. Frieda Paltiel was its first occupant. In 1976, to demonstrate its interest in furthering women's policy interests, Prime Minister Trudeau's Liberal government reorganized the office, elevating it to a separate department. Thus, from the years 1976-84, Status of Women Canada functioned as the closest analogue to a ministerial department as it ever would. See Geller-Schwartz, 46-48; O'Neil and Sutherland, 216.
48. Annual Reports of the Canadian Advisory Council on the Status of Women, cited in Tatalovich, 189.

49. In 1995, the Advisory Council was folded into the Department Status of Women by the Liberal Chrétien Government.
50. Maureen O'Neil (written with Sharon Sutherland), "The Machinery of Women's Policy: Implementing the RCSW," in Caroline Andrew and Sanda Rodgers, eds., *Women and the Canadian State* (Montreal: McGill-Queen's University Press, 1997), 211.
51. Mollie Dunsmuir, *Abortion, Constitutional and Legal Developments* (Ottawa: Library of Parliament, Research Branch, 1989, Current Issue Review 89-10E), 9.
52. Cited in Tatalovich, 31.
53. Dunsmuir, 10.
54. Mildred Morton, *The Morgentaler Judgment: How the Decisions Differ,* Library of Parliament, February 9, 1988.
55. Dunsmuir, 10.
56. Donley Studlar and Raymond Tatalovich, "Abortion Policy in the United States and Canada: Do Institutions Matter?," in Marianne Githens and Dorothy McBride Stetson, eds., *Abortion Politics: Public Policy in Cross-Cultural Perspective* (New York: Routledge, 1996), 86.
57. M. Morton, 11.
58. Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada* (Toronto: Wall & Thompson, 1989), 424.
59. The May 1988 attempt failed largely on procedural grounds, when the Government sought suspension of the rules to limit debate and forestall amendments, which the Opposition refused. As described in Thomas Flanagan, "The Staying Power of the Legislative Status Quo: Collective Choice in Canada's Parliament after *Morgentaler*," *Canadian Journal of Political Science*, XXX: 1 (March 1997), 37-38.
60. Ibid., 86.
61. Author interview with a pro-choice activist, Ottawa, June 13, 1998.
62. Brodie, in Brodie, Gavigan and Jenson, 61, 66.
63. Canadian Advisory Council on the Status of Women, *Annual Report 1987-88*, cited in Tatalovich, 191.
64. Interviews with former members of the Minister's office, Ottawa, June and November 1998.
65. Statement by the Honourable Barbara McDougall, Minister Responsible for the Status of Women, 33rd Parliament, July 27, 1988; *Hansard*, 18080.
66. Brodie, 69.
67. Ibid., 77, 85.
68. As discussed in Alexandra Dobrowolsky, *The Politics of Pragmatism: Women, Representation, and Constitutionalism in Canada* (Oxford University Press, 2000), 89-91.
69. *Murphy v. Dodd* (1990), 63 D.L.R. (4th) 515 (Ont. H. Ct.), and *Tremblay v. Daigle*, [1989] 2 S.C.R. 530.
70. Brodie, 91-96.
71. Dunsmuir, 24.
72. Daigle, cited in Morton, 281-282.
73. Tonia Desiato, "Pro-lifers irked by PM's stand," *The Catholic Register*, August 5, 1989.
74. In the survey, of the 114 MP's identifying themselves as pro-life, 72 were from the Conservative party, 39 were from the Liberal party, 2 were from the NDP and the other was the lone Reform Party M.P. Of the 63 pro-choice MP's, 30 were from the NDP, 22 from the Tories (Conservatives) and 11 from the Liberals.

Among the 86 MP's favoring some restrictions on abortion access during later stages of pregnancy were 51 Tories, 25 Liberals and 10 NDPs. These figures were collected by the then-National Coordinator of CARAL, Robin Rowe, and cited in David Vienneau, "Abortion: Commons Deadlocked, Survey Says," printed in the *Montreal Gazette*, July 22, 1989, p. A1.

75. These data are from a 1989 Gallup poll, reprinted in Tatalovich, Table 4.2, 112-113.
76. Apparently, his answers varied by the language of the response; in English, he stated, "we'll see," but in French stated that "yes, there will be a common position." David Vienneau and Tim Harper, "Abortion Bill Priority This Fall, PM says," *Toronto Star*, July 25, 1989.
77. Interviews with former members of the Caucus and Legislative Committees, and former and current Tory Caucus members.
78. Ibid., 2; McBride and Shields, 45.
79. Statements taken from the CARAL "Brief to Legislative Committee on Bill C-43," January, 1990.
80. Women's Legal Education and Action Fund (LEAF), "Submission to Legislative Committee of Parliament on Bill C-43," January 30, 1990.
81. National Action Committee on the Status of Women, "Submission to the Parliamentary Committee on Bill C-43," February 7, 1990.
82. Jane Wilson, "Doctor Calls Bill 'an Insult'," *The Ottawa Citizen*, November 4, 1989.
83. "Abortion Law Would Force Women to Lie, CMA Says," (Canadian Press) Toronto *Globe and Mail*, February 7, 1990; Marilyn Dunlop, "Doctors to Oppose New Abortion Law," *Toronto Star*, January 17, 1990.
84. Christie McLaren, "MD's and the New Abortion Law," *Globe and Mail*, June 19, 1990; André Picard, "Quebec Clinics Pledge Defiance of Law if Criminal Penalties for Abortion Revived," *Globe and Mail*, May 29, 1990.
85. Statement by M.P. Dawn Black, NDP Critic for the Status of Women, House of Commons, November 8, 1989, 33rd Parliament, *Hansard*, 5739.
86. Statements by Liberal Women's Critic Mary Clancy on third reading of Bill C-43, House of Commons, May 24, 1990, *Hansard*, 11855.
87. Interview with a pro-choice lobbyist, Ottawa, June 1998.
88. Statement by the Honourable Barbara McDougall, Minister Responsible for the Status of Women, House of Commons, November 8, 1989, 33rd Parliament, *Hansard*, 5725.
89. "Brief Submitted to the Legislative Committee on Bill C-43 by the Canadian Advisory Council on the Status of Women," March 1990, 2.
90. Ibid., 1. In January 1990, Barbara McDougall was moved out her then-current portfolios in a cabinet shuffle, including the position of Minister Responsible for the Status of Women.
91. Brodie, "Choice and No Choice," 99.
92. Brodie, 115.
93. Prince Edward Island has allowed no abortions to be performed there since 1982. In 1989, Nova Scotia tried to pass legislation prohibiting the performance of abortion outside hospitals, and levying punitive fines if this were transgressed. The Appeals Court and ultimately the Supreme Court struck this down on the grounds that "the law was made primarily to control and restrict abortions in the province," and therefore belonged properly to the federal powers under the Criminal Code. See Dunsmuir, 15-19.

94. These figures are from Donley T. Studlar and Raymond Tatalovich, "Abortion Policy in the United States and Canada: Do Institutions Matter?," in Marianne Githens and Dorothy McBride Stetson, eds., *Abortion Politics: Public Policy in Cross Cultural Perspective* (Routledge, 1996).
95. Abortion in Canada Today: the Situation Province-by Province, Spring 1998, Childbirth by Choice Trust, Toronto.

Open Topic Section

Articles hors-thèmes

Eric Breton

Canadian Federalism, Multiculturalism and the Twenty-First Century[1]

Abstract

The first country in the world to have an official policy of multiculturalism was Canada. Underlying the policy and the framework it supports is a belief in the primacy of the individual in all areas of public life. Each and every citizen was to be encouraged to express his or her heritage as a part of the Canadian "mosaic." Despite this lofty goal, multiculturalism has never been anything less than controversial, having been seen by some as detracting from the rightful place in the country of Quebec, of Aboriginal Peoples by others, and of the real capacity of individuals to become truly "Canadian" by others still. The following paper examines the policy in the light of these criticisms and sets out the groundwork for an alternative in which Canada is viewed as comprising at least three identifiable multicultural societies, each distinct and unique, and argues that specific recognition of this is needed in the Canadian federal framework.

Résumé

Le Canada a été le premier pays au monde à se doter d'une politique officielle de multiculturalisme. Sous-jacente à cette politique et au cadre qu'elle appuie on retrouve la croyance en la primauté de l'individu dans tous les secteurs de la vie publique. Chaque citoyen et citoyenne est ainsi convié(e) à exprimer son patrimoine à titre de constituante de la « mosaïque » canadienne. En dépit de ce noble objectif, le multiculturalisme n'a jamais cessé de susciter la controverse et on y a vu un effort pour refuser au Québec, pour certains, aux Autochtones, pour d'autres, la place qui leur reviendrait au sein du Canada, tandis que d'autres encore y voyaient un obstacle à l'exercice concret de la capacité des individus à devenir véritablement des « canadiens ». Dans le texte suivant, on se penche sur la politique du multiculturalisme à la lumière de ces critiques et on effectue le travail préparatoire à la définition d'une autre interprétation du multiculturalisme en vertu de laquelle le Canada apparaîtrait comme composé d'au moins trois sociétés multiculturelles identifiables, dont chacune est distincte et unique. On conclut en soutenant qu'il est nécessaire de reconnaître précisément ce fait à l'intérieur du cadre fédéral canadien.

For over a century, Canada has been an attractive choice for many migrants from all over the world. They have come for a variety of reasons, but

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ultimately the majority has sought a better life for themselves and their families. As a result, Canada now boasts one of the most culturally diverse citizenries in the world, and this diversity is increasing as other groups and other types of community assert their identity in public discourse. While Aboriginal Peoples are clearly the only "original Canadians," other Canadians have begun to articulate their feeling that Canada is home, and in light of this, "Canadian" has been a category on the Canadian census since 1991.[2] Despite this positive development, which suggests that many individuals think of themselves primarily as "Canadian," none of this changes the fact that there is no racial, ethnic or moral stereotype for what a "Canadian" is.[3]

To call oneself an "ethnic Canadian" is a matter of individual choice. As such, the category cannot be viewed in the same light as other "ethnic" communities. There are at least two important reasons why this is so. Firstly, "ethnic Canadians" cannot collectively claim to share a history, culture or even a mother tongue.[4] Indeed, many of the strongest "Canadians" are first-generation immigrants who have experienced incredible hardship in becoming "Canadian."[5] The process of migration is undoubtedly a cause of many immigrants' desire to "re-create" a communal form which conforms to the requirements of their cultural community in the adoptive country. Human beings long to go "home," and the establishment of particular commercial enterprises, and the building of religious and other significant cultural institutions is a common means of identifying a cultural community in Canada's largest cities.[6] For many individuals who chose Canada, the experience of overcoming through difficult circumstances was precisely what forged a deeply personal sense of attachment to their adoptive country. In this vein, Barry Broadfoot has demonstrated that the long transition from a shattered homeland in the "old" country to a self-created one[7] in the "new" formed some of the strongest "Canadians" in post-war European immigrants.[8]

Secondly, the basic idea of an "ethnic" group denotes homogeneity based on shared characteristics ranging from race, culture, homeland and collective history to language, mainstream conceptions of morality and religion. The self-identification of individuals as Canadian is done by individuals *qua* individuals in the light of their own personal experience and volition. This is potentially a valuable distinction between "Canadians" and members of other ethnic groups partly because of the notion that memory is "re-creative." In this, the "old" country in fact provides a far narrower range of individual freedom in manifestation of unique but authentic forms of culture. In that Canada lacks a single official culture, members of cultural communities are able to "re-create" their own version of their "home" in Canada. The multicultural ideal of each and every person as a full participant in society has arguably created a politically-derived nationality.[9] This is because a notion of "Canadian-ness" has been created which explicitly excludes the two self-defining "ethnic Canadian"

communities, Aboriginal Peoples and *Québécois*, both of which have from the outset, been specifically excluded from the multiculturalism policy framework.

This paper contends that because Aboriginal Peoples, Quebec and Anglophone Canada can be distinguished from one another in the light of the two forms of multiculturalism articulated by Will Kymlicka, they constitute three distinct entities.[10] Further, it will argue that these entities require some form of explicit constitutional recognition.

Multiculturalism became the official policy of the Government of Canada on October 8, 1971 when Pierre Elliott Trudeau made his "Statement on Multiculturalism" in the House of Commons.[11] The rationale for the policy originated in the groundbreaking conclusions reached by the Royal Commission on Bilingualism and Biculturalism[12]; and specifically the recommendations contained in the final volume of its *Report*.[13] The work of the Royal Commission demonstrated that Canadian society was profoundly culturally diverse, and that it had unquestionably profited from this fact. It had been constructed by individuals from many different backgrounds and shaped by hands of many colors. This fact needed explicit recognition by the Government of Canada. The political manifestation of these ideas ushered in a new age in which official recognition of cultural communities became a basic building block of federal public policy.

Most discussions of Canadian multiculturalism have approached the issue from the perspective of the effect the policy and the subsequent legislation[14] has had on Canadian society and on specific groups within it. The purpose of this paper is to examine the political manifestation of "multiculturalism" by asking two questions. Firstly, to what extent has it contributed to achieving a situation where Canadians can "live together and live well?"[15] Secondly, does the multiculturalism policy framework as it exists at present inspire confidence in the capacity of federal public policy to meet the needs of an increasingly diverse Canadian society at the beginning of the twenty-first century?[16] Both queries are important, since to recall Aristotle's vision of political community cited above, a political community should aim for its members to "live together and to live well;" An important goal of multiculturalism has been to create socio-political conditions in which all Canadians can achieve full participation in public life.

In a political community explicitly committed to the principles of liberal democracy such as Canada, most writers agree that "full participation" must be grounded in a shared sense among all members that each individual has an equal place and equal opportunity in society. In the *Statement*, Trudeau set the terms of the policy framework which followed in socio-philosophical terms: "… adherence to one's ethnic group is influenced not so much by one's origin or mother tongue as by one's sense of belonging to the group and by what the [Bi and Bi] commission calls the group's

'collective will to exist.'"[17] He emphasized the liberal virtue of individual choice as the very basis for the notion of freedom: "The individual's freedom would be hampered if he were locked for life within a particular compartment by the accident of birth or language […]. A policy of multiculturalism within a bilingual framework commends itself to the government as the most suitable means of assuring the cultural freedom of Canadians."[18]

From the standpoint of political theory, this demands that the content of each person's status be deemed to be a universal particularity. This is to say, each individual is to be seen as imbued with the complete range of moral, political and social entitlements available to every other. Implicit in this idea is the notion of a regime of equal citizenship which would be an explicit goal of the *Canadian Charter of Rights and Freedoms* eleven years later. The terms of the *Canadian Multiculturalism Act* 1988 strengthen the connection between these ideas, and provide that "the Government of Canada […] is committed to a policy of multiculturalism designed to preserve and enhance the multicultural heritage of Canadians while working to achieve the equality of all Canadians in the economic, social, cultural and political life of Canada."[19]

As suggested above, the problem with this position is that it does not recognize the fact that membership in a community is fundamental to some individuals' senses of self. The policy deems every Canadian to be an individual first and further that being "Canadian" implies that one's communal attachments are a private matter. For the vast majority of Aboriginal persons and many *Québécois* to actualize their individuality as "equal Canadians" they need to be recognized as strongly situated within their communities, and the distinctness of their communities needs to be recognized by others. Since the policy of multiculturalism fails to acknowledge the centrality of community to members of Canada's minority nations' senses of *who and what they are* – and thus of their identity as "Canadians" – it implicitly denies the legitimacy of their senses of "Canadian-ness." Not only does this preclude the possibility of all Canadians actually *being* equal, as opposed to just having equal legal status, but it also constitutes a substantial limitation in the manifestation of liberal democracy in Canada.

The creation of a regime of equal citizenship in the Canadian context has been difficult to actualize. While multiculturalism has arguably been useful in the integration of recent individual immigrants and their families in the ways suggested above, overall its effect has been divisive,[20] and moreover, the policy itself remains controversial. There are two main ways in which this is so. Firstly, in being perceived to privilege recent immigrants over the more established groups, the policy has served to slow the rate at which recent immigrants are able to integrate themselves into Canadian life and to increase the incidence of clearly defined, ethnically homogenous neighborhoods among immigrant groups of the past thirty years.[21]

Secondly, in having attempted to level the differences between individuals and groups, multiculturalism has also had the effect of undermining the claims of Aboriginal Peoples and *Québécois* to specific recognition as national communities. Recognition of these societal communities demands more than what can be reasonably accommodated under the rubric of liberal toleration.

The tensions between these two national minorities and "the Rest of Canada" did not originate in the negative reactions of the former to multiculturalism; but they have clearly been deepened and rendered more complex by it. In the case of both groups, the division has developed over time in the form of a decreasing sense of trust between them and non-Aboriginal Canada outside Quebec. If all Canadians are to be, and sense that they are, "full [and equal] participants" in the public life of the country, the grounds of "equality" must be acknowledged as being the political context within which individuals understand themselves as selves, agents and citizens. But to acknowledge the existence of societal communities as distinct multicultural contexts is to go further than has been achieved to date to reconciling diversity and equality.[22]

In 1763, First Nations understood the *Royal Proclamation* as a treaty that guaranteed that their communities would be treated fairly and with respect as independent nations under the protection of the British Crown. In this, they assumed that as was the case among their own peoples, their relationship with the British would be one between mutually-recognizing nations. To this day, Aboriginal Peoples have maintained that this is the only valid interpretation of the *Royal Proclamation*, and have consistently held that the promise enshrined within it has been broken on countless occasions.[23]

One of the most serious critiques which can be leveled at the multiculturalism policy framework as a whole is precisely that it has never had any mediating effect in the relationship between Aboriginal Peoples and non-Aboriginal Peoples in Canada. A basic goal of multiculturalism has been to recognize the fundamental diversity of Canadian society as a positive, defining characteristic of public space and to be "sensitive and responsive to the multicultural reality of Canada."[24] Despite this broad claim, neither the deep cultural diversity among First Nations themselves, nor the fact of Aboriginal Peoples as elements of Canadian society are acknowledged in the policy. Furthermore, these issues were not recognized in either the *Preliminary Report* of the Royal Commission on Bilingualism and Biculturalism nor was it recognized in Book IV of their *Report*.[25]

Just as Aboriginal Peoples found over time that their original perception of the relationship they were to have with the British had been misplaced, within decades of Confederation, French-Canadians also discovered that their assumption that Confederation had been a treaty between equal partners was erroneous. Within years of July 1, 1867, what was later

described by Abbé Lionel Groulx as the most glorious day in French-Canadian history, the mutual trust they perceived as having been central to the union, was betrayed by the execution of Métis leader Louis Riel (1885) and the forced participation of French-Canadians in the Boer War of 1899-1902.

For both Aboriginal Peoples and *Québécois*, a number of policies implemented by [English-] Canadian governments over time have prevented the original sense of trust from being renewed. These historical examples are now counted as the first among many perceived injustices perpetrated by the federal government. For First Nations, the exclusion until very recently of Aboriginal Peoples from constitutional fora, and the failure to resolve outstanding land-claims and demands for self-government, have contributed to their sense of betrayal.[26] For the *Québécois*, the erosion of French-language and education rights in Manitoba and Ontario, and the willingness of the federal government to ignore French Canada on the issue of conscription in the first half of the twentieth century were illustrations of [English-] Canada's refusal to recognize them as being equal.[27] In addition to this, the failure of the Government of Canada to seek the approval of the Government of Quebec on the 1982 Constitution have all deepened feelings of alienation.

The *Canadian Charter of Rights and Freedoms* is the first part of the *Canada Act*, 1982. It guarantees Canadian citizens equality of full participation in public life and safeguards their private lives. As such, individuals are guaranteed full membership in the federation as a whole. But the existence of more than one form of multicultural society in Canada means that the ways in which individuals view themselves and the country as a whole and the relationship between them depends partly on the context within which they live. The importance of recognizing societal communities as integral elements of Canada lies in their indispensability to their members' sense of "Canadian-ness."

There are at least three distinct multicultural contexts in Canada: Aboriginal Peoples, Quebec and Anglophone Canada. Each "societal community" has its own constellation of societal expectations which defines and constitutes the space within which individuals as members of cultural communities and other groups interact. As such, the boundaries of each societal community demarcate a political context within which its particular form of multiculturalism best fits.

With the exception of the French and the English, no immigrant group has established itself as politically dominant in Canada. French settlers and their descendants have generated a particular cultural milieu within the borders of Quebec, while English settlers have done so largely outside Quebec. Aboriginal Peoples have existed as a multiplicity of small national communities throughout Canada for millennia. This is the reason for beginning with the premise that there are *at least* three societal communities.

As discussed above, the political relationship between societal communities is far from one of equal partners. In relative terms, their political role in the federation can be viewed as a recognizable hierarchy. "Anglophone Canada" includes non-Aboriginal Canadians outside Quebec. It has the largest population and as such the greatest influence in Canada as a democratic state. But it also has the weakest collective sense of self, due to regional, economic and other forms of diversity present within it. Second in the hierarchy of political influence, Quebec's population constitutes approximately one-quarter of the Canadian total. It comprises non-Aboriginal Canadians inside Quebec, including its Anglophone minority who constitute an integral minority in Quebec society. Aboriginal Peoples are least populous of the societal communities, and have the least political influence. They are both the most ancient and the most recent of these entities to appear, on one hand having constituted a multicultural geopolitical system in North America for millennia; while on the other having only attained an identifiable role as a political force in Canada in the last thirty years.

A number of writers have articulated views about the philosophy and effectiveness of multiculturalism in Canada and elsewhere.[28] Will Kymlicka has shown that it is inaccurate to speak of the situation of Aboriginal Peoples and Francophone Quebecers in the same language as one talks of ethnic groups because the existence of minority nations in Canada is a fundamentally different source of cultural diversity.[29] Neither is it acceptable to speak of Aboriginal multiculturalism in the same terms as one does the cultural diversity that is a defining characteristic of contemporary Quebec. To think of "Multiculturalism" as a single concept is to misrepresent the complex reality of Canada at the beginning of the twenty-first century.

As noted above, the model of societal communities presented here begins with Kymlicka in that it is premised on the idea that fundamentally different sources of diversity require recognition as constituting distinct multicultural contexts, but is distinct from his notion of a "societal culture" in many ways. The distinction Kymlicka makes between *multi-national* and *polyethnic* multiculturalism is helpful in clarifying this issue. He argues convincingly that to speak of "Multiculturalism" as a single entity is to suggest that all "diversity" can be presented as falling along a single continuum. He finds this view to be overly narrow because it assumes that communities perceive of themselves as primarily being parts of a socio-political space defined by certain common goods.

Kymlicka defines a *polyethnic* society as one where cultural diversity is composed of communities whose members have become a part of the society as individuals or in small groups. *Polyethnic* multiculturalism enriches a society by constituting it as a rich tapestry containing threads of multiple cultural traditions. An important characteristic of this form of society is that the ethno-cultural communities which compose it do not

demand specific political recognition in and of themselves. *Multi-national* multiculturalism by contrast, is characterized by a variety of national communities within a single society. Individuals in a *multi-national*, multicultural society are first and foremost members of their particular nations, and membership in society as a whole is contingent on their community's status within the whole. *Multi-national* multiculturalism occurs when pre-existing national communities become members, either voluntarily or by force, of a larger political community.

Kymlicka's notions of different forms of multiculturalism and "societal culture" form the starting point for the concept of societal communities. However, it is important to distinguish the model of a societal community from Kymlicka's notion of a "societal culture." This he defines as a "territorially concentrated culture centred on a shared language that is used in schools, media, law, the economy, and government."[30] Membership in such a culture "provides access to meaningful ways of life across the full range of human activities – social, educational, religious, recreational, economic – encompassing both public and private spheres."[31] He characterizes it as "inevitably pluralistic, containing Jews, Muslims, and atheists as well as Christians; gays as well as heterosexuals; rural farmers as well as urban professionals; socialists as well as conservatives."[32] All of these identities can be accommodated within a "societal culture" because although it is pluralistic, it does not contain communities which define themselves, and demand recognition, as nations.

An important example of a societal culture is the Anglophone community in Quebec.[33] The majority of English-speaking Quebecers live in and around Montreal. They have access to social and religious organizations, recreational facilities and a wide range of other services as well as limited access to English-language education for their children. Their internal unity is clearly centred on a shared language, but Anglophone Quebecers do not constitute a societal community. They constitute a societal culture which is a constituent part of the multicultural make up of Quebec. In addition to the Anglophone community, the societal community contains the *Québécois* nation, other Francophones, as well as members of a wide variety of ethnic and other groups. It is within the particular multicultural context that all of these groups interact, and in this way, a societal community is wider than a societal culture. The former is based on a shared constellation of societal expectations which define and demarcate the resources for the public life of the societal community as a whole, while the latter is grounded in a far more precise, shared sense of place within a larger community but distinct from it.

In contrast, Aboriginal Peoples also constitute a societal community because theirs is composed of a multiplicity of independent nations. The idea of a "societal community" is thus a broader concept than a "societal culture" because it signifies a multicultural community which potentially contains not only one or more "societal cultures," but can also

accommodate national communities and a whole range of other multicultural sub-groups.[34]

Explicit constitutional recognition of societal communities is of the utmost importance if Canadian federalism is to be reformed successfully so as to produce the "peaceable kingdom" Canada has so often been dubbed. Aboriginal Peoples and many Francophone Quebecers regard themselves as having particular claims as nations that deserve specific recognition. The policy of multiculturalism is perceived of as potentially threatening to the well-being of their communities because members of these groups view it as challenging their self-defining status as national groups. The *polyethnic* multiculturalism that has developed since Confederation neither does, nor can, include members of these groups because they constitute self-defining, widely recognized nations which are not merely ethnic groups.

Although majorities of Aboriginal persons and Francophone Quebecers perceive themselves as members of national communities living in particular, self-defined societal circumstances, the societal milieus dominated by these minority nationalities are multicultural in and of themselves.[35] As has been shown above, however, each composite constitutes a specific political context framed by a distinct constellation of societal expectations. A "constellation of societal expectations" is the set of normative "ground rules" which guides the interaction of individuals as members of the societal community and the communities within it.

Since the particular mix of cultural communities is different in each societal community, its constellation of societal expectations is also distinctive, making its form of multiculturalism specific. More importantly perhaps, many Quebecers and members of Aboriginal communities see the fact of their collective, particular universality as a strong legitimating factor in the quest for recognition. The outcry against the federal policy of multiculturalism from these groups stemmed from their interpretation that it would not only diminish their place in Canada, but would in fact deny the reality of Quebec and Aboriginal societies as loci of distinct forms of multiculturalism in their own right. Recognition of societal communities as defined here would go a long way toward addressing this problem.

As noted above, Aboriginal Peoples constitute a distinct multicultural entity. They have created socio-political structures based on intercultural relations over time between the varieties of separate nations and communities that comprise their societal community. Non-Aboriginal Canadians and others have tended to view Aboriginal Peoples as a single people and to classify them as a set of geographically disparate communities linked by common history and culture. Although it is true that they share a common link to continental North America, far more important is the fact that "Aboriginal Peoples" now comprise over fifty separate nations dispersed among over six hundred band communities.[36] As such, Aboriginal multiculturalism is entirely "multi-national" because as

described above, their societal community is composed of national groups. "Poly-ethnic" multiculturalism is practically nonexistent among the First Nations because there has been no migration to their communities.

Quebecers – Francophone, Anglophone, and "Allophone" live in a culturally diverse context, defined by the primacy of the French language within the borders of their province.[37] In addition, many *Québécois* have claimed Quebec as their national homeland. All of this has contributed to a particular set of circumstances which have produced a particular form of multicultural society, because both *multinational* and *polyethnic* forms of multiculturalism are found in Quebec. The *Québécois* define themselves as a nation, and trace their origins to the earliest French settlers of the sixteenth and seventeenth centuries. Their nation shares the societal community with many other communities of various forms, including a large variety of groups composed of individuals who have migrated to Quebec singly or as members of families.

Anglophone Canada has yet to define itself in a clear and well-articulated manner. There are a number of reasons why this has not occurred, including regional cleavages, profound polyethnic multiculturalism rendering the possibility of a single "nation" coming to dominate the whole unlikely, and the fact that Anglophone Canadians share a language with the United States, being three prominent ones. Among the three societal communities, Anglophone Canadians are also the most clearly animated by the "pan-North American" commercial culture that originates, in the great majority of instances, south of the border. "English-Canada" as it has often been called, shares a common heritage with the United States in many ways: language, a public philosophy of liberal individualism, and a long history of migration across the border separating the two countries has meant that there has been little possibility of developing a distinctly "Anglophone Canadian" culture.[38]

Given that Anglophone Canadians constitute the majority of the country's population, it is unlikely that the need for a collective self-definition more specific than "Canadian" will be viewed as a high priority. This is a difficult argument to counteract, for as Jon Elster has argued, "decision by majority is the ultimate criterion in any democracy, even constitutional ones."[39] The law of majorities is the legitimizing mechanism of contemporary democracy in many states and criticizing this fact must be done with the utmost care.

Of course, both of the other societal communities are also committed to the rule of the majority to express their public wishes and gain democratic legitimacy for them as well. The majority of Quebecers support the constitutional recognition of Quebec as a unique entity, and the separatists' plan to form an independent country can only be realized if the majority of Quebecers support it. Days prior to the last referendum on the secession of Quebec, members of Aboriginal communities within the borders of Quebec

undertook their own referendum to show their opposition to the *Indépendentiste* plan in a democratic way.[40]

Canadian democracy occurs within a complex framework of laws, including the *Charter*, designed to ensure compliance with human rights, treaties and other obligations of the Canadian state. Canada is a liberal democracy, constitutionally committed to protecting the rights and freedoms of each and every individual. The underlying purpose of entrenching the *Charter* was to complete the larger project that began with the *Official Languages Act* and included the *Statement on Multiculturalism*. All three of these contributed to a plan to create a pan-Canadian solidarity based on the principle that each member of Canadian society should be able to participate fully in the life of the whole as a self-defining agent.

The principle of individually-defined identity in a socio-political milieu that supports each person in his or her choices by guaranteeing her a space where no outside interference is justifiable is a key characteristic of contemporary liberal democratic society. In it, "culture" as an element of selfhood is by definition officially viewed as a component of the private sphere. There is no room for exclusive forms of nationalism or social coercion requiring individuals to define themselves in a certain way in order to "belong." This view of what Canadian society is, or should be, seems increasingly to characterize Anglophone Canada, particularly in its largest multicultural centers.[41] Moreover this pervasive individualism at the level of public discourse has rendered an identifiable, collective self-definition of Anglophone Canada extremely difficult to achieve.[42]

The role of multiculturalism in the project to create the predominantly individualist social definition of Canada, now so prevalent in Anglophone Canada, was arguably to diminish the social importance of community where the whole has legitimate claims to limit individual choices. Against this, the centrality of community is that it is the context wherein individuals undertake processes of self-definition. The community, thus described, is the womb within which selfhood develops. Multiculturalism encourages individuals to celebrate their cultural heritage with others in order to enrich the life of the whole. Unfortunately, as Bissoondath has pointed out, the policy fails to provide a bridge between particular cultural communities and mainstream Canadian society. As such, in many cases, it has been instrumental in producing societal categories in which individuals are caught between fully participating in mainstream society and acting as agents of particular cultures.[43]

The negative effect of multiculturalism on the capacity of Anglophone Canadians to arrive at an agreeable, collective definition of themselves as one or more political contexts within Canada is an important issue. Perceiving themselves as the numerical majority of Canadians, many Anglophone Canadians fail to see why any smaller collective entity is

necessary to define them, the political ramifications of which has undoubtedly fuelled the separatist cause in Quebec. In addition, deep regional cleavages exist among and between Anglophone Canadians. Provincial identities stemming from the histories of particular settler groups often conflict with one another on national issues, and thus prevent the topic of Anglophone Canadian identity from arising in the first place. The identities of the original settler groups have become interwoven with those of individuals who came later and made their mark, and this in sum may well mean that the most complete, collective definition of "Anglophone Canada" is the *Charter* itself.

For Anglophone Canada to recognize Aboriginal Peoples and Quebec as particular political contexts *qua* societal communities would be a step toward reconciling diversity and equality in Canada. This is because the case must be made to the majority that recognition of other political contexts in the country is the only way to move forward.[44]

The fact that there are a number of differently multicultural communities in Canada renders a single multicultural policy across the country untenable. The differences between forms of multiculturalism correspond to a very real difference between the grounds on which cultural diversity is negotiated. The idea of a single *pan-Canadian* nation as Pierre Trudeau and others articulated it contained a citizenry possessing an almost incalculable variety of cultural backgrounds. The idea of being Canadian, had to involve the acceptance of a common *modus operandi* for the public life of the country as a whole. The horizons of this shared form of interaction were constitutionally entrenched as a "common set of values" in the *Canadian Charter of Rights and Freedoms*. Such a society could never accommodate Quebec or Aboriginal Peoples because it premised on a single constellation of societal expectations that animates interaction among cultural communities in all parts of Canada. Kymlicka identifies this specific point as the explicit reason for the failure of the Canadian Constitution to reconcile federalism with nationalism.[45]

Faced with this dilemma, it is imperative that we set our sights of reconciling diversity and equality beyond *one single* context. In order to manage the issue effectively, we must acknowledge at least these three societal communities, each of which is multicultural in its own right, and in its own way. Recognizing these entities would be an important step to acknowledging that at the end of the twentieth century it is no longer feasible to think of "one country, one multicultural context." As Joseph Carens has pointed out, "there is something to be gained from a pluralism of styles as well as from a pluralist style."[46]

This paper has shown that there are three or more distinct multicultural contexts in Canada and that in order for the federal framework to include all Canadians in a meaningful way, this reality requires constitutional recognition. But it still remains to address the question of just *how* to

recognize societal communities, in what form, and by what means. While a fully developed answer to this question cannot be provided here, it is perhaps useful to explore briefly some of the issues which would need to be dealt with in the articulation of what would clearly need to be a major change in the substance of Canadian federalism.

"Whitestream"[47] society in Canada has imposed an understanding of "sovereignty" which a number of scholars have shown to be fundamentally at odds with traditional Aboriginal notions of the concept.[48] Briefly, "sovereignty" in Aboriginal culture is based on inclusion and consensus. It is not imposed and authoritarian, but rather it signifies the idea that all human beings are responsible for land and resources. The "whitestream" conception of "sovereignty" is hierarchical and exclusive. The hundreds of treaties signed between Aboriginal communities and European settlers were thus understood differently by the parties to the agreements. Aboriginal Peoples maintain that their notion of sovereignty is legitimate, and that it must be acknowledged as a valid alternative in Canada to the current regime.

To this end, the Royal Commission on Aboriginal Peoples recommended that an important step towards a renewed relationship between Aboriginal Peoples and Canada would be the creation of a new Royal Proclamation.[49] This contemporary version of the great promise given to Aboriginal Peoples by King George III would re-affirm First Nations as independent entities within Canada, and would commit both Aboriginal Peoples and Canadians to healing the broken relationship through re-affirming Aboriginal autonomy.[50]

The possibility of a new Royal Proclamation is an important idea, not only because it would hold out hope for the re-establishment of a trusting relationship between Aboriginal and non-Aboriginal Canadians, but also because it could serve as the locus for official recognition of societal communities. The form of recognition would not need to be the same for all societal communities. It is unclear how Anglophone Canada could be recognized because it constitutes the non-Aboriginal population of nine provinces and so is already substantively acknowledged in the Canadian Constitution.

The notion of sovereignty has been briefly discussed above. It is important to this discussion because as noted earlier there has been a strong sense among *Canadiens* and now *Québécois* that they have been excluded from the constitutional development of Canada.[51] They have felt that far from Anglophone Canadians seeking their consent, they have had no choice but to be one of ten equal provinces or to protest. A new Royal Proclamation might be a first step in restoring the trust between Quebec and Anglophone Canada which was seen as the fruit of Confederation. It would recognize Quebec as a societal community within Canada and explicitly acknowledge it as a unique multicultural entity.

To acknowledge Aboriginal Peoples and Quebec as societal communities in Canada would require a number of important problems to be overcome: the differences between Aboriginal and non-Aboriginal forms of sovereignty; the constitutional feasibility of a non-contiguous territorial Aboriginal societal community being recognized within a territorial federation; and the reconciliation of diversity and differently culturally diverse contexts with equality. These are major challenges. Constitutional recognition of societal communities as fundamental elements of Canada through a new Royal Proclamation would open the door to a lengthy process of healing, searching and re-acquaintance.

Notes

1. An earlier version of this paper was presented at the 1999 Annual Meetings of the Atlantic Association of Sociology and Anthropology, St. Thomas University, Fredericton, NB, Canada, October 21-23, 1999. The author wishes to acknowledge the helpful comments on previous versions made by Caroline Andrew and Christine Mínas, and the useful suggestions made by the anonymous assessors for this Journal.
2. On this, see the interesting study by E.T. Pryor, G.J. Goldman, M.J. Sheridan and P.M. White, reported in their article "Measuring Ethnicity: Is 'Canadian' an evolving indigenous category?" in *Ethnic and Racial Studies*, 15:2 (April 1992) 214-35.
3. In citing the Pryor et al. study, it is acknowledged that the Canadian census confuses ethnic origins and ancestry. Data may reflect current membership in, or identity with, some ethnic or other community. The category "Canadian" was included in the census to the question "To which ethnic or cultural group(s) did this person's ancestors belong?" Clearly, the question sought information regarding the respondent's ancestry – whereas the "Canadian" category may be indicative of how a person feels or sees him/herself. Nonetheless, the public self-identification of some people as "Canadian" not only indicates that individuals see themselves and "feel Canadian," it also suggests that they perceive their parents and previous generations as being primarily "Canadian" as well.
4. This is to say that individuals who identify themselves as "Canadian" do not share a particular linguistic heritage. Third generation "ethnic Canadians" share English as a *lingua franca*, their "public" language, and perhaps even their adopted home language. But English is not linked to their cultural community in a historical sense because it is not the traditional medium for the transmission of culture. This is not to say that a common linguistic heritage is essential to the building of community – but members do require a substantive set of shared understandings. If membership in a community is to be meaningful, such understandings cannot be limited to the realm of legal status, but must include provisions for such basic human requirements as recognition, respect and trust. The United States is as culturally diverse as Canada, and yet arguably English has become a basic element of what it is to be "American." The social and political development of the American English language is taken up in Bill Bryson, *Made in America: An Informal History of the English Language in the United States* (New York, Avon Books, 1996).

5. On the conditions of immigration and immigrants to Canada, see Barry Broadfoot, *The Immigrant Years: From Europe to Canada 1956-67* (Toronto: Douglas & McIntyre, 1986). See also Valerie Knowles, *Strangers at our Gates: Canadian Immigration and Immigration Policy, 1540-1990* (Toronto: Dundurn Press, 1992) and J.L. Elliott, "Canadian Immigration: A Historical Assessment" in J.L. Elliott, Ed., *Two Nations, Many Cultures: Ethnic Groups in Canada* (Scarborough, ON: Prentice-Hall Canada, 1983), p. 289-301.
6. Nowhere are these communities more obvious than in Canada's most populous urban centers of Vancouver, Toronto and Montreal. In these large cities, many immigrant groups have made concerted attempts to re-create societal forms reminiscent of their ancestral lands. Through the establishment of commercial and other enterprises, not only do immigrants provide for their own community, they may also aid their own integration into the larger community as a whole. The so-called "Chinatowns," "Little Italies" and "Greek towns" of these cities demonstrate the veracity of this claim. See Lawrence Lam and Anthony Richmond, "Migration to Canada in the Post-War Period" in Robin Cohen, ed., *The Cambridge Survey of World Migration* (Cambridge: Cambridge University Press, 1995), p. 263-270.
7. In this, the idea that memory is "re-creative" is important. In a country of origin, an individual may not be able to "re-create" their cultural community in the literal sense as they have it in their mind's eye. In an adoptive country, the need to build the physical structures required by the community can provide this very opportunity. Individuals are assumed to have an inherent right to "re-create" their cultural community as participating members of it. On this see Yael Tamir, *Liberal Nationalism* (Princeton, NJ: Princeton University Press, 1992), ch. 1. *passim*.
8. Broadfoot argues that the hardship experienced by European immigrants to Canada in the period following the Second World War affected them throughout their lives. It can be seen as threefold: in the old country, during the actual journey, and in the transition to life in the adoptive society, and that the combination of the first two in an almost dialectical sense produces a pronounced sense of pride in the basic elements discovered in the third (Canadian society). Broadfoot shows how many of these immigrants in fact showed a greater sense of "patriotism" than their Canadian-born counterparts. See Broadfoot, *The Immigrant Years*, *passim*.
9. This is not to say that the category "Canadian" in the census is meaningless or invalid. One's ethnicity is not chosen because it is inherent. One's self-identification with a community however, is the result of rational choice. As Broadfoot makes clear in the case of many immigrants, the choice to belong to Canada has made them extremely strong Canadians. (Cf. Broadfoor, *The Immigrant Years*, *passim*.)
10. Kymlicka's discussion of this distinction is in *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), p. 10ff.
11. See Canada, *House of Commons Debates*, Vol. VIII (Ottawa: House of Commons, 1971), p. 8545-46.
12. Hereinafter referred to as the Bi and Bi Commission. The mandate of the Commission had been to examine the ongoing conflict between English- and French-speaking Canadians and to attempt to produce recommendations to deal with this. The commissioners completed the vast majority of their work in the mid-1960s, and the idea that other groups ought to be recognized as having

contributed in a significant way to the development of Canadian society was only articulated in an afterthought in Book IV of its *Report*. See note 11, *infra.*

13. *The Report of the Royal Commission on Bilingualism and Biculturalism. Book IV: The Cultural Contribution of Other Groups* (Ottawa: Queen's Printer and Controller of Stationary, 1969).
14. Specifically, the *Canadian Multiculturalism Act*, 1988; but also other pieces of legislation both prior and subsequent to the *Act* which had as their purpose the implementation and execution of policies in concordance with the general principles of multiculturalism.
15. Aristotle articulated this as being the central aim of political community in *Politics*, 1324a22.
16. This is of course far from the first paper to deal with these issues. Among the important works on the subject of the last decade are: C.M. Taylor, *Reconciling the Solitudes: Essays on Canadian Nationalism and Federalism*, Ed. G. Laforest (Montreal/Kingston: McGill-Queen's University Press, 1993); J.H. Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995); K. McRoberts, *Misconceiving Canada: The Struggle for National Unity* (Toronto: Oxford University Press, 1997); S.V. LaSelva, *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements and Tragedies of Nationhood* (Montreal/Kingston: McGill-Queen's University Press, 1996); and J.H.A. Webber, *Reimagining Canada: Language, Culture, Community and the Canadian Constitution* (Montreal/ Kingston: McGill-Queen's University Press, 1994).
17. Canada, *House of Commons Debates*. Vol. VIII, p. 8545.
18. Ibid.
19. *The Canadian Multiculturalism Act*. Preamble. The full title of the act is *An Act for the Preservation and Enhancement of Multiculturalism in Canada* (R.S., 1985, c. 24 (4th Supp.) [C-18.7] [1988, c.31. (21 July 1988)]).
20. This argument has been brilliantly articulated by Will Kymlicka in his *Finding Our Way: Rethinking Ethnocultural Relations in Canada* (Toronto: Oxford University Press Canada, 1998). Kymlicka specifically criticizes Neil Bissoondath (*Selling Illusions: The Cult of Multiculturalism in Canada* (Toronto: Penguin, 1994) and Richard Gwynn (*Nationalism Without Walls: The Unbearable Likeness of Being Canadian* (Toronto: McClelland and Stewart, 1995) for their negativity towards the policy. Through carefully considering several categories of empirical evidence about the integration of immigrants, Kymlicka demonstrates that the claims made in these two works are simply ungrounded. His argument is meant to overcome the "divisiveness" generated by the policy by defending and strengthening it.
21. On this, see Bissoondath, *Selling Illusions*. Bissoondath argues that multiculturalism has imposed labels on immigrants, and that these have prevented them from being able to choose to be "Canadian." In a different vein, however, there is evidence that "Canadian" is in fact becoming a valid ethnic category in and of itself. On this, see Pryor et al., "Measuring Ethnicity" *passim.*
22. The concept of societal communities is developed below.
23. On the development of the relationship between First Nations and the rest of Canadian society, see J.H. Tully, "A Just Relationship between Aboriginal and Non-Aboriginal Peoples of Canada" in C. Cook and J.D. Lindau, *Aboriginal Rights and Self-Government: The Canadian and Mexican Experience in North American Perspective* (Montreal/Kingston: McGill-Queen's University Press, 2000), p. 39-71 at 43-53.

24. Cited in Bissoondath, *Selling Illusions*, at p. 41.
25. Although the Commission acknowledged that Aboriginal Peoples were the least understood and least well integrated of any group in Canadian society, its recommendations did not include suggestions to resolve these issues. Cf. Bi and Bi Commission, *Preliminary Report of the Royal Commission on Bilingualism and Biculturalism* (Ottawa: Queen's Printer and Controller of Stationary, 1965) p. 22.
26. An excellent discussion of this diminishing trust is provided in Royal Commission on Aboriginal Peoples, *Report of the Royal Commission on Aboriginal Peoples*. *Volume I: Looking Forward, Looking Back* (Ottawa: Minister of Supply and Services, 1996). See also C. Denis, *We Are Not You: First Nations and Canadian Modernity* (Peterborough, ON: Broadview Press, 1997), p. 11-17.
27. See G. Laforest, *Trudeau and the End of a Canadian Dream* (Montreal/Kingston: McGill-Queen's University Press, 1995).
28. There is a constantly expanding literature on the subject of multiculturalism. Some recent works on the subject are: Cynthia Willett, Ed., *Theorizing Multiculturalism: A Guide to the Current Debate* (Oxford: Blackwell, 1998); John Rex, *Ethnic Minorities in the Modern Nation State: Working Papers on the Theory of Multiculturalism and Political Integration* (Basingstoke, UK: MacMillan, 1996) and David Theo Goldberg, Ed., *Multiculturalism: A Critical Reader* (Oxford: Blackwell, 1994). On multiculturalism in Canada, see many of the works listed here. See also David V. J. Bell, *The Roots of Disunity: A Study of Canadian Political Culture*, Revised edition (Toronto: Oxford University Press Canada, 1992); Leslie A. Pal, *Interests of the State: Language, Multiculturalism and Feminism in Canada* (Montreal/Kingston: McGill-Queen's University Press, 1993); J. A. Laponce and W. Safran, Eds., *Ethnicity and Citizenship: The Canadian Case* (London/Portland: Frank Cass, 1996); Harry H. Hiller, *Canadian Society: A Macro Analysis* (Scarborough, ON: Prentice-Hall Canada, 1996).
29. Kymlicka, *Finding Our Way*, *passim*.
30. Kymlicka, *Finding Our Way*, 27
31. Ibid.
32. Ibid.
33. Indeed, Anglophone Quebecers perceive themselves in precisely this manner. See ibid., 157.
34. Within the category of "subgroups" I include the full range of collectivities Kymlicka associates with a "societal culture" as well as a wide range of ethnic and other communities.
35. No one openly declared the multicultural reality of Quebec more than Jacques Parizeau, Premier of the province from 1990-95. Indeed in the famous "Bill 1" – Québec's "constitution," which remains to be ratified following a successful referendum on independence, openly recognizes the importance of cultural diversity in Quebec society. On the Parti Québécois' continued official acknowledgement of cultural diversity in the province under Parizeau, see National Executive Council of the Parti Québécois, *Quebec in a New World: The PQ's Plan for Sovereignty*, trans. R. Chodos (Toronto, Lorimer, 1994) at p. 39-40. Aboriginal Peoples' conception of themselves as members of national communities does not correspond to the same idea as that of Francophone Quebecers. The notion of national communities held by members of Aboriginal communities is to the community itself, as a self-defining national entity in and of itself.

36. Aboriginal Nations define themselves in terms of particular histories, ethnicity and kinship. On this, see for example, Royal Commission on Aboriginal Peoples, *People to People, Nation to Nation: Highlights from the Report of the Royal Commission on Aboriginal Peoples* (Ottawa: Minister of Supply and Services, 1996). See also Royal Commission on Aboriginal Peoples, *Partners in Confederation: Aboriginal Peoples, Self-Government and the Constitution* (Ottawa: Minister of Supply and Services, 1993), *passim*.
37. As defined by the boundaries demarcated in 1912. The Government of Quebec formally recognizes eleven First Nations within its territory with rights to self-determination, and has granted exemptions to the requirements of Bill 101 to the Inuit, Cree and Naskapi nations. Despite this acknowledgment of their existence, the territorial boundaries of an independent Quebec – contested by Aboriginal Peoples and Anglo "partitionists" – appear to be non-negotiable.
38. On these issues, see Seymour Martin Lipset, *Continental Divide: The Values and Institutions of the United States and Canada* (New York: Routledge, 1990), *passim*.
39. Jon Elster, "Majority Rule and Individual Rights" in S. Shute and S. Hurley, Eds., *On Human Rights: the Oxford Amnesty Lectures, 1993* (New York: Basic Books, 1993), p. 175-216 at 177.
40. I am particularly grateful to Michael Burgess for first bringing up the point that the problematic co-existence of the societal community of Quebec and a significant part of the societal community of Aboriginal Peoples within the borders of the province of Quebec is a "weak link" in the model of societal communities. It is admitted that this is true and no solution will be offered here. The issue raises a number of important questions including the feasibility of non-territorial federal units, or at least those whose territory is non-contiguous, and the possibility of their co-existence with traditional territorially-bounded units. Resolving these issues requires detailed analysis and thus this discussion cannot be continued here.
41. Of course, Montreal is one of Canada's most multicultural centers as well and is also the commercial center of Quebec. Unlike Anglophone Canadians, however, over the past forty years Quebecers have consistently elected nationalistic or quasi-nationalistic parties to office with a continuing mandate to recast Quebec as a specifically Francophone political context in North America with its own brand of multiculturalism. The fact that Quebec constitutes a numerically viable, linguistically differentiated, self-defining political community is a central element of the case to recognize Quebec as a societal community.
42. There are a number of important scholars who disagree with the idea that what is here being referred to as "Anglophone Canada" lacks internal, collective definition. Among the most adamant defenders of the "English-Canadian nation" is Philip Resnick, who has argued that what is lacking in non-Aboriginal Canada outside Quebec is not a collective sense of self, which he argues is alive and well, but rather a medium through which to articulate it. Cf. Resnick, *Thinking English Canada* (Toronto: Stoddart, 1994) and Resnick, "English Canada: The Nation that Dares not Speak its name" in K. McRoberts, Ed., *Beyond Québec: Taking Stock of Canada* (Montreal/Kingston: McGill-Queen's University Press, 1995), p. 81-92.
43. Cf. Bissoondath, *Selling Illusions*, chs. 2-4.
44. The Government of Quebec has stated that it is committed to recognizing a wide range of elements of Aboriginal self-government within Quebec, after a positive referendum on independence, but the possibility of Aboriginal territories being

severed in the result of a positive referendum is unacceptable. In order for the model of societal communities to be given constitutional and practical legitimacy, the Government of Quebec would need to rescind this policy or substantially modify it.

45. Cf. Kymlicka, *Finding Our Way*, p. 127-83, passim.
46. Joseph Carens, "Complex Justice, Cultural Equality and Political Community" in D. Miller and M. Walzer, Eds., *Pluralism, Justice and Equality* (Oxford: Oxford University Press, 1995), p. 45-66 at 46.
47. This term is borrowed from C. Denis, *We are Not You*. He explains its derivation and meaning at p. 13 note 5.
48. This misunderstanding is the subject of T.A. Alfred "Sovereignty" in P. Deloria and N. Salisbury, Eds., *The Blackwell Companion to Native American History* (Oxford: Blackwell, 2000 – forthcoming).
49. The creation of a new Royal Proclamation was a central recommendation of the Royal Commission on Aboriginal Peoples. Cf. Royal Commission on Aboriginal Peoples, *Partners in Confederation*, *passim*.
50. The Royal Commission made a number of recommendations throughout its *Report* as to how this healing ought to take place.
51. The most recent incident which *Québécois* cite to support this claim is the patriation of the Canadian Constitution in 1982. In that instance, many perceived that Quebec had been purposely excluded from the final negotiation of the agreement.

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Culture in a Global Environment: The Case of Split-Run Periodicals in Canada

Abstract

This article deals with a specific case of cultural protection and discusses public and private interests in the global environment. It poses the question: "Are the World Trade Organization rules compatible with the public interest, and can they accommodate cultural diversity?" More specifically, this paper deals with the case of split-run periodicals in Canada, that is, periodicals in which more than 20 percent of the editorial material is the same, or substantially the same, as the editorial material of a non-Canadian periodical and which contains advertisements directed specifically at the Canadian market. By examining the protection of the Canadian magazine industry, this case study sheds light on three issues relevant to the study of national and supranational policies in the field of culture and communication: the entanglement of culture and cultural industries in protectionist national policies; the impact of "technological convergence" on culture and communications; and supranational regulation. The resolution of the dispute between Canada and the United States on split-run periodicals also illuminates the way in which the functioning of the World Trade Organization appears to be essentially blind to cultural matters.

Résumé

Cet article porte sur un cas de protectionnisme culturel et fait ressortir la question de la défense des intérêts public et privé dans un contexte mondial. Nous tentons de répondre à la question : les règles de l'Organisation mondiale du commerce permettent-elles la défense de l'intérêt public et peuvent-elles laisser s'épanouir la diversité culturelle? De manière plus précise, ce texte concerne les périodiques à tirage dédoublé au Canada, c'est-à-dire des périodiques dont plus de 20 p. 100 du contenu éditorial est le même ou substantiellement le même que le contenu éditorial d'un périodique non canadien et qui contient de la publicité visant de manière spécifique le marché canadien. En étudiant la protection de l'industrie des magazines au Canada, cette étude de cas se penche sur trois questions relatives à l'étude des politiques culturelles nationales et supranationales : l'enchevêtrement de la culture et des industries culturelles dans les politiques protectionnistes, l'impact de la convergence technologique sur la culture et les communications et la régulation supranationale. Le règlement du conflit sur les périodiques à tirage dédoublé entre le Canada et les États-Unis laisse voir un fonctionnement de l'OMC tout à fait étranger à la question culturelle.

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Globalization challenges the nation state in many ways.[1] Supranational bodies increasingly make rules in sectors formerly under the sole responsibility of the state, and this process needs to be assessed sector by sector. A system of "global governance" with "layers of governance spread within and across political boundaries" (Held and McGrew 1999:487) is emerging, and its impact on national public policies has yet to be appreciated. This paper is an attempt to assess supranational cultural regulation by the World Trade Organization from the citizen's perspective.

While it is clearly in the public interest to encourage global dialogue and to implement global solutions for some problems (like the thinning of the ozone layer, the sexual exploitation of children, or Internet regulation), for some sectors, it is not the public interest but private interests that explain globalization. Trade is one of those sectors. Trade issues are dealt with by the World Trade Organization, whose rules are the business principles of reciprocity, openness and transparency. But trade is not exclusively a matter for business. Trade involves a series of public interest issues concerning the environment, work relations, the industrial composition of a country, public health, collective security, etc. In these issue-areas, decision making usually takes into account some kind of public interest. In culture and communications, trade rules may impinge upon cultural sovereignty. As trade increasingly affects people's wellbeing, health, survival, security, culture or identity, the globalization of trade not only challenges the nation state but poses the question of the very notion of public interest at the international level.

This article deals with a specific case of cultural protection and discusses public and private interests in the global environment. We pose the question: "Are the World Trade Organization rules compatible with the public interest, and can they accommodate cultural diversity?" The notion of "public interest" needs to be specified briefly. It is impossible to define the public interest by its contents: there would be "many public interests" since different groups have different interests. In fact, conflicting interests compete to be recognized as "public interest." It is also unsatisfactory to equate public interest with the aggregate of private interests, since societies are more than the sum of their components. Particularly because every society rests on a dialectic of conflict and consensus, public interest must be defined simultaneously as a sum of private interests and as the transcending dialectic of those same interests (Legrand, Rangeon and Vasseur 1980: 188).[2] In discussing public interest, our aim is to identify conditions under which collective decisions can be taken. In this sense, the notion of public interest refers to the need for an equilibrium between the interests of various groups of different natures in a global context where many supranational organizations are said to suffer from a "democratic deficit." Since a "global civil society" has yet to be built, a citizen should at least be able to expect that the current formal regulation mechanisms take into account the full range of perspectives related to various issues. More precisely, this paper

deals with the case of split-run periodicals in Canada, that is, periodicals in which more than 20 percent of the editorial material is the same, or substantially the same, as the editorial material of a non-Canadian periodical and which contain advertising directed specifically at the Canadian market.

By examining the protection of the Canadian magazine industry in an environment of liberalized trade and in an era of technological convergence, this case study sheds light on three issues relevant to the study of national and supranational policies in the field of culture and communication. The first is the entanglement of culture and cultural industries in protectionist national policies. In Canada, culture is perceived as the soul of a nation and is therefore thought to be worthy of protection. Since cultural industries are part of the making of this culture, they too need to be promoted or protected by the state. But this link between culture and cultural industries can also be understood the other way around: commercial interests may supersede the dignified function of culture. The history of public management of culture (Raboy 1990; Gingras 1999: 105-112) shows that there has always been a tension and an ambiguity between culture as a commodity, and culture as shared values and "a collective sense of who we are as a nation" (Canada 1999a). The second issue is the impact of "technological convergence" (digitalization and the integration of different technologies) on culture and communications. Until recently, national policies on culture and communications were based on the relevance of culture and communications to national sovereignty. Whereas content industries were seen as worthy of protection, carriers were not and could therefore be open to a larger share of foreign ownership. Add to the context of technological convergence an economic and political convergence[3] and the barrier between content industries (like broadcasting) and carriers (like electronic transmission) vanishes, which poses the problem of which form of regulation can be applied in the future. The third issue is the supranational legal regulation that supersedes national regulation. Liberalized trade and globalization required international agreements on trade, but because no such agreements have been reached in the realm of culture, trade disputes involving culture are not dealt with by specific instruments that take into account the peculiarities of cultural matters.

The first part of this article explains briefly the issue of cultural protectionism in Canadian foreign policy and at the international level. The second part tells the story of the fight against split-run periodicals, from the transmission of the American edition of *Sports Illustrated* in 1993 to the 1999 agreement between Canada and the United States.

The Defence of Culture and Cultural Industries in Canadian Foreign Policy and at the International Level

In Canada, nation building has always depended on communications and culture (Lacroix and Tremblay 1997:98; Penrose 1997:24-27).[4] From coast to coast and from the most remote communities, access to railroad, radio, television and telephone meant that the federal government could offer equality of treatment to all of its citizens and symbolically "unite" all regions. This was not only a question of offering equal services to all regions, but of offering Canadians a culture in which they could recognize themselves. Culture was thought of as the cement of the nation and was thus worthy of protection. If the size of the country and the scope of its multicultural make-up justify such a preoccupation, surely the influence of its southern neighbour is an even greater cause for concern. Indeed, the double impediments of a small domestic market and proximity to the world's most powerful producer explain Canadian interest in the protection of its culture and its cultural industries. Without the Government's involvement (subsidies, fiscal incentives, etc.), some cultural industries would have barely survived.[5]

One of the central principles of the Canadian government in the realm of culture used to be called "cultural exception" and is now recognized as "cultural diversity." Both expressions mean that culture has to be promoted and protected because it is seen as a rampart or a defence for national sovereignty. Since the cultural industries participate in the making of culture, they also need protection. Following Hannerz, we distinguish three dimensions of culture: (1) ideas and modes of thought[6]; (2) forms of externalization[7]; and (3) social distribution, i.e., "the ways in which the cultural inventory of meanings and meaningful external forms — that is, (1) and (2) — is spread over a population and its social relationship" (Hannerz 1992:7). Cultural policies concern these three dimensions, but the defense of cultural diversity on the international scale deal mainly with the first and the third dimensions. The promotion of cultural diversity can thus be conceived (in its third dimension) as a plea for an economic support in a dissymetrical cultural market. This stand, shared by Canada and the European Union, challenges the implementation of complete cultural free trade advocated by the United States.

On the international level, concerns over culture and cultural products in an open trade environment were first expressed in 1947. Article IV of the GATT Agreement established the legitimacy of quotas in the movie industry because complete free trade could jeopardize national culture. Furthermore, Article XX(f) created an express exemption from the rules of national treatment in matters relating to the protection of artistic works of national importance (Tawfik 1998:284; Raboy 1994:20-27). In 1961, the United States protested against the Canadian quotas on American television programs and a Working Party was established, with no concrete

result (Ming Shao 1995:112). At the end of the 1960s, the United States drew up a list of twenty-one countries accused of maintaining non-tariff barriers in order to protect their movie industries.[8] The ambiguity surrounding the status of cultural products within the GATT came to light once more in 1989 when the United States asked for a consultation in the case of the European Convention on Transfrontier Television and the directive "Television Without Frontiers." The European Community responded that television was a service and would therefore not be included in the GATT (Bernier and Lamoureux 1996:18-19). In fact, the Uruguay Round (1987-1994) entailed discussions of three new issues, including, thanks to the United States, services; and in 1990, an Audio-Visual Sector Working Group linked to the Services Negotiations Group was established, with no concrete result. To this day, no formal agreement has been made between the advocates of complete cultural free trade and the defenders of cultural diversity.

The American government has repeatedly defended free trade in culture over the years, comparing the defence of cultural industries to simple protectionism. In the American mind, culture is a "market phenomenon" and "the notion that a state might regulate art or culture evokes […] ideas of intellectual terrorism and communism" (Kaplan 1994:303). In the Uruguay Round debate, the imbalance between American and Canadian cultural industries has never been acknowledged. For example, in 1987, Clayton Yeutter, the U.S. Trade Representative said: "All issues should be on the negotiating table. I'm prepared to have American culture on the table and have it damaged by Canadian influence after a free-trade negotiation. I hope Canada is prepared to run that risk, too" (Warnock 1988:223).

The advocates of cultural diversity are Canada and the European Union. France has traditionally carried the torch for cultural exemption (Rigaud 1995). Canada and the European Union argue that there is a direct link between national identity and cultural sovereignty on the one hand, and cultural industries on the other. Culture for Europeans is "a very concrete affair," beginning with language, also extending "to matters such as taste, temperament, and values," it is a matter of archaeological layers accrued over time; to summarize, culture is "both the vehicle and the substance of memory" (Kaplan 1994:303-4).

The "Television Without Frontiers" directive, first adopted in 1989, restricted access to the European television programming market by establishing content quotas. Today, the European Union considers that "culture must contribute to European citizenship, to personal and human development, to economic and social cohesion […] and to enriching the quality of life in Europe" (EU 1999b):[9] The European Commission seeks "to strike a balance between the requirement of cultural and heritage promotion, the openness of trade and competition in the single market and the need to avoid undue distortions" (EU 1999a). Thus, government aid for

protecting culture is justified if it does not "cause undue distortion of competition" or is not "contrary to common interest" (EU 1999a).

The "official" conception of culture in Canada is in the same vein. Like many governments, Canada "invests in promoting culture, just as it invests in other activities that benefit its citizens, such as protecting the public health, protecting the environment and maintaining a defense force," thus acknowledging that "cultural products are not simply commodities that can be packaged and sold" (Canada 1999b). Canada considers that protecting culture is a normal duty of the state since culture is a reflection of a nation's soul and that " a nation's identity and values are expressed and transmitted by its art and its culture" (CEM 1998:37).

The need to protect national cultural industries seems particularly acute when they are small, as in the Canadian case. Data from the report of the Cultural Industries Sectoral Advisory Group on International Trade shed light on the domination of the Canadian cultural market by foreign cultural products. Foreign firms and products account for: 81 percent of English-language consumer magazines on Canadian news-stands and over 63 percent of magazine circulation revenue; 79 percent of retail sales of tapes, CDs, concerts, merchandise and sheet music; 85 percent of revenues from film distribution; and between 94 and 97 percent of screen time in Canadian movie theatres (Canada 1999b). According to the Group,

> Our proximity to the United States and the fact that we share a common language makes it easier for English-speaking Canada to become an extension of the American market and for American cultural products to spill over the border. This is not the case in the Canadian French language market, which has the "natural buffer" of a different language. (Canada 1999b)

A cultural exemption was included in the Free Trade Agreement (FTA) between Canada and the United States in section 2005, and in the North American Free Trade Agreement (NAFTA) in section 2106. During the Uruguay Round, Canada asserted that the preservation of its identity and its cultural sovereignty was not negotiable, although it agreed to discuss the issue of cultural industries. The United States maintained that cultural industries had to be on the table, and that the protection of cultural sovereignty constituted disguised protectionism (Bernier and Lamoureux 1996:34). The United States also argued that the cultural identity of audio-visual goods and services was "increasingly difficult to ascertain given the trend toward multinational productions" (Ming Shao 1995:113).

It is true that globalization increases multinational productions, hybridization of cultures and the blurring of cultural frontiers. But although cultures are changing, preserving local languages and regionalisms has become a necessity for many peoples. The sense of pride related to small cultures has increased and is sometimes related to national sovereignty or political recognition. Over all, globalization is a process, not a *fait*

accompli. Today, beside the globalization of cultures, national cultures and regionalisms do flourish, albeit not always economically (Warnier 1999: 93-102; Mattelart 1996:104-113). So the use of the argument of cultural globalization by the dominant cultural producers (states or companies) can be conceived more as a competitiveness statement than a sociological assessment. This argument used by the United States to fight protectionism is self-serving; they are using a phenomenon to justify their position at the same time as they are actively participating in its development.

The mixing of cultures is seen as threatening in a Report of the Canadian Heritage Department: "Globalization and technology have removed barriers to the dissemination of ideas and cultural expression, thus putting within our easy reach the world's wealth of cultures and products." At the same time media "have made it more difficult for Canadians to find choices that reflect their reality" (Canada 1999a). The more culture is linked to national identity, the more threatening the mixing of cultures is. According to Jan Penrose, globalization has "actively disrupted assumptions about cultural unity and distinctiveness which have long been used to 'prove' the existence of a nation and to thereby legitimize the right to statehood"; it has "undermined assumptions of cultural integrity by altering or diversifying cultures in situ" and "the legitimacy of the nation-state is correspondingly weakened" (Penrose 1997:30).

At the end of the Uruguay Round,

> members did not agree to exempt culture from the agreement but they did allow countries to opt out of MFN (most favored nations) obligations and to opt in to national treatment obligations. As a result, Canada took an MFN exemption for its film and television co-productions and did not include any commitments for national treatments in the cultural sector. In other words, Canada effectively withheld its cultural policies from the GATS [General Agreement on Trade in Services] disciplines and maintained its right to promote Canadian cultural services and suppliers" (Canada 1999b).

Although this quotation from an Advisory Group to the Canadian government leaves the impression that culture has remained totally outside free trade, this is not so. In the FTA as well as in NAFTA, the cultural industries sector is not exempted from the objectives of the agreements (free trade) and there is a provision that allows retaliation in the form of measures of equivalent commercial effect in response to government actions in the cultural sector that are seen to cause a loss of actual or potential revenues. The retaliation might take any form, in any sector, up to the amount of the actual or potential revenue loss in the other country's market (Bernier and Lamoureux 1996:62; Lanie 1989:105-6; Northcote 1991:53).

At the international level, the European Union and Canada have promoted cultural diversity and will continue to do so in the Millennium

Round. Some forty countries are members of the International Network on Cultural Policy, an outcome of the June 1998 meeting in Ottawa that aimed at promoting cultural diversity.[10] The countries participating in the network feel there is a need to strike a balance between the protection of cultural products and international trade obligations, between public and private interests. In their view, the full range of perspectives is not being taken into account in discussions about trade in cultural industries. Commercial interests currently supersede cultural or political interests, as if business principles constituted the most legitimate framework for regulating culture.

Since free trade and cultural diversity are conflicting principles, a series of conditions or rules must be developed to determine how and when cultural diversity should prevail over free trade. To face the GATS disciplines, a new instrument[11] must be negotiated or the disputes must be dealt with not only by the WTO, but within another international body. The situation might be compared to the areas of the environment and labour, where international agreements exist and specific bodies are empowered to deal with those issues.

It is difficult to tell exactly how and at what point of the Millennium Round this situation will evolve for this issue contains an intrinsic ambiguity[12] that prejudices cultural protection: the complete dependence of cultural industries' protection upon the links between culture, cultural industries and cultural sovereignty. In official documents, culture is a sociological concept defining the fabric of society as "our collective sense of who we are as a society," including traditions, values, history, heritage, symbols, and how we connect to each other individually and collectively (Canada 1999a). The official rhetoric then links this sociological concept to cultural industries without any specific precaution, either of a conceptual or practical nature. The cultural industries are also said to foster cultural sovereignty and contribute to national identity, without any more elaboration. For many people, it is undeniable that cultural products generate meaning; language, a common past, common references and national characteristics may help identify the cultural products of a specific nation. But how precisely these elements foster cultural sovereignty or help promote national identity is not clear. Add to that the multicultural nature of Canada,[13] and the complexities of this issue appear in full light.

The Canadian government's rhetoric denies or minimizes the commodity character of cultural products or services and attributes to them a mostly dignified function. But this rhetoric only tells half of the story. Lacroix and Tremblay are right to stress that the state "has significantly contributed to the process of the indirect commodification of culture initiated by flow logic," it authorized "the broadcasting of advertising over public station airwaves" and obliged "broadcasters to rely increasingly on so-called independent production companies for their programming needs" (Lacroix and Tremblay 1997:103).

In fact, cultural products and services reflect the Canadian culture to varying degrees and are, again to varying degrees, commodities, although special ones. The dual nature of cultural products and services is a sure guarantee of a perennial deadlock between the partisans of free-trade and those promoting cultural diversity. The former refuse to consider cultural products differently than as commodities, whereas the partisans of cultural diversity are blind to the commodity aspects of cultural products, insisting instead upon the links between cultural industries on the one hand and culture, cultural sovereignty, and national identity on the other. Since these links are not recognized by the American government,[14] partisans of cultural diversity have no choice but to mobilize against the partisans of cultural free trade and to develop a rhetoric that will introduce the issue of public interest in matters of international trade.

The Fight Against Split-Run Periodicals[15]

The case of split-run periodicals in Canada illustrates the dispute between Canada and the United States in the area of culture and serves as an indication of the way things stand at present in international trade concerning cultural matters.

This case also sheds light on the joint impact of trade liberalization and technological convergence on culture and communications. In these realms, regulatory regimes depended on the relevance for national sovereignty and used to be founded on technology. One set of rules applied to carriers (with a higher level of foreign-owned infrastructures) and another set to content industries (with Canadian content obligations and fiscal incentives). Culture and communication have been affected by deregulation, a phenomenon wrongly identified as a retreat of the state.[16] Deregulation instead constitutes a major change in orientation involving the abandonment of the Keynesian spirit in favour of the "market spirit." This change has been in the making during the last two decades, encouraged by the private sector, which sees great opportunities in manufacturing new equipment and offering new services in a global, as opposed to national, business environment.

The case of split-run periodicals in Canada illustrates how culture is affected by deregulation in communication. In this area, deregulation is associated with the end of closed markets, the dismantling of regulatory barriers between economic sectors, and the relaxing of foreign ownership rules for media and carriers (Bélanger and Martinez 1998). As deregulation increasingly impregnated Canadian policy-making, decreasing regulation mainly affected carriers while content (culture) stayed within the realm of the state.

But technological advances blur the distinction between the carrier and content industries, that is, telecommunications, computing and broadcasting. Technological convergence, along with the will to

monopolize larger market shares in a future digital world, drive "economic convergence," which ultimately means close or similar regulations for various industries that were formerly separated. This is what the private sector advocates. The trend is to apply the market-oriented set of regulations that is aimed at carriers to the content industries.

The content on the Internet illustrates the multiple dimensions of the problem. Does such content constitute private or public communication? Should the Internet be dealt with as a carrier when it is becoming a medium for public communication and entertainment, two areas that are regulated differently than carriers? Are web sites public or private? Should experiments with television on PCs or Web surfing on television be treated and regulated as broadcasting? Since the future of Internet commercial ventures (advertising, private banking services, and entertainment, on both domestic and international markets) will involve many sectors, each with its own set of regulations, it is unclear which set of regulations will apply and which authorities will enforce them.

Canada's dispute with the United States over split-run periodicals stems from this blurring of carrier and content industries. Regulation of content (periodicals) was bypassed by regulation of carrier (electronic transmission). This whole issue must be seen in its historical context.

Large proportions of American periodicals have always been exported to Canada. As of 1997, 81 percent of these exports were destined for the Canadian market (WTO 1997a). Foreign periodicals made up 40 percent of all periodicals on Canadian newsstands and 50 percent of all English periodicals sold (Bélanger and Martinez 1998:213). In order to protect Canadian content as well as the Canadian advertising market, tariff code 9958 was established in 1965. This code prohibits the importation of split-run periodicals into Canada, that is, periodicals distributed in Canada in which editorial material is the same, or substantially the same, as the editorial material of a non-Canadian periodical and which contain advertisements directed at the Canadian market.[17] This measure allows the importation of non-Canadian periodicals on the condition that they do not carry advertisements aimed at the Canadian market. This code is therefore intended to protect the Canadian advertising market as well as Canadian content. As the Canadian government explained to the WTO:

> [T]here is a direct correlation between circulation, advertising revenue and editorial content. The larger the circulation, the more advertising a magazine can attract. With greater advertising revenue, a publisher can afford more to spend on editorial content. The more a publisher spends, the more attractive the magazine is likely to be to its readers, resulting in circulation growth. Similarly, a loss of advertising revenue will produce a "downward spiral." Less advertising entails less editorial, a reduction in readership and circulation and a diminished ability to attract advertising. Magazines can be sold on newsstands, or through

> subscriptions, or distributed at no cost to selected consumers [...] Canadian English-language publications face tough competition on newsstands; they account for only 18.5 per cent of English-language periodicals distributed on newsstands, where space is dominated by foreign publications. (WTO 1997:section IV)

Another measure, called "funded rates" for Canadian periodicals, is applied to Canadian periodicals and enforced by Canada Post and Heritage Canada. The criteria defining a Canadian publication include: production by a person or company whose primary business is publishing; Canadian ownership and control; and publishing printing and mailing in Canada (Canada 1997b:2.16).

In order to bypass these regulations, since 1993 Time Warner has published a split-run edition of *Sports Illustrated* by electronically transmitting a "Canadian" edition above the 49th parallel for printing. Although technically this is perfectly legal (since the printer is Canadian), this "Canadian" edition includes only American editorial content.

The Canadian government responded in 1995 by passing an amendment requiring "the imposition, levy and collection, in respect of each split-run edition of a periodical, of a tax equal to 80 per cent of the value of all the advertisements contained in a split-run edition" (WTO 1997b:2.6). It also defined a split-run edition as an edition in which more than 20 percent of the editorial material is the same or substantially the same as the editorial material of a non-Canadian periodical.

The United States then filed a complaint to the World Trade Organization (WTO). In June 1996, it was decided that tariff code 9958 and the excise tax were inconsistent with the "national treatment" clause of the GATT. A panel was established (decision: March 1997) to further study the matter, and an Appellate Body was appointed (decision: July 1997). In the investigation, no attention was paid to the nature of the "goods," that is, the content of the magazine.

> Canada submits that content developed for and aimed at the Canadian market cannot be the same as foreign content. Content for the Canadian market will include Canadian events, topics, people, and perspectives. The content may not be exclusively Canadian, but the balance will be recognizably and even dramatically different than that which is found in foreign publications which merely reproduce editorial content developed for and aimed at a non-Canadian market. (WTO 1997a:section IV)

The WTO Appellate Body decided that Canadian and split-run periodicals were "like-products," that is, "directly competitive or substitutable products which are in competition with each other" (WTO 1997a:section IV) and that a differential treatment was therefore inconsistent with international trade rules. To decide that Canadian and split-run periodicals were "like-products," the Appellate Body used a

previous case, Japan-Alcoholic Beverages, thus making it clear that periodicals and alcoholic beverages were considered to be goods of the same nature. For the WTO, cultural issues do not deserve to be treated differently from other commodities. Furthermore, the refusal to make a connection between culture and cultural industries resulted in the Appellate Body writing that: "the ability of any Member to take measures to protect its cultural identity was not at issue in the present case" (Kirsch 1997:356). In response, the fragility of Canadian culture was stressed by the Ambassador of Canada to the World Trade Organization: "we share a common language and the world's longest undefended border with a neighbour ten times our size" and we have "no possibility of achieving the economies of scale available to producers of cultural products and services that reinforce the American identity" (Kirsch 1997:356-357).

The issue of split-run periodicals also illustrates the dominance of the regulations aimed at carriers over those applying to the content industries. The former are much more compatible with the major principles of free trade (i.e., the most favoured nation status, national treatment and transparency/predictability[18]), whereas the latter require some sort of public policy so as to strike a balance between conflicting principles, notably, between commercial and cultural aims. In the future, the value of any international agreement on culture must be evaluated in light of its capacity to resist the application of the type of regulation devised for carriers.

In 1998, following the WTO ruling, all of the measures concerning periodicals held to be inconsistent with international trade rules were abolished and a new plan was proposed to protect Canadian content and the advertising market. After discussions with the American administration, an agreement was reached that opened the Canadian advertising market to foreign periodicals according to the percentage of their editorial content that is Canadian. From now on, the law will permit two forms of access to the Canadian advertising market. First, any periodical containing less than 50 percent of Canadian editorial content will be able to have 18 percent of its ads aimed at the Canadian market (currently 12 percent, 15 percent after eighteen months and 18 percent thirty-six months after the date of enactment of the Foreign Publishers Services Act). A foreign publisher will have unrestricted access to the Canadian advertising market if it creates a majority of Canadian content and establishes a new periodicals business in Canada. The tax deduction to the advertiser of the ads is 50 percent for periodicals containing less than 80 percent of Canadian editorial content and 100 percent for those containing more than 80 percent (Canada 1999c).

To summarize the Agreement, the threshold of Canadian editorial content permitting full access to the Canadian advertising market dropped from 80 percent to 50 percent and partial access is granted for periodicals containing less than 50 percent of Canadian editorial content, including foreign magazines without any editorial content from Canada. Although

the news release on the Agreement stated that "[f]or the first time in its history, the American government has recognized the right of a country, Canada, to require a majority of Canadian content in one of its cultural instruments," the agreement is clearly a rescue operation. The WTO principles have prevailed, and in the future, any policy on investment in the periodical publishing sector will be scrutinized closely.

Conclusion

Are the WTO rules compatible with the public interest, and can they accommodate cultural diversity? The case of split-run periodicals is the first and only decision of the WTO Appellate Body in the field of cultural trade. Should we consider it a sign for future trend? Myra J. Tawfik believes that it is certainly more than just a case study; she contends that the decision on split-run periodicals "represents an important step toward the progressive dismantling of cultural safeguards worldwide" (Tawfik 1998:289). She believes that the WTO rules "grounded as they are in the fundamental principles of national treatment and non-discrimination, cannot accommodate national cultural autonomy" (Tawfik 1998:293). Although the WTO ruling on split-run periodicals is just one of many decisions, it brings ammunition to those who are convinced that in the WTO, the full range of perspectives is not always appreciated, that interests of various groups and of different natures are not evaluated.

Indeed, the case of split-run periodicals demonstrates that protecting culture has not been considered in the process of dispute resolution, despite the imbalance between Canada and the United States. The decision of the WTO Appellate Body accorded no legitimacy whatsoever to the cultural concerns raised by Canada. It asserted that a magazine was a commodity without any cultural characteristic and compared it to alcoholic beverages. No balance was struck between different aims or different viewpoints; business principles have not even been challenged by social, cultural or political principles.

According to some analysts, the WTO decision on split-run periodicals is consistent with other decisions. Recalling the reproaches of the environmentalists, Myra J. Tawfik writes: "The concern over the composition of the dispute-resolution panels and their limited expertise in addressing broad public issues is not new" (Tawfik 1998:293). Other analysts of the WTO dispute-resolution process assert that in the first three years of operations, decisions rendered by the organization's Appellate Body show that fundamental aspects of a nation's identity have been affected and that there is an undeniable "commercial tropism" (Ruiz Fabri 1999:51).

As of now, in the field of cultural trade, the WTO has not shown its ability to balance the private sector's interests with other competing interests, whether educational, heritage preservation, identity formation, etc.,

contrary to the description of the Commission on Global Governance (1995:2): "Governance is […] a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken."

At this point, no elements indicate that a major change of orientation could take place in the WTO decision-making in the cultural sector. We believe that from the citizen's perspective, business principles do not constitute an acceptable framework for regulating culture. Although cultural industries do have some commodity aspects, their nature as carriers of ideas and of collective identity require a political and social type of regulation. But the current power relations between the United States and the countries favouring cultural diversity preclude such a regulation. Only a large mobilization of civil society (such as the one against the Multilateral Investments Agreement or the first session of the WTO Millennium Round in Seattle) together with a vigorous upsurge in support from a variety of countries for the European Union and Canada's position against the exclusively commercial regulation of cultural industries, could change this situation.

The debate over regulation of cultural products began in 1947 and a resolution to the dispute between partisans of cultural free trade and those favouring cultural diversity has been impossible because of the diametrically conflicting viewpoints of the countries involved in this problem. We believe nonetheless that the end of this dispute might be close at hand. Considering the actual functioning of the WTO, the partisans of cultural free trade have no incentives whatsoever to strike a deal. The current situation suits them well,[19] as the case of split-run periodicals has demonstrated. Unless significant opposition crystallizes at the international level, commercial partners seeking cultural free trade could just procrastinate until other litigation is resolved through the dispute settlement mechanism of the WTO. In this way, they would avoid compromises and win the lengthy battle against cultural diversity without an active effort.

Notes

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1. According to David Held and Anthony McGrew, globalization "stretches social, political, and economic activities across political frontiers, regions, and continents; [it] intensifies our dependence on each other […]; [it] speeds up the world […]; and [it] means that distant events have a deeper impact on our lives […] (1999:484). They also write: "New institutions have both linked sovereign states together and pooled sovereignty beyond the nation-state. We have developed a body of regional and international law that underpins an emerging system of global governance, both formal and informal, with many layers […]. Our policymakers experience a seemingly endless merry-go-round of international summit. [It] locks governments

into global, regional and multilayered systems of governance that they can barely monitor, let alone control" (1999:487-488).

2. "[L]a notion d'intérêt général […] est traditionnellement définie comme une somme consensuelle d'intérêts particuliers, *et* comme le dépassement dialectique de ces mêmes intérêts. *Les deux définitions sont indissociables*. La première insiste sur l'aspect concret, "palpable" de la notion : l'intérêt général ne doit pas être perçu comme un rêve, une utopie. La seconde traduit la nécessité d'un dépassement des intérêts particuliers qui assure leur réconciliation" (Legrand, Rangeon and Vasseur 1998:188).
3. Gaëtan Tremblay and Jean-Guy Lacroix (1994:5) have stressed that there is also an economic convergence (concentration and offer of services) and a political convergence (convergence of regulation and legislation).
4. According to Jan Penrose (1997:24-27), drawing from Carlton J. H. Hayes (*The Historical Evolution of Modern Nationalism*) two out of four nation-building mechanisms in Canada concern culture and communication: The development of national media and the creation of national symbols.
5. John W. Warnock (1988:216) writes: "To an astonishing degree, Canada is a culturally occupied country. While everyone acknowledges that Canada is a rich, advanced industrialized country, our cultural industries and our mass communications resemble those of a colony."
6. "[E]ntities and processes of the mind — the entire array of concepts, propositions, values and the like which people within some social unit carry together, as well as their various ways of handling their ideas in characteristic modes of mental operation" (Hannerz 1992:7).
7. "[T]he different ways in which meaning is made accessible to the senses, made public […]" (Hannerz 1992:7).
8. Argentina, Austria, Belgium, Brazil, Canada, Chile, Denmark, Egypt, France, Germany, Greece, India, Indonesia, Israel, Italy, Japan, the Netherlands, Norway, United Kingdom, Pakistan, and Portugal.
9. "The treaty on European Union made respect for cultural diversity an obligation (Article 3(p) and Article 128(1) of the EC Treaty) which has been strengthened in the Amsterdam Treaty: the new Article 128(4) states that "the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures" (EU 1999c).
10. This "Network provides opportunities for national ministers of culture to exchange views on critical domestic and international cultural policy issues, and to work together to further common goals" (Canada 1999a).
11. In February 1999 (Canada 1999b:2) the Cultural Industries Sectoral Advisory Group on International Trade (SAGIT) proposed an instrument that would "recognise the importance of cultural diversity, acknowledge that cultural goods and services are significantly different from other products and set out rules on measures to be applied to in the cultural realm," "a new instrument that would specifically address cultural diversity, and acknowledge the legitimate role of domestic cultural policies in ensuring cultural diversity."
12. Raboy et al. (1994:58) write about a "conceptual confusion."
13. Not everyone agrees that there is one or even two cultures in Canada (Northcote 1991:28-29).
14. "Canadians have nothing to fear because there is no link between sovereignty and culture" said Ambassador Thomas Niles on February 5, 1987 (quoted in Warnock 1988:223).

15. This section draws on a paper presented at the European Consortium for Political Research in March 1999 at Mannheim.
16. According to the World Bank, public spending has continued to grow in the OECD countries over the last fifteen years (Jobert, 1998:120).
17. "Advertisements directed to the Canadian market include those that indicate specific sources of product or service availability in Canada or which include specific terms or conditions relating to the sale of goods or services in Canada" (WTO 1997b:paragraph 2.4).
18. Most Favoured Nation status means that countries that are partners to trade agreements agree to grant all of their trading partners "most favoured nation" (MFN) status and to treat them equally. National treatment means that when a trading partner's goods or services enter a country's market, the receiving country agrees to give them "national treatment" or treat them the same as its own national goods and services. Transparency and predictability are principles according to which countries agree to make all their trade practices "transparent" or "visible" to their trading partners, and avoid unfair or less visible practices, such as subsidizing industries or dumping products. Countries also agree to negotiate binding agreements that create a predictable trade environment, so foreign companies and investors do not have to worry about countries suddenly throwing up arbitrary barriers to trade (Canada 1999b).
19. In 1999, at the beginning of the first meeting of the Millennium Round, Canadian International Trade minister Pierre Pettigrew said that "the cultural exception negotiated in NAFTA didn't really exist" (Rioux 1999:4, our translation).

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Review Essays

Essais critiques

Frances Abele*

Best Chance, Perilous Passages: Recent Writing About Nunavut

The reason for Nunavut's appeal is obvious. A large area of a settled, affluent, and [...] successful industrial nation-state has renegotiated the effects of European settlement with an aboriginal people earlier dispossessed.

Peter Jull, "Nunavut Abroad," *Northern Perspectives* (Fall 1993) Vol. 21 n. 3 p. 15.

The giving of breathing space to difference is why we have provinces, why Nunavut has emerged, and why some version of a third order of Aboriginal government is on our agenda. At the moment, for obvious historical reasons, the political and moral pressure is toward maximising the exit of Aboriginal peoples via self-government from majorities they can influence at the margins. The stress on difference recognition is a kind of natural pendulum reaction to the previous stress on assimilation. On the other hand, we need to have commonality as well as difference. We need to be more than coexisting strangers [...].

Shared civic identities may be a project for the future. The same, however, could have been said of the Canadian identity in 1867. Conceptions of who we are are not immutable; they are not simply inheritances. Collectively, we are the subjects of our own creativity.

Alan C. Cairns, *Citizens Plus: Aboriginal Peoples and the Canadian State*. Vancouver: University of British Columbia Press, 2000, p. 110.

The creation of the Territory of Nunavut shows (and hopefully, its successful operation will demonstrate) that aboriginally based governments can be formed by combining aboriginal and Western notions of governance.

[...] the Nunavut Act and the NLCA [Nunavut Land Claims Act] provide an example of how willing a modern Western government can be to accommodate internal politics and

> their civil rights claims. From one perspective, such accommodation logically follows from a liberal Western government's response to internal complaints about representation and self-determination.
>
> Jeffrey Wutzke, "Dependent Independence: Application of the Nunavut Model to Native Hawaiian Sovereignty and Self-Determination Claims," *American Indian Law Review*, v. 22 n. 2 (1998) p. 555; 561-2.

The Nunavut Land Claim Agreement and Nunavut Territory together present a unique model for the peaceful realisation of an Indigenous people's self-determination within a nation-state. Of particular interest is the fact that although Nunavut exists in part as a consequence of the comprehensive land claim agreement signed by Inuit and the Canadian government in 1992, Nunavut Territory itself is not served by an ethnically exclusive government. While the Nunavut Land Claim Agreement benefits are available only to Inuit, the Government of Nunavut is a territorial government rather like those of the other two Canadian territories; any Canadian may become a voting resident of Nunavut simply by moving there.[1]

This circumstance is the result of conscious choices made by Inuit and other Canadians. Thus, the signing of the Nunavut Land Claims Agreement[2] in 1992 and the creation of Nunavut Territory on April 1, 1999 were the culmination of twenty-five years of political development and negotiation. The creation of Nunavut, and land claims implementation, mark the beginning of a new era in Inuit life and a new phase in the relationship between Inuit and the Canadian state.

Nunavut means a great deal to Inuit, to other Canadians, to Indigenous peoples world-wide, and indeed to all people who are concerned with the peaceful balance of "difference" and unity in modern polities. This article introduces some recent writing about Nunavut. Along the way, it will highlight important features of Nunavut's development, concluding with a review of some of the challenges that create a perilous passage for the new territory.

A few preliminary qualifications are in order. The story of Nunavut begins with the dawn of Inuit history, thousands of years ago. It includes the roughly two hundred year period of relatively slight contact with explorers, missionaries and whalers and the much more invasive period of military and state contact that began during the Second World War. In this short essay, the scholarly literature on these important antecedents to the modern time of Inuit-led renegotiation of their relationship with the Canadian state cannot be discussed. Therefore there is no reference to Inuit cosmology and oral history, some now published in written form, or to the diaries and memoires of various explorers, also available in print. Similarly, the

voluminous, important, occasionally fractious and intensely interesting body of work produced by anthropologists and archaeologists is ignored in this short paper. A selection of excellent works from all these categories is included in the bibliography.

Who Are the Inuit and What Is Nunavut?

Inuit are a circumpolar people whose homelands lie in Greenland, northern Canada, Alaska and Russia. In Canada their traditional territories are in Labrador, northern Quebec (Nunavik) and Nunavut (formerly the eastern half of the Northwest Territories). Inuit living around the pole are linked by kin and cultural ties, including a common language of many dialects. In Canada there are almost 25,000 Inuit in Nunavut, 8,500 in Nunavik, and about 4,300 in Labrador – almost 38,000 people in all.

Living in territories not readily accessible without very specialised technology and knowledge, until recently most Inuit interacted with other peoples from a firm base in their own way of life.[3] In Canada, wholesale and rapid transformation of their way of life, and integration of Inuit into the Canadian economy, political system and cultural life, began during the Second World War when American military bases, airstrips and personnel arrived.[4] Before the war, missionaries and Royal Canadian Mounted Police, explorers and whalers were well known to many Inuit. Certain parts of their territory were connected to the global economy by trade and by wage labour.[5] Inuit territories bordered those of other indigenous peoples (principally Dene, Cree and Innu) and in the borderlands there was shared use, trade and occasional conflict. But most Inuit lived with little contact with non-Inuit, most of the time. Despite some technological changes, they lived generally as their ancestors had done for centuries, until the Second World War and the Cold War that immediately followed it.

In Canada as in the other circumpolar nations, the Second World War brought the south to the north with unprecedented impact.[6] During the war, forward air bases were constructed at several locations in the Inuit territories, creating large encampments of transient, and mainly male, military personnel as well as large depots of materiel. Some military personnel remained after the war and construction began on the Distant Early Warning line. With all of this traffic, the north was "visible" from the south to an unprecedented degree, just as southerners and southern commodities were evident to Inuit to an unprecedented degree.[7]

Two other large changes in Canadian life, both an indirect result of the war, were to have a sudden and enormous impact in the North. The Second World War had advanced the integration of the Canadian and United States economies, and after the war, the burgeoning U.S. manufacturing sector created a growing market for Canadian power and raw materials. In Canada this led to a renewed interest in ascertaining and developing Canadian resources in the northern two-thirds of the country. At the same time, as part

of the post-war economic and social recovery, Canada began to expand its social welfare programs and extend them into all regions. In Nunavut as in other parts of Canada, health care and education, and later the full range of pensions and income support programs, were introduced.

All of these changes, but the social programs especially, eventually completely reorganised the Inuit way of life. Families were induced to settle in communities (limiting or eliminating the seasonal round upon which traditional life was based). Rental housing was provided, built on southern designs, which required imported energy to heat and imported skills to maintain. Communities were built and extended families were relocated, sometimes for reasons of social engineering or protection, while individuals disappeared from families when they were moved south for health care. And, to make administration of all these changes easier, Inuit were numbered by public servants who could not understand or work with the Inuit system of naming.[8] The post-war changes in northern Canada resemble, in magnitude, thoroughness and direction, the Industrial Revolution of Europe – but they differ from these changes in that they took place within the span of one generation and within a relatively wealthy, developing capitalist welfare state.[9]

Between 1969 and 1973, Inuit formed political organisations to represent their own interests in reaction to the events of the post-war period, as did Indigenous peoples elsewhere in Canada and the rest of the world. The national organisation, Inuit Tapirisat of Canada, was established in 1971, and at about the same time, regional bodies also appeared in Labrador and Quebec.[10] In time, organisations were also created to work on issues central to women's lives, on constitutional issues, and on land claims negotiations (Pauktuttit, the Inuit Committee on National Issues,[11] and Tungavik Federation of Nunavut, respectively).[12]

The 1970s and 1980s saw enormous efforts in bilateral negotiations with the federal government, in the legislature of the then-Northwest Territories, at the constitutional negotiating table and in international fora to create a new relationship between Inuit and Canada.[13] From the perspective of the development of Nunavut, three achievements – fruits of these multifaceted efforts – are especially important. First, in the early 1980s, Inuit working through the Legislative Assembly of the Northwest Territories obtained the support of co-residents in the NWT for division of the Territory to create Nunavut and the new NWT in the west.[14] Eventually, federal support for division followed. Second, in comprehensive claims negotiations, Inuit achieved a settlement agreement similar to other comprehensive claims agreements, and in addition, negotiated a clause committing the federal government to recommend to Parliament to pass legislation to create the new territory of Nunavut. Thus, in addition to the capital and institutions for resources management created by the claims agreement, a new territory came into existence. Third, in concert with other indigenous peoples in Canada, Inuit negotiated constitutional entrenchment of their rights.[15]

The jurisdiction and powers of Nunavut Territory are similar to those of the other two territories. Like Yukon and Northwest Territories, Nunavut exercises "province-like" powers in all most areas. (One important exception is natural resource development on Crown land.) Territorial politicians usually participate in the institutions of executive federalism in the same fashion as do provincial leaders, but they do not have a seat at the table of constitutional amendment. Provincial and federal powers are defined in the *Constitution Act* [1982], while federal legislation creates the territories and enumerates their powers. In this sense, the territories' areas of jurisdiction do not have constitutional protection. Nunavut Territory, however, is an exception to this rule. The existence of Nunavut is legally a consequence of the Nunavut comprehensive claims agreement, a document that like all treaties and comprehensive claims agreements has constitutional protection.[16]

A most significant feature of the current situation is that the Government of Nunavut is a public government. That is, participation in political life is not restricted to previously defined groups who inherit their membership (as, for example, on Indian reserves). Any resident of Nunavut may vote and run for office, though Inuit dominate electoral politics by virtue of their numerical predominance. They form approximately 85% of the population. As in the Northwest Territories, the legislature of Nunavut does not have political parties, but it otherwise functions like the provincial legislatures. The public service of Nunavut is organised in a fashion familiar in southern Canada, and Nunavut's public service employees serve the whole population.[17]

The Government of Nunavut co-exists with a number of other powerful institutions which exist as a consequence of the comprehensive claims agreement.[18] Nunavut Tunngavik Inc. administers claims funding and fulfils a number of other responsibilities on behalf of the 85% of the Nunavut population who are Inuit. The other bodies are institutions of public government: Nunavut Planning Commission is responsible for land use planning; Nunavut Impact Review Board conducts environmental and socio-economic reviews of development projects; Nunavut Social Development Council and the Nunavut Wildlife Management Board oversee the areas of social life suggested by their names. Although some work has been completed in sorting out the areas of co-operation and responsibility among all of these bodies and the Government of Nunavut, clearly, more time and experience will be required before these matters are settled. Most of the bodies created required appointed or elected citizen involvement and regularised community consultations. Thus, Nunavut is unusual in one final respect, in being born with an enormous array of institutions already developed for broadly democratic public participation. When the plans for decentralisation of the public service, scheduled to unfold over the next five years, are taken into account as well, it seems very likely that the future shape of territorial government in Nunavut will evolve away from the Canadian norm.

The Large Issues

Nunavut was not yet two years old when the first book-length study of the new government and territory was published. Jens Dahl, Jack Hicks and Peter Jull's edited collection, *Nunavut: Inuit Regain Control of their Lands and their Lives*,[19] provides an excellent introduction to the territory and the political and economic issues that have dominated its establishment and early months of government. Reflecting the growing degree to which Nunavut may be seen not only as a part of Canada but as an important government in the circumpolar region, one editor (Dahl) and several contributors are from the circumpolar north outside Canada.[20] There is even a helpful "answer to the critics" of Nunavut who, while few in number have been quite successful in garnering public attention.[21]

The Dahl, Hicks and Jull collection and a broader literature on Nunavut can be conveniently discussed under four general headings that describe the broad themes that have preoccupied the builders of Nunavut and observers in the last few years.

The Philosophical Basis and National Importance of Nunavut

A distinctive feature of writing (and indeed public speaking) about Nunavut is the extent to which its creators have gone to elaborate and to explain its philosophical basis. Inuit leaders and non-Inuit fellow travellers have tended to focus less on the injustices and mistakes of the past and more on developing a positive vision of what Nunavut *could* be, and of why it *should* exist. For example, John Amagoalik, the Inuit leader who is known as the father of Nunavut, emphasises that the creation of Nunavut is the fulfilment of a democratic movement, rather than simply a transfer of political power from one ethnic group to another.[22] While he acknowledges the racial dimension to past injustices, he insists upon an explicitly inclusive and anti-racist (or multi-ethnic) vision of the future of Nunavut.

Similar themes are struck by other analysts, most trenchantly and consistently, perhaps, by long-time advisor and analyst Peter Jull. Jull sees the realisation of Nunavut as Canada's chance to learn from the errors of the past and to invent a vehicle for Inuit self-determination that represents an enhancement of Canadian democracy.[23] Zebedee Nungak, Tagak Curley, Jose Kusugak, Gurston Dacks, André Legaré, Mark Dickerson and others develop similar or complementary themes.[24] Whatever might be said of the difficulties attending the establishment of Nunavut, its creation is not an example of traditional Canadian atheoretical pragmatism.

Governance and Democracy in Nunavut: Implementation

Can and should the government of Nunavut operate in a distinctive fashion, suitable to the unique living circumstances of its residents and the surviving features of Inuit culture, including language? The great dream of many Inuit and many observers too has been that those building Nunavut would find

ways of making decisions and implementing them that differed from practices in other Canadian jurisdictions and were more democratic.

The implementation of such a dream requires detailed consideration. In a number of careful and probing descriptive analyses, André Legaré, Graham White, Marc Stevenson and Peter Clancy have mapped progress towards institutional reform and tried to imagine how the institutions could better adapt to northern and Inuit realities.[25] Others have written about proposals for legislated gender balance in the Nunavut legislature,[26] reforming the judicial system,[27] and various aspects of the institutions for environmental protection and wildlife management.[28] The potential for use of the Internet to facilitate institutional development and the deepening of democratic potential is being assessed, even as the Government of Nunavut and bodies such as the Nunavut Planning Commission adapt the Internet to their purposes.[29]

Inuit Traditions, Culture and Natural Science

Some of the distinctiveness of life in Nunavut is a practical consequence of geography and demography: the very small population is distributed over a vast area, living in small communities connected by air and in the short summer, sea. There are no trees and there is no agriculture; wild food is harvested from land and sea according to a demanding regime requiring elaborate local knowledge and specific technologies. The indigenous culture that developed in these circumstances has been altered considerably by the introduction of new technologies and forms of social organisation. But it is still cheaper and healthier to gather food from the land and sea, and still necessary to understand the climate and its cycles in order to have a good life. Thus, in addition to the universal human desire to preserve what has been cherished, there is also strong incentive to continue to adapt, rather than to abandon, the way of life Inuit followed before the major changes of the last fifty years. The original social and economic practices were successful.

This reality and the project it implies have drawn considerable scholarly attention, often cast in the form of a discussion of "traditional knowledge" or "traditional environmental knowledge." For many years, scientists whose work has led them to work closely with Inuit have engaged in a long discussion of these matters, seeking ways to collect and transmit local knowledge and ways to incorporate it in their own researches.[30] Social scientists and the public servants of Nunavut have in turn tried to consider the ways in which bureaucracies and legislatures could be adapted to reflect the principles of the indigenous cultures of the north.[31]

Economic Development

Since the days of John Diefenbaker's "Roads to Resources" dream, through several federal governments to the present time, exploitation of northern

non-renewable resources has been an important – if often postponed – goal. No doubt some of the revenue upon which the Government of Nunavut will depend will come ultimately from mineral extraction. But after decades of controversy over the future of the northern economy, something like a consensus has emerged to favour development of a highly diversified economy which will be for the foreseeable future also an economy in which transfers from the federal level of government remain very important. Furthermore, most analysts believe that the economy of Nunavut will likely be a "mixed" economy of work for wages, handicraft production of art and commodities, and complementary patterns of hunting and gathering food from the land.[32]

Other important sectors of the economy include commercial fishing and hunting (though the latter is still controversial) and ecotourism.

The View from Abroad

The movement of indigenous peoples on every continent to achieve security and self-determination within nation-states in which they were a minority gathered force in the years after the end of the Second World War, when so many other forces of liberation were unleashed.[33] For those indigenous movements in North and South America, and the North Atlantic including Scandinavia, Nunavut presents an interesting example and reason for hope.

Perhaps the best comparisons are with Scandinavian relations between Inuit and Sami and the majority populations. Although the small northern European nations differ from Canada in that they are small unitary states with very homogeneous populations, they share with Canada a broadly social democratic political culture, similar indigenous cultures, and sufficient national wealth to permit generous experimentation and development. Significantly, as well, the choice of governmental form (Inuit in Canada have consistently chosen public government over large land and sea area instead of ethnically exclusive government over small areas) resembles the situation in Greenland and Norway more than that in southern Canada, Alaska or the southern United States.[34]

Some Concluding Thoughts

The combination of the Nunavut Land Claim Agreement and the establishment of the Government of Nunavut together offer perhaps the best chance in many years for the successful realisation of an indigenous people's self-determination within a modern state. Should Canada's northern economic and political development initiative be successful, it will provide a model for at least some other circumstances.

If Nunavut represents the "best chance" in sight, it also faces some significant challenges. In the short term, there is the heavy weight of multiple expectations. A generation of Inuit were born and reached

adulthood while the comprehensive claim was being negotiated. Among this group, and among older people who have spent their adult lives working on and thinking about the completion of the land claim and the creation of Nunavut, expectations about more democratic and responsive government are very high. In addition, observers from all over the world are interested in assessing the progress of the new territory with attention and some impatience. Bearing in mind that building large institutions and changing organizational culture typically requires decades rather than months, the pressures on the political leaders and public servants who are charged with political development will certainly continue to grow.

At the same time, there is a very practical reason for local impatience. Even taking into account the difficulty in "counting" land and sea-based production for consumption, unemployment rates in most Nunavut communities are very high. On the other hand education completion rates and post-secondary training levels are relatively low, especially in comparison to the demand created by the establishment of the new government institutions. Highly skilled and bilingual workers are urgently required. The challenge for everyone in the immediate future will be to find ways to close the gap between the level of training of unemployed people and the level of training required to build Nunavut. To the extent that this can be achieved, self-determination will flourish, in all senses of the word.

Notes

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1. More than 85% of the current population of Nunavut is Inuit, and population trends suggest that Inuit will form a comfortable majority of the electorate for many years to come.
2. Canada, Indian Affairs and Northern Development, and Tungavik Federation of Nunavut, *Agreement*, 1993.
3. Although early encounters on Inuit lands were generally controlled by Inuit, those few who traveled abroad with explorers and adventurers generally suffered a great deal. See, for example, the heartbreaking story of Minik Wallace, told in Harper, 2000. For other descriptions of "contact," see Rowley, 1996; Hicks and White, 2000; Stevenson, 1997.
4. Armstrong, Rogers and Rowley, 1978; Rea, 1968.
5. Royal Commission on Aboriginal Peoples (henceforth RCAP), Vol. 1 pp. 78-86; Rowley, 1996; Stevenson, 1997; Goldring, 1986.
6. Brøsted and Faegteborg, 1985; Armstrong, Rogers and Rowley, 1978.
7. Rea, 1968; Grant, 1988.
8. Alia, 1994.
9. Rea, 1968; RCAP, *The High Arctic Relocation*; Abele, 1986; Alia, 1994; Clancy, 1987; Mitchell, 1996; Tester and Kulchyski, 1994; Marcus, RCAP CD ROM, 1997.
10. Interestingly, none of these organisations was resolutely ethnically exclusive. COPE was chartered by a group of Mackenzie Delta residents from all of the

ethnic groups of the region, including non-indigenous people. Later, to permit the receipt of federal funding, membership was restricted to Inuvialuit. In Labrador, the LIA found a means to include their largely non-Inuit relatives, who shared the same communities and economic circumstances. And in Quebec, after the land claims settlement, Inuit formed a public regional government and public regional school boards.

11. The Inuit Committee on National Issues was disbanded with the unsuccessful conclusion of Canada-wide constitutional renegotiation in 1987.
12. The Tungavik Federation of Nunavut became Nunavut Tunngavik Inc. with the successful conclusion of the Nunavut land claim. NTI administers the compensation funding provided under the claims agreement and meets a number of other obligations of the agreement.
13. Duffy, 1988; Cameron and White, 1985.
14. Abele and Dickerson, 1985.
15. *Constitution Act* [1982], Sec. 35, and see the discussion in Canada, RCAP, *Partners in Confederation*, pp. 29-49.
16. *The Constitution Act* [1982], Sec. 35(1) and (3).
17. Dahl, Hicks and Jull, 2000; White, 1999; White, 2000.
18. A thorough discussion of the implications of the comprehensive claim agreement may be found in Jack Hicks and Graham White, "Nunavut: Inuit Self- Determination through a Land Claim Agreement and Public Government," in Dahl et al., *Nunavut*, 2000; for interesting commentary on the relationship of claims-created bodies and the Government of Nunavut, see Légaré 1996; on the implications of the co-management institutions created by the Land Claim Agreement, see Rodon, 1998.
19. Dahl, Jens, Jack Hicks and Peter Jull, eds. *Nunavut: Inuit Regain Control of their Lands and their Lives.* Copenhagen: International Work Group for Indigenous Affairs, 2000.
20. The contributions include: Amagoalik, 2000; Brantenberg, 2000; Harper, 2000; Høgh, 2000; Hicks and White, 2000; Jull, 2000; Kusugak, 2000; Muller-Wille, 2000; Nungak, 2000; Sørenson, 2000; Wenzel, 2000.
21. For example, Howard and Widdowson, 1999. Other critics are cited and discussed in Dahl, Hicks and Jull, 2000.
22. Amagoalik,1992, 1993, 1994, 2000; Nungak, 2000; Ittinuar, 1981.
23. See the works by these authors in the bibliography.
24. For example, Nungak, 2000; Kusugak, 2000; Dacks, RCAP CD ROM, 1997(b); Dickerson and Shotton, RCAP CD ROM, 1997; Dickerson, 1992; Légaré, 1993.
25. Légaré, 1993, 1996a, 1996b, 1998; White, 1998, 1999, 2000; Hicks and White, 2000; Clancy, RCAP CD ROM, 1997; Dacks, RCAP CD ROM, 1997a. In the period between the signing of the 1992 Nunavut Land Claims Agreement and the creation of Nunavut in 1999, Fenge, 1992, 1993, 1995 and Merritt, 1993 analyzed the implications of the claim for the political future.
26. Young, 1997.
27. Rousseau, 1994.
28. Rodon, 1998; Fenge, 1992, 1993, 1995; cf. Abele, 1990.
29. Cf. Savard, 1998.
30. Usher, 2000; Wenzel, 1999; Duerden and Kuhn, 1998.
31. Stevenson, RCAP CD ROM, 1997; Dacks, RCAP CD ROM, 1997a; Dickerson and Shotton, RCAP CD ROM; Nunavut, *Principles of conduct*, n.d.

32. Cf. Usher and Weihs, 1989; Usher, RCAP CD ROM, 1997; Weihs, Higgins and Bolt, RCAP CD ROM, 1997; Wenzel, 1991, 1995, 2000; RCAP, Vol. 2, pp. 818-824; Vol. 4, pp. 387-487; Myers and Forrest, 2000.
33. Brantenberg, Hansen and Minde, 1995; Brøsted et al., 1995.
34. On Scandinavian comparisons, see Brantenberg, 2000; for examples of comparisons made with the United States and Australia in mind, see Kersey, 1994; Miller, 1998; Jull, 1993, 1999.

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Note: The academic literature about Inuit is enormous. The following list includes all sources mentioned in the text (which treats the somewhat narrower topic of Nunavut), and a good number of other excellent works, chosen because they illuminate a particular aspect of Inuit history or contemporary life. For a more complete listing of sources, see http://www.nunanet.com/~jhicks/nunabib.htm, an excellent bibliographic website maintained by Jack Hicks. Another useful website is www.inac.gc.ca/nunavut.

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From the Collected Research Studies of the Royal Commission on Aboriginal Peoples

Note: To Canada's shame, almost none of the research studies of the Royal Commission on Aboriginal Peoples have been published in book form. All of the studies listed below are available only on the CD ROM produced by Libraxus, *For Seven Generations: An Information Legacy of the Royal Commission on Aboriginal Peoples.* Ottawa: 1997. There is a copy of this CD in all depository libraries in Canada, or see www.libraxus.com.

Atii Training Inc., *Northern Education and Training Systems for Inuit: A Strategic Analysis*.
Barsh, Russel Lawrence, *High Arctic Relocation: International Norms and Standards*.
Chartrand, Jean-Philippe, *Inuit Statistics in Canada: An Analysis of Concepts and Categories Used by Government Agencies at Federal, Provincial and Territorial Levels.*
Clancy, Peter, *Contours of the Modern State in the Territorial North: Policies, Institutions and Philosophies*.
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Marcus, Alan Rudolph, *Inuit Relocation Policies in Canada and Other Circumpolar Countries, 1925-60*.
Pierce, Jon and Robert Hornal, *Aboriginal People and Mining in Nunavut, Nunavik and Northern Labrador.*
Prince, Michael J. and Gary Juniper, *Public Power and the Public Purse: Governments, Budgets and Aboriginal Peoples in the Canadian North.*
Stevenson, Marc G., *Traditional Inuit Decision-Making Structures and the Administration of Nunavut*.
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Cherry Clayton

Constructing Canadian Nations: McCluhan and After

This essay examines the evolution of debates about the relationship between aesthetics and politics, communication and culture, from the Frye and McCluhan era onwards, taking as its main focus two anthologies of interdisciplinary critical essays published in Canada between 1971 and 1997: *Contexts of Literary Criticism*, edited by Eli Mandel and *New Contexts of Canadian Criticism*, edited by Ajay Heble, J.R. (Tim) Struthers and Donna Palmateer Pennee. Exclusions and biases are discussed to show how attitudes have changed with the advent of poststructuralism and with the socio-political changes that increased immigration and an awareness of multicultural diversity have brought to Canada. New forms of address to minority cultures, Quebec, First Nations and social justice issues are described, as well as the political models arising from postmodernist challenges to fixed notions of truth, progress and identity. The essay looks at Canadian culture within a postcolonial frame, and suggests that comparative dialogues with other national postcolonial, literatures and critics could be fruitful avenues of study and research.

In his 1971 interdisciplinary anthology of Canadian history, philosophy and literary criticism, Eli Mandel spoke of a central tenet of Canadian intellectual life: "the importance of communication theories in a demanding physical setting" (vii). Both of the major theorists and commentators on Canadian society and cultural production, Northrop Frye and Marshall McCluhan, seem to accept this thesis, which is another variant on the tension between unity and diversity, nation and region, centrifugal and deconstructive forces observed by analysts of the Canadian nation. One might add that these two tendencies, one toward ethical imperatives, social justice and politically contextualized literature, and another toward deconstructive play, border-crossings and irony, have also frequently emerged in Canadian cultural criticism over the past few decades.

In his lucid overview of earlier trends in Canadian criticism, Mandel points out the prevalence of frontier and wilderness determinism, a landscape orientation which ignored any indigenous presence (and the existence of the French), as in George Grant's "the primal...was the meeting of the alien and yet conquerable land with English-speaking Protestants" (Mandel, 4). E.K. Brown's *On Canadian Poetry* (1943) was a minor classic because it made clear the Canadian modifications of a North American

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frontier theory: "the imperial demands of Britain and America and the polarization of French-English cultures" (Mandel, 6). Mandel, among others, argues that it is not the West but the North that constitutes the physical and psychic frontier in Canada. If one takes leading novelists as the guideposts, then the fiction of Rudy Wiebe suggests that the Prairie encounters of Indian and Metis with military colonizers constitute the historical memory and psychic contours of the Euro-Canadian unconscious. Aritha van Herk's *The Tent Peg, No Fixed Address* and *Places far from Ellesmere* mythologize the North, but also subject it to a feminist revision.

W.L. Morton argued persuasively in 1961 that one of the permanent, uniting features of Canadian life and history is its northern character: "the alternate penetration of the wilderness and return of civilization is the basic rhythm of Canadian life" (Mandel, 8). Morton also sees the contradictions of wilderness violence and civilized restraint as central to the Canadian temper, with Puritanism as their offspring. This oscillation forms the structure of two key Canadian novels, Margaret Atwood's *Surfacing* and Marian Engel's *Bear*, which both employ these contrasted settings and impulses as the vehicle of the female protagonist's inner recovery. A tension between Puritanism and passion also informs Sinclair Ross's *As For Me and My House*, both in the action and in the contrast between the genteel female journal format and the thwarted passions recorded.

Morton also argued for a view of Canada as distinguished by coastal and riverine settlement, so that the frontier has a maritime character. Hunting and fishing were seasonal occupations, thus the pioneers were not trekkers across land, as they were in South Africa, for instance, but fishermen seeking new grounds. This riverine base can be distinguished in Margaret Laurence's *The Diviners*, with its river flowing two ways, and in the riverine setting of *The Double Hook*, as well as the setting of a recent novel, Thomas King's *Truth and Bright Water*. The great staple trades have been in-gathering trades in Canada, and Morton argued for Canada's historical distinctness on the basis of this "civilization of the northern and arctic lands" (52). Furthermore, and Morton's view is worth quoting because this kind of historical causation and national distinctness is no longer fashionable, Canada has also been marked by forms of internal and external economic dependence. The hinterland depended on the base economy, the frontier on the metropolis, and thus the modern Canadian political fabric "unites the technology of a highly civilized and industrial baseland with the exploitation of the resources of a harsh and enormous hinterland" (54). Canada also moved through different historical phases of outside alliances with Britain and the United States, so that cultural developments have a historical and temporal component. The general factor of economic dependence may also account for the tendency in Canada to explain cultural features by comparison to both British and American traditions.

Northrop Frye modified the frontier theory in 1961 when he pointed out that the truly significant thing about the Canadian frontier is that it does not exist at all. Canada has no Atlantic seabord; to enter it is to be silently swallowed by an alien continent (66). This view accords with Frye's emphasis on a vast landscape looming over puny human beings. Nevertheless, east to west exploration was the axis of development, and "attracted to itself nearly everything that is heroic and romantic in the Canadian tradition" (66). Frye speaks not of the conquest of wilderness by civilization but of an incongruous "collision of cultures" (68). Frye saw the frontier as an imaginative construct, influenced by a largely unseen hinterland, and also influenced by a mystique which was "the accompaniment of Confederation and the imperialistic mood that followed it" (68-69). He comments: "One wonders if any other national consciousness has had so large an amount of the unknown, the unrealized, the humanly undigested, so built into it" (69).

Frye speaks of the early pioneering language of Canada as that of engineering and technology, "the inarticulate part of communication, railways and bridges and canals and highways" (70). Culture (which he usefully separates into three levels: everyday customs, the pathways of history, and the level of imaginative creativity, 191-2) takes time and leisure. Canada is a place of long-range views, nomadic movement, a pragmatic conservative outlook, a vast unconsciousness of nature which challenges morality, and the garrison mentality of small, isolated communities, which is not necessarily a negative description. He saw the Depression era as creating a new dialectic in criticism with the entry into debate of the social role of literature (77). Though Frye is regarded as the mythopoetic critic par excellence, he argues that because Canadian literature emerged relatively late, it is based not on myth but history (79). Nevertheless "the forms of literature are autonomous" (79) and the writer is "a place where a verbal structure is taking its own shape" (80). Literature is conscious mythology, when mythical stories become the structures of story or habits of metaphorical thought (80). An ironic or realistic literature becomes possible with the detached view of the twentieth century (83).

According to Frye, the pastoral myth has been very prevalent in Canada, which has a strong children's literature. The pastoral principle is evident in popular literature in Canada and in "all the fiction that deals with small towns as collections of characters in search of an author," which would include many of Canada's strongest writers, from Stephen Leacock to Alice Munro. In an early response to global culture, which he here calls "technological uniformity," Frye speaks of the Canadian temper as having "deep reservations to this world as an end of life in itself" (93). Canadian radicalism co-exists with the anti-revolutionary temper of its origins. His conclusion is nevertheless that there is an imaginative continuum to Canadian literature, conditioned by "the inheritance of the entire enterprise" (95). Frye's view of literature is conditioned by a strong sense of

the evolving autonomy of literary forms, and the central characteristics of Canadian settlement, geography and history. He is neither an environmental nor a cultural determinist. His view of cultural negotiations with indigenous peoples is that settler Canadians could not establish any real continuity with Indian mythology, and thus "Indians, like the rest of the country, were seen as nineteenth century literary conventions" (80). This view accords with a later constructivist view of culture.

Mandel wrote in 1971 that the quest for nationally distinctive characteristics in Canadian literature elided national and local politics. In his essay in Mandel's anthology, Robert McDougall argued that Canadian literature was startlingly blind to class struggle and social structure in its genteel academic bias (23). Mandel adds that there was little of seriousness about the craft of the novel, either. He quotes Atwood's 1970 afterword to the *Journals of Susanna Moodie*, in which she argues that the national illness of Canada is paranoid schizophrenia, citing the ambivalence of Moodie herself to the land and its people, and her morbid fascination with the criminally insane, death and murders: in Canada all of us immigrants "move in fear, exiles and invaders" (Atwood, 62). Atwood's thesis, that to choose Canada is to choose a "violent duality" (62), would prove to be her own motto, as a novelist who recently returned to Moodie to flesh out her story of a servant murderess, the Grace of *Alias Grace*. Perhaps the ancestors we choose to write about return to haunt us.

E.K. Brown's essay, "On Canadian Poetry," describes the slight impact of Canadian literature both on outside cultures and on the national consciousness, and the choice many writers have made to move elsewhere or write to an outside audience. Morley Callaghan's Toronto is not specific enough; De la Roche's work is shaped by an English readership. Brown adduces psychological and economic reasons for this: Canada was poor at the turn of the century; an imperial nostalgia lingered. Brown argues that cultural autonomy is needed for a great art to flourish. In Canada aesthetics was a luxury when the material structure of the nation was a priority. Art becomes diversion, not interpretation, and so the bestseller became king. Puritanism also demanded high standards of moral orthodoxy (43). Brown sees regionalism as a stage to be passed through toward cultural maturity, yet regional art would always stress the superficial at the expense of the universal (45). Criteria of autonomy, cultural maturity and universality run through his argument.

The work of H.A. Innis, "The Strategy of Culture" (1952), is strongly materialist, analysing the economic dimensions of writing and publishing in Canada, and "the power of nationalism, parochialism, bigotry and industrialism" (72). In his detailed analysis of the rise of the periodical and of commercialism in printing and publishing, he argues that the freedom of literature from religion and state, which is necessary for a true civilization, was impeded by these material processes. The Toronto-Chicago publishing axis made these processes crucial to Canada as well as the United States.

Innis shows the centrality of advertising in its effects on the newspaper, the magazine and the book. Some of these processes are illuminated in Alice Munro's fictional scenarios set in Ontario libraries and bookstores, where the existential and commercial processes of writing and publishing become part of the characters' lives. The American drive toward mechanization and commercialism affected Canada, and helped to destroy the peace and permanence needed for cultural production. It also drove a wedge between English-speaking and French-speaking Canadians.

Innis opens up debates related to technology, the new languages and ethos developed in print capitalism, the subtle effects of publishing links with the United States, material constraints on culture, and the commodification of culture in corporate sponsorship. His essay is a model of cultural studies work informed by material data and analysis. This type of materialist analysis is continued in the *New Contexts* volume by Carole Gerson, whose piece on the inclusion of women writers in Canadian anthologies makes gender much more central.

In Mandel's volume, William Kilbourn analyses the shaping of narrative patterns by two historians, Donald Creighton and Frank Underhill. He sees Creighton's contribution in the shaping of grand tropes of penetration and settlement along the St. Lawrence, and in his graphic, individualizing style. Underhill's theme is party politics and he assesses Canadian politicians for their skill in combining farflung and diverse interests. Kilbourn praises McCluhan for his interpretive challenge to future generations in rethinking the relationship of technology to culture, a challenge still to be fully taken up and developed.

He quotes Thomas Macaulay on the need for the power of narration in history: "The perfect historian gives to truth those attractions which have been usurped by fiction" (101). This is rather different from a poststructuralist tendency to reduce history to one narrative among others.

F.H. Underhill, writing on "French-English Relations in Canada," continues the theme of "great Canadians," an individualizing emphasis which has been largely lost in the world of poststructuralist theory, where abstract discursive effects and social constructions are usually in question. Underhill remarks on the moral qualities needed in a society like Canada, and sees that the "problem of the relations between different groups inside Canada is at bottom the same as the problem of international relations in the world at large" (104). This insight, too, seems to have gone astray in the contested debates on identity politics and multiculturalism in Canada at present. Underhill points out that the danger of Quebec nationalism resides in an "isolationist, Sinn Fein type of tribal nationalism," whereas the dangers for the English-speaking community lie in the unconscious assumption that English-Canadian habits and culture will prevail.

Only recently, in the critiques of writers like Himani Bannerji, Marlene Nourbese Philip and George Elliot Clarke, have the assumptions of both

groups been seriously analysed and challenged (Verduyn 1998). Race and ethnicity are not topics discussed in Mandel's anthology at all, where "race" still refers to the cultural and political contestation between the two European founding nations (107). Underhill traces this debate and fracture through education and attitudes to the state. The English see Quebec as adhering to a static, habitant economy and to clerically controlled education, the latter being a more important objection than the language difference often cited. Quebec is also perceived as being anti-assimilationist toward immigrant groups. Protestantism, however, like state power, is an assumption informing English-Canadian politics. These invisible assumptions need further scrutiny in the analysis of literature and other forms of cultural production. Ideology does its work in these under-scrutinized arenas of culture and politics. Only with a critical influx of articulate visible minorities have these assumptions been more fully debated.

George Grant's lament for a Canadian nation is well known. He bases his arguments on an equation of continentalism with consumption and the excitements of U.S. style mass democracy. Influenced by British liberalism, many Canadians have viewed America as the land of opportunity and equality. Continentalism is seen as opposed to a narrow nationalism. In both the arguments cited and opposed here, economics is elided or mystified. Grant's strength lies in his linking of political theory and moral philosophy. The states we desire depend on our concepts of virtue, constraint and freedom: "If the best social order is the universal and homogeneous state, then the disappearance of Canada can be understood as a step toward that order" (121). His argument, which assumes a Canadian identity under threat, is based on tradition and faith in an eternal order beyond politics. Nevertheless, he draws on a fact relevant to the more recent history of immigration, or perhaps to all immigration: "multitudes of human beings through the course of history have had to live when their only political allegiance was irretrievably lost" (121-2). This idea has a resonance in an age of migrancy far beyond the time and application of Grant's 1965 *Lament for a Nation*. Process, that keyword in a poststructuralist age, is not all.

Frye's first essay in *Contexts*, "The Road of Excess," continues Grant's emphasis on the relationship between history and timelessness and, drawing on Blake, underlines the intimate connections between creativity and criticism. This connection becomes the main thesis of the essay by J.R. (Tim) Struthers in the *New Contexts* anthology, though an argument that has generally lost ground in the theoretical schools now fashionable. Or rather, the link now renders them similar in a discursive sense, but not as inter-related efforts of the imagination that offer critiques of society and a world beyond society. Frye makes significant statements about the workings of narrative and *anagnorisis* and the relation of both to a perception of design. There are two responses to literature: a participating,

pre-critical response, and a detached one which sees the work whole. Postmodern fictions often work against *anagnorisis*: they continue to problematize or defer discovery in either a playful, ludic sense, or to problematize the categories of perception and thus those of social justice. This is particularly clear in novels which begin with a mystery, such as Atwood's *Alias Grace*, or Thomas King's *Truth and Bright Water*. In *Alias Grace,* the effect of an unsolved murder and of prisoner interviews is to problematize gender categories and class hierarchies, as well as the distinctions between immigrants and host cultures. In *Truth and Bright Water,* the mystery turns out to be related to gender and birth, but still remains tantalizing in a way which provokes further thought around gender and racial distinctions, and the burden of cultural genocide in Canada.

Frye also points to the ironic tone as a feature of modern literature, where the audience is given a fuller perception than the characters. The debate around irony, sometimes marked as a feature of "the" Canadian temper, is very fully expanded by Linda Hutcheon in *New Contexts* where she explicates the slipperiness of the context in relation to the "Out of Africa" museum exhibition in Toronto in 1990. In Hutcheon's work, a discussion of irony becomes part of an understanding of multiple responses in an ethnically fractured society, the different senses of postcolonialism to different audience vectors, and the inherent problems in rethinking and redisplaying artefacts of Empire in our times. Frye also argues that commentary always allegorizes works of art, an argument that contests later attempts to designate Third-world texts as more peculiarly allegorical, as with Jameson's theory of the political unconscious. However, different senses of the allegorical need to be distinguished, and analyses of Canadian fictions in terms of a political unconscious tend to be in short supply, partly because of the overlapping of Anglo-Canadian literary and critical production, with both traditionally in the hands of an academic elite. Frye calls the ironic resolution the negative pole of an allegorical one (134). He also insists that genre categories and conventions provide a significant explanatory context for literature. This last has decreased in importance in recent times, partly because constructivist theories of language de-emphasize genre, as do discourse theory and semiotics, and partly because many writers now deliberately blur genre categories in order to imply the difficulty of distinctions between fiction and history, and the truth or ethical claims of any genre. The fictions of Robert Kroetsch and Aritha van Herk provide good examples of such post-structuralist genre-crossing. In the *New Contexts* volume, far more space is given to theorizing literature in general and to the relationship between culture and politics, than to the discussion of genres, which takes up over half of the Mandel volume. This reflects a shift from criticism to theory, and to a more insistent politicizing of critical discussion in relation to social text as a whole and to the voices of minorities in multi-ethnic societies.

McLuhan's essay, extracted form his 1964 *Understanding Media,* reveals that he laid down the basis of much of what is now called Cultural Studies. Changes in technology are a matter of scale as well as medium of exchange, and any new medium has personal and social consequences. This insight is a far-reaching one with which critical discussion has yet to engage fully. Failure to understand these implications means a lack of self-definition. This may explain a constant low-key anxiety around the uses of media in education, a topic now being addressed by conferences on new technologies. McLuhan's theory predates Althusser's theory of interpellation and extends it to all media. The cultural matrix, including recent technology, shapes us and our activities. Yet mechanization contains a paradox: causing maximal change, it also hampers understanding of change. McCluhan's attitude to new technologies is not clear-cut, but he anticipates post-Saussurean theory in his insistence on the movement from lineal structures to configurations. He also anticipates post-modernism, or becomes one of its founders, by dwelling on Cubist art and the role of total sensory impact rather than the separation of thematic content from art. His theories are surprisingly underutilized in discussions of contemporary postmodernism in Canada. Like Benedict Anderson later, he sees the advent of the printed word as crucial to nationalism and uses it to distinguish between France and England.

McLuhan establishes the argument which has been crucial to much of postcolonial theory, that the West has confused reason with literacy, and rationalism with a single technology, and offers a brilliant reading of *A Passage to India* as illustration. The clash in the novel, he argues, is between an oral, intuitive culture and a rational, visual patterns of experience. *A Passage to India* is a "parable of Western man in the electric age." His citation of Africa and the effects of "detribalization by literacy" offers insights parallel to the work of Fanon on the psychology of colonization. His critical commentary on the politics of media manipulation offers a conceptual structure for the analysis of media and politics in Canada, much as Chomsky's critiques do in the United States.

Francis Sparshott locates literature and criticism in relation to aesthetic theory and all fine arts. In doing so, he invokes ideas of contemplation and performance, words now seldom heard in literary theory. This conceptual base is useful for writers like Jane Urquhart, who constantly works with visual art as well as narrative, and who makes painting a structural component as well as a metaphor. Complex works, Sparshott argues, invite elaborate criticism. He examines criticism as an institution related to market forces. The extension of the teaching of literature into universities has pushed it toward a science, or scientific pretensions. His discussion is illuminating; an explosion of theory has called into question the old, assumed balance between teaching and something called criticism. An activity once called criticism is now called either theory or research. He also questions whether the teaching of the arts can be called criticism, or

qualifies people for criticism. And whatever happened to literary history? His discussion of generally booksy people reminds us that a high degree of specialization is now a necessity, and that literary critics are also supposed to be experts in social justice, race, class, gender, political reform and everything else. Literary critics, or theorists, are now masters of social justice issues within textuality, or are required to be. Their function seems to have become ridiculously broad, yet also functionalist in a strange way, because the world is now within the text. They must save the world by understanding extremely arcane theory minutely, and\or must produce their credentials as activists. As citizens, they must be more activist than others. The traditional distinction between artist and citizen, or critic and citizen, has collapsed. There is no time for life, ever since politics took over the academy in such devious ways, because these political credentials are very time-consuming, even without the teaching and marking. People tire quickly doing all these things, and then there is early retirement. Fine minds are cut short in their prime. Though he could not have predicted these complex outcomes, Robert Mc Dougall's piece on "The Dodo and the Cruising Auk" does lay down the basis for a political conception of Canadian literature when he attacks the absence of class and economic factors. There is, he argues, a tragic view of struggle in Canadian literature which elides class struggle. The Canadian fictional world is one of chilly sacrifice in which denial and defeat are prominent. Writers and their heroes have tended to be a bourgeois, sherry-swilling lot in Canada. He makes exceptions of Susanna Moodie and Sara Jeanette Duncan. If this points to a gender difference in the depiction of class (what of the fiction of Morley Callaghan and Alastair MCleod?), Alice Munro continues it in her frank depictions of class constraints, pretences, mobility and mores. It also seems that the postmodernist trend has diminished the depiction of economic realities. When textual strategies become the markers of a political conscience, the depiction of economic actualities is less detailed. One has to turn to the literary production of migrant and First Nations writers to register everyday struggles for survival.

New Contexts of Canadian Criticism is a modernizing version of Mandel's volume; it represents far more variety in terms of race, gender, authorial voices and thematic content. The 1971 collection included one woman among 16 critics, no French-Canadian voice, and no-one addressing indigenous Canadian or African-Canadian presences. This alone points to current concerns with equitable representation and social justice to diversity within Canada. Marlene Nourbese Philip opens the collection with a discussion of communications and community which seems to be so central to Canadian cultural debates. However, she also sharply registers an awareness of multiple origins, different audiences, forms of reception, the lingering of landscapes of origin for many writers, and an undercurrent of racism in Canadian society. She positions herself in a way that now recognizes that no critical position is neutral, a current habit of presentation absent from the earlier collection, where it was assumed, or

where objectivity was assumed. She also locates herself in a particular urban centre, Toronto, and makes her sensitivity to forms of appropriation and spokesmanship apparent. Topics such as exile, cultural nostalgia, degrees of language differentiation, marketing, racism, gender and media patronage are central to the multicultural mixture which now exists in Canada.

Her arguments are taken further by Enoch Padolsky, who outlines a pluralistic approach to majority and minority writing in Canada. He argues, rightly, that the corpus of minority writing has not had sufficient impact on the critical conceptualization of Canadian literatures, especially in English Canada. The search for nationally unifying or distinctive themes, so apparent in the Mandel collection, has dominated English-Canadian criticism, with some discussion of the "two cultures" problem, and Quebec debates have concentrated on cultural and political survival. The dominant voices have been those of Atwood and Frye, and "minority" writers have been patronized as newcomers to the club or ignored on the margins. For a conceptual reorientation a cross-cultural, comparative approach to Canadian literature is needed, and *New Contexts* offers a starting-point to such debates.

As Padolsky points out, terminology is part of the problem when the category of ethnicity belongs only to marginal and not dominant groups. Earlier representations of indigenous or immigrant groups consolidated British-Canadian ethnic identity. Representations of French-speaking Canadians need similar scrutiny. Topics of linguistic registers and dialects, translation and cultural plurality within Quebec, which are central to Christl Verduyn's *Literary Pluralities* anthology, are noted by Padolsky as emergent and necessary topics. This recognition of diversity is necessary both because of assimilationist pressures and the unquestioned nature of dominant cultural assumptions. A further need may be for multilingual criticism: both *Literary Pluralities* and *New Contexts*, unlike Mandel's volume, include critical essays in French. This alone broadens the definition of Canadian literature and cultural production from an unquestioned Anglo-Canadian equation. There is great potential here for new critical and research directions.

Charles Taylor's article "The Politics of Recognition" traces the complex genealogy of ideas around identity, recognition, the politics of nationalism and ideals of self-realization which colour the temper of our times. He speaks of "the massive subjective turn of modern culture" (100) which should be added to the discursive, linguistic turn outlined above. His account of authenticity and the drive toward self-fulfilment as an individual and as a national ideal creates a new view of colonialism and anti-colonialism: the idea of rolling back colonialism (if this could be done) becomes another variant of a nationalist ideal. A more helpful category than authenticity might be dialogue, which creates the process of self-definition

and which recognizes, as Nourbese Philip does, that works of art are also acts of communication.

Taylor's finely tuned argument traces the origins and development of two main types of politics: a politics of universalism, emphasizing equal dignity and entitlements, and a politics of difference, where we are asked to recognize uniqueness and difference. These two political modes are often in conflict in Canada, and elsewhere. What comes up in my own mind, as an academic and writer employed on a part-time, short-term basis within the academy over nine years of cultural adaptation, is that the rhetoric of equal rights and entitlements, now the cornerstone of much critical rhetoric in the academy, especially postcolonial theory, is belied by the actual institutional hierarchy in place, where there are first-class and second-class academics, with very unequal rewards, payment, security and benefits. This is another part of the doublespeak and complacency of universities generated on a Euro-Canadian model of dominance and class hierarchy. Those who enter the hierarchy permanently, whether middle-class, minority, or indigenous voices, are often bought off like any other elite, and cease to question the system, if they ever did. This fundamental inequity goes unremarked and unchanged, adding to the list of the elided economic dimensions of culture, and are still unaddressed by those very academics, in both the Verduyn collection and the *New Contexts* anthology, who make social justice their *cri de coeur*. We need not only the reciprocity which Taylor argues for to underpin equality, we need a change of those hierarchical institutional structures of hiring which flagrantly contradict a rhetoric of social justice and equity.

Taylor points out how rights liberalism is related to diversity in Canada in various contexts: ethical, legal, philosophical and historical. Views of human agency are crucial, and these are debated less when we view culture as a matter of "an evolving differential system of linguistic signs," which is how Frank Davey views constructions of Canadian nationalism in his *Post-National Arguments: The Politics of the Anglophone-Canadian Novel since 1967* (1993). Taking Free Trade debates as a launching pad, he tracks the idealizing notions which permeate art, thought and conceptions of the nation, and which conceal the political nature of interventions. Though his critiques of fictions are extremely illuminating in terms of cultural politics, he does not extend his critique to the academic institutional politics and structures that underpin his own work. Thus a huge material dimension of cultural activity is silently elided.

New Contexts contains a rich mixture of creative essays, critical placements, historical investigations of genres such as the short story and theatrical activity in Canada, and outlines of contemporary theory. Healthy signs are the much fuller historical and critical delineation and separation of conceptions of identity, nation and culture, and their grounding, quite often, in materialist analysis. Ajay Heble, one of the editors, makes the dissolution of naturalized categories of truth and objectivity, and thus of assumed

nations, a main argument. He asks: "what does a radical commitment to social justice and forms of democratization mean in Canadian society?" (80). His answer is to relate politically informed criticism to the public sphere, to Ontario problems in labour laws, welfare programs and employment equity legislation. He argues against the corporatization of knowledge but fails to recognize the extent to which universities are already corporatized in terms of their funding, governing structures and research money.

These arguments rely on a notion of universities as disinterested, publicly funded spheres of academic freedom, which they patently are not, given the proliferation of academic-corporate partnerships. Heble uses musical practices of counterpoint to encourage cultural listening and cross-cultural contact. He argues that the Canadian mosaic image has to be translated into corresponding theories of literary hybridity. Notions of textual hybridity as politically emancipatory can privilege fictional techniques of surrealism and fragmentation over realism, as Laura Moss has recently argued in an essay on Rohinton Mistry in *Postcolonizing the Commonwealth* (2000). The theoretical model of hybridity can elide the hierarchies which are in place in many institutions, especially the academy. Are there exact parallels between literary hybridity and the difficult politics of affirmative action, for instance? The strength of Heble's essay lies in his full engagement with the problems of postmodernism in a current Canadian context, troubled by both national and local struggles for forms of equity.

Donna Palmateer Pennee's essay offers an overview of the *New Contexts* anthology, and an excellent survey of recent theoretical developments. She remarks the shift within the term "representation" from the idea of mimesis to the question of representing the different constitutencies or voices within Canada. Notions of space and identity have been re-articulated since Frye's conceptualization of dominant Canadian myths and patterns of settlement as significant determinants. Pennee also speaks of the need to exit from an inherited oppressor/victim binary structure. The questions are: whether the theoretical schools of which she offers thumbnail sketches have themselves contributed to the disappearance of a sense of the historical and material causes of and constraints upon creative and critical production, in which ways they conflict with one another, and how they are to be applied in cultural analysis which does more justice to those previously marginalized or excluded voices and presences? Some of these questions are addressed in the case study of practical pedagogy offered by Arun Mukherjee, where she draws on one of Margaret Laurence's African stories, and highlights the code of universality in which students have been trained to speak of literature. McCluhan is one of the main thinkers who have persuaded us that society and media are inter-related, shifting constructions, not universal and timeless.

Stephen Slemon's essay attempts to reclaim "that neither/nor territory of white settler-colonial writing which Alan Lawson has called the 'Second

World'" for postcolonial theory. Though his elaborate discussion of terminology around the concepts of postcolonialism and resistance is complex, the problem he identifies as a starting-point, the excision of the Second World terrains—Canada, Australia, South Africa—seems to me not to be a real problem. The European majorities in these Second World domains (which are not homogeneous) have had only too much cultural continuity with metropolitan centres, and that is the form of cultural continuity which needs to be examined in Canada. Slemon's argument does not advance an understanding of the ways in which countries like Canada have been complicit in their theorizing with a mainstream academy, at first in Europe and latterly in the United States. Nor does his argument advance an understanding of the ways in which First Nations writing or cultural production have been marginalized, which seems an essential ingredient of postcolonial analysis in Canada. The main difficulty lies not in pinpointing resistance in Second World texts and identifying the range of anti-colonialist gestures in imperial writing itself, which is Slemon's argument, but in assessing the ways in which colonial and imperial gestures and hierarchies linger on, everywhere, and go unquestioned. Moreover, Slemon's approach is geared to theories of resistance in textuality only, and in theoretical vocabulary. There are no material, economic or public aspects to his discussion.

Thomas King's "Godzilla versus Post-Colonial" offers inductive descriptive terms for indigenous narratives from a writerly and academic perspective. He uses the descriptors "tribal, interfusional, polemical, and associational" for Native writing (243). He prefers terms which identify points on a cultural and literary continuum because they "do not depend on anomalies such as the arrival of Europeans in North America or the advent of non-Native literature in this hemisphere, what Marie Baker likes to call 'settler litter'" (243). This rather surprising piece of invective indicates the nature and degree of critical antagonisms based on cultural and racial differences in Canada, but it also proves a need to invert the terms on which postcolonial theorizing is based, and to make Native experience and belief systems primary and continuous. The danger is that the damages and silencings which were real effects of colonialism go unremarked. The critical terms King chooses "avoid a nationalistic centre, and they do not depend on the arrival of the Europeans for their *raison d'être*" (248). But was the arrival of the Europeans an anomaly, or part of an interlocking system of burgeoning nationalisms become imperial powers which have left their mark almost everywhere, including the language in which King writes?

Coming from a country where democracy was achieved very late, in the nineties, and where a colonial system was compounded by racism and multiple forms of labour control and legislation, I was most interested in the *New Context* essays which attempted a political analysis of forms of nation and state in Canada and their effects on cultural production. As Cynthia

Sugars argues, "it is a mistake to identify a province with a nation, just as one cannot always identify a nation with a state. That ethnic and cultural groups in Canada are not distributed in clearly definable areas—hence obviating the possibility of cultural and linguistic homogeneity necessary to the traditional constitution of nationhood—renders it difficult to establish national identities even within Canada, as, for example, with Quebec" (276). Perhaps Canadian geography rendered McCluhan's theoretical construct of a "global village" necessary as well as illuminating. The relationship between the actualities of historical spatiality and forms of theoretical enquiry in Canada has now become a central question. Sugars quotes Ramsay Cook's differentiation between nationalism and nationhood. In the liberal conception, "nations were more properly seen as political rather than cultural entities that deserved the allegiance of citizens not through claims of cultural uniqueness, but rather because they protected cultural pluralism" (Cook, xvii).

The rich debates which are joined in *New Contexts* have been expanded in W.H. New's *Borderlands: How We Talk about Canada*. New shifts the debates beyond customary domains in delineating both political and cultural dimensions of the many borders within and around Canada. He sees borders as sites of cultural tension. He traces some of the history of ideas of cultural sovereignty in Canada, and outlines legal and jurisdictional debates. He also takes the reality of "Canadian culture" as a given. He adds to the debate on irony by marking its political function as resistance to cultural takeover (49). He also traces the relationships between forces of commerce, reports such as the Massey Commission, and cultural institutions. He argues that the so-called "national" character is unstable and has been used to different ideological purposes, and relates this discussion to an analysis of David Guterson's *Snow Falling on Cedars* and Jack Hodgins' *The Macken Charm*. He concludes that "we have to insist on a system of public education that encourages, rather than impedes, an imaginative understanding of the way Canadians live. We have to think of Canadian Studies as the *text* of our lives, not as the *subset of the real text*." This is a future oriented analysis which continues to embrace dialogue in the process of cultural self-definition in Canada.

Within Postcolonial Studies we are encouraged to think of Canadian literature as existing across borders, and encompassing migrants, and to seek explanatory paradigms which account for national differences and similarities among countries formerly the colonies of Great Britain and whose contemporary literatures are primarily written in English. In Rowland Smith's new anthology, *Postcolonizing the Commonwealth: Studies in Literature and Culture*, Edward Baugh of the West Indies and Jacqueline Bardolph of France discuss the ways in which Postcolonial Studies has indigenized the study of literature in English in Jamaica and generally energized and legitimated the field of comparative and national literary study in the ex-Commonwealth. Despite Rowland Smith's

introductory emphasis on shared ideas and themes in the essays collected, they are also about difficult differences: national, cultural, linguistic, political and feminist differences. The strength of Postcolonial Studies lies in this tension between acknowledging a basis for comparison while refusing to paper over differences arising from the forceful impact of imperialism and the effects of colonialism on both settlers and indigenes.

The comparative themes which emerge strongly in this collection are struggles over land, cultural hybridity or metissage, debates over genres such as Magic Realism in new Afrikaner writing in South Africa and Latin America, realism in the work of Rohinton Mistry and Lauretta Ngcobo, the reinvention of the Gothic in Rushdie's *Shame* to comment on politics in Pakistan, fractures in feminist positions within Iranian political resistance and global feminism, and the gender divisions and roles of settler writing in the mid-nineteenth century. Many comparative research possibilities become evident here: between the settler journals of Susanna Moodie and Natal settler women; the land policies of Australia and current struggles over land in Zimbabwe and by First Nations in Canada; Magic Realism as a prophetic genre for Afrikaners facing marginality in the new South Africa and its different applications in Latin America or in the migrant writers of the diaspora; comparative studies of language and genre mentioned by Jacqueline Bardolph in relation to African literature and discussed by Mac Fenwick as a tension between the local and the global, a cross-cultural exchange which is always in process.

What is currently comparatively new in Postcolonial Studies is a tendency to turn the lens back on settler writing and ideology itself with less of the politics of blame and more of the critical compassion which comes from long-range views and also the settlement of large political questions, such as the democratic contract in South Africa and more progressive land policies in Australia and Canada. Afrikaner literature can be analysed with less recrimination and guilt, for instance. Cowboy songs can be seen as the expression of lived hardships, too, as Edward Chamberlin does. The mountaineers of Everest are part of an imperial ideology of ascent in Stephen Slemon's exhaustive and ironic reading. At the same time, there are insistent political and social questions within local contexts that are clearly not being sufficiently addressed or being subjected to cultural constructions that blur the lived realities of First Nations women, as in Cheryl Suzack's essay on Foetal Alcohol Syndrome and the stigmatization of Native Canadian and American women. The voices of anti-imperialist Iranian feminists are also, according to Nima Naghibi, elided by dominant discourses of international feminism and anti-imperialist patriachy. My own essay on South African writer Lauretta Ngcobo is intended to convey the belatedness of the portraiture of rural African women's lives and struggles in South Africa, and the ways in which South Africa has not been imagined as part of continental Africa. Canadian literature in English now forms part of an international, critical and creative dialogue about the ways

in which political power continues to play itself out in literary and social texts, and the ways in which acts of imagination, in their unruliness and diversity, seem to continue to set us free.

Postcolonial Studies takes up these topics in order to examine the difficult and unequal relations which exist in post-colonies, and, as all of these essays suggest, to make literary criticism illuminate areas and actions of social responsibility which may flow from these readings and writings.

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Publisher/Éditeur: Chandra Mohan (University of Delhi).

The Journal of American and Canadian Studies. Yearly/Annuel. The Journal of American and Canadian Studies. Sophia University, Institute of American and Canadian Studies, 7-1 Kioicho, Chiyoda-ku, Tokyo 102, Japan.
Editor/Rédacteur: Kazuyuki Matsuo (Sophia University).

Journal of Canadian Studies/Revue d'études canadiennes. Quarterly/ Trimestriel. $Can35; $Can15 (Student/Étudiant); $Can55 (Institutions). Plus 7% GST in Canada/TPS de 7 p. 100 en sus au Canada. Outside Canada, payment is required in American dollars/À l'extérieur du Canada, les frais sont en dollars américains. Journal of Canadian Studies, Trent University, P.O. Box 4800, Peterborough, Ontario, K9J 7B8.
Editor/Directeur: Robert M. Campbell (Trent University).

The Korean Journal of Canadian Studies. Biannual/Semestriel. Articles are published in Korean/Publication de langue coréenne. Institute of East and West Studies, Yonsei University, Room 528, Seoul 120-749, Korea.
Editor/Rédacteur: Myung Soon Shin (Yonsei University).

Québec Studies. Biannual/Semestriel. US$45; US$35 (Student/ Étudiants); US$50 (Libraries/Bibliothèques). Outside the U.S., please add US$6/ Abonné à l'extérieur des É.-U., prière d'ajouter 6$US. Professor Jane Moss, French Department, Colby College, Waterville, ME 04901 USA.
Editor/Rédactrice: Jane Moss (Colby College).

Revista Española de Estudios Canadienses. Yearly/Annuel. 4.000 ptas; 8.000 ptas (Institutions). Asociacion española de estudios canadienses, Espronceda, 40, 28003, Madrid, Spain.
Editor/Rédacteur: Kathleen Firth (Universidad de Barcelona).

Revista Mexicana de Estudios Canadienses. Biannual/Semestriel. 70$. Asociación Mexicana de Estudios Canadienses. RMEC, Coordinación de Relaciones Internacionales, Facultad de Ciencias Políticas y Sociales, Ciudad Universitaria, UNAM, C.P. 04500, México.
Directora: María Cristina Rosas (Universidad Nacional Autónoma de México).

Revista Venezolana de Estudios Canadienses. Biannual/Semestriel. 500 Bs. Asociacion Venezolana de Estudios Canadienses. Subscriptions/ Abonnements: Embajada de Canadá, Torre Europa, Piso 7. Ave. Francisco de Miranda. Apartado 63.302. Caracas 1060, Venezuela.
Editor/Rédacteur: Vilma E. Petrash (Universidad Central de Venezuela).

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Rédacteur en chef/Editor-in-Chief: Robert Schwartzwald (University of Massachusetts Amherst).

Rivista di Studi Canadesi. Annual/Annuel. 30.000 lire; Foreign/Étranger, 40.000 lire. Rivista di Studi Canadesi, Grafischena, n. 13147723, Viale Stazione 177-72015 Fasano di Puglia, (Br-Italia).
Director/Directeur: Giovanni Dotoli (Università di Bari).

Zeitschrift für Kanada Studien. Biannual/Semestriel. DM25. Zeitschrift für Kanada Studien, Pädagogische Hochschule, Kunzenweg 21, D-79199 Freiburg, Germany.
Editors/Rédacteurs: Udo Kempf (Universität Freiburg), Reingard Nischik (Universität Konstanz).

INTERNATIONAL JOURNAL OF CANADIAN STUDIES

Call for Papers

Issue Number 24 (Fall 2001)

Territory(ies)

Territory is one of the enduring themes of the Canadian experience. The International Journal of Canadian Studies is interested in submissions that explore questions of the conceptualization, exploration, mapping, and codification of space in philosophy, the arts, literature, cinema, history, communication, and the social sciences. Studies of territoriality include the ways in which subcultural groups and/or communities identify with, use and struggle over space, both in urban and rural settings; discussions of juridical territories (including new territories such as Nunavut); critical approaches to the study of borders and borderlands, and to traditional notions of hinterland/periphery/centre; relationships between imagined and material territory(ies), including the economic, social and cultural implications of municipal mergers and policies of regionalization. The IJCS will also welcome submissions related to other aspects of this theme. Please forward paper and abstract (100 words) before **March 15, 2001** to the ***IJCS***, **75 Albert, S-908, Ottawa, Ontario, Canada K1P 5E7. Tel.: (613) 789-7834; fax: (613) 789-7830; e-mail: gleclair@iccs-ciec.ca**.

REVUE INTERNATIONALE D'ÉTUDES CANADIENNES

Soumission de texte

Numéro 24 (Automne 2001)

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INTERNATIONAL JOURNAL OF CANADIAN STUDIES

Call for Open Topic Articles

The Editorial Board of the IJCS has decided to broaden the format of the Journal. While each future issue of the IJCS will include a set of articles addressing a given theme, as in the past, it will also include several articles that do not do so. Beyond heightening the general interest of each issue, this change should also facilitate participation in the Journal by the international community of Canadianists.

Accordingly, the Editorial Board welcomes manuscripts on any topic in the study of Canada. As in the past, all submissions must undergo peer review. Final decisions regarding publication are made by the Editorial Board. Often, accepted articles need to undergo some revision. The IJCS undertakes that upon receiving a satisfactorily revised version of a submission that it has accepted for publication, it will make every effort to ensure that the article appears in the next regular issue of the Journal.

Please forward paper and abstract (one hundred words) to the IJCS at the following address: **325 Dalhousie, S-800, Ottawa, Ontario K1N 7G2. Fax: (613) 789-7830; Internet: gleclair@iccs-ciec.ca**.

REVUE INTERNATIONALE D'ÉTUDES CANADIENNES

Soumission d'articles hors-thèmes

La Revue internationale d'études canadiennes a adopté une politique visant à modifier quelque peu son format. En effet, la Revue continuera à offrir une série d'articles portant sur un thème retenu, mais dorénavant elle publiera aussi des articles hors-thèmes.

Le Comité de rédaction examinera donc toute soumission qui porte sur un sujet relié aux études canadiennes indépendamment du thème retenu. Bien entendu comme toute soumission, celle-ci fera l'objet d'une évaluation par pairs. La décision finale concernant la publication d'un texte est rendue par le Comité de rédaction. Une décision d'accepter de publier un texte est souvent accompagnée d'une demande de révision. Une fois qu'elle aura reçu une version révisée qu'elle jugera acceptable, la Revue essaiera, dans la mesure du possible, d'inclure cet article dans le numéro suivant la date d'acceptation finale.

S.v.p. faire parvenir votre texte et un résumé (100 mots maximum) au Secrétariat de la RIÉC : **325, rue Dalhousie, S-800, Ottawa, Canada, K1N 7G2. Téléc. : (613) 789-7830; Internet: gleclair@iccs-ciec.ca**.