

The Ties that Bind

**Accommodating Diversity
in Canada and the European Union**

**John Erik Fossum,
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The Ties that Bind 'Post-national' Polities Together

An Introduction

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What are the elements that keep complex, “post-national” political entities together? This question has captured broad academic attention over the last two decades. However, most efforts to develop and apply normative theories have been based on single-case studies. The aim of the present collection is to contribute to a more systematic comparative assessment of the challenge of binding increasingly diverse and complex societies. It weaves normative and empirical debates regarding two cases which have, up to now, seen little cross-fertilisation: the European Union (EU) and Canada, polities that may be hard to define, but that are definitely not classical nation-states.

The contemporary state faces a number of unprecedented challenges. Many cut across national boundaries: environmental degradation, crime and terrorism, the food and the energy crisis. Economic globalisation, tax evasion and capital-flight weaken the capacity of individual states to fashion adequate responses. At the same time, “nations within nations” (or “nations without states”) call for greater recognition, both in symbolic and more concrete political terms, and new patterns of immigration and emigration profoundly alter the socio-cultural make-up of national populations. As a result, states have to contend with greater degrees, and more complex, forms of diversity, a phenomenon which is compounded by the revolution in communications technologies, which accelerates the flow of ideas and lifestyles.

These developments call into question a number of engrained conceptual associations. First, the theoretical fit between “state” and “nation”, which has dominated political philosophy for several centuries, particularly in continental Europe, is clearly out of synch with contemporary reality.

Second, the conceptual and empirical link between democracy and the “nation-state” is facing profound challenges today. The nation-state form of democracy is based in a set of rules that regulate access to the territory controlled by the state; determine membership; and spell out the rules for participation in the socio-political sphere of activity. These conditions are increasingly challenged as political power has moved both “above” and “below” the contours of the nation-state. Concomitantly, the historical (and theoretical) fit between “power to and by the people” and the “nation-state” has become greatly disputed.

The upshot is that most countries face heightened uncertainty and contestation over the character of the *demos* (understood as the democratic people), the question of membership, the issue of identity, and the appropriate range of individual and collective rights and duties. Constitutive traits of both democracy and of citizenship are thus profoundly challenged and/or transformed. James Bohman has recently argued that “(i)n the age of globalization and significant authority beyond the nation state ... democracy needs to be rethought in the plural, as the rule of *dêmoi*” (Bohman 2007: vii).

A major contemporary challenge is thus to ground cohesion and democracy beyond the confines of the nation-state, which has served as the “natural” container for political theory for 400 years. What are the ties that bind people together in a world where they can no longer rely on the safety of established national identifications (if they ever could)? How can democratic states contend with the many new or reconfigured modes of difference and diversity that confront them?

History holds innumerable examples of states and polities that have ‘managed’ difference and diversity through violence and oppression. This book focuses on contemporary transformations that have a democratic objective, take place through democratic means, or both.¹ This important proviso significantly limits the number of relevant cases. Indeed, whereas the challenges associated with globalisation are wide-reaching, only parts of the world handle these challenges in a fashion that could be qualified as democratic. The EU and Canada represent two examples of polities that seek to do so, while they both in their respective ways defy the classical nation-state paradigm.

¹ This book is confined to the contemporary efforts at addressing difference and diversity. This is not to deny, of course, that many of the claims for protection of diversity have their roots in a past rife with historical injustice.

Why Compare Canada and the EU?

This book is the product of the updated and revised contributions to a conference entitled *The Ties that Bind: Accommodating Diversity in the European Union and Canada*, which was co-organised by the European Network for Canadian Studies and the Centre for Canadian Studies at the Université libre de Bruxelles, in December 2005. One of the principal objectives of both the Conference and of this volume is to underline the merits of comparing and contrasting the EU with Canada.

Theoretical and comparative scholarship on Europe and the EU has shown persistent interest in the American experiment. Until recently, Canada seems to have largely escaped the European radar.² It made sense to consider the experience of the US federation for several reasons. The US federal system is made up of fifty units and has an overall population comparable to Europe; and in both European and the US, integration was predominantly driven by economic factors. Nevertheless, we should not ignore the political attraction for Europeans of casting their sights on the US. By setting up the US as the natural comparator, the EU signals its objective to somehow match US might and global prominence.

Moreover, comparison with the US faces powerful limits, especially when attention focuses on our concern with diversity. The US, EU and Canada are all ethnically diverse societies, largely grounded on the experience of immigration. However, by contrast with Canada and the EU, the US has an entrenched national identity and ethos. For their part, Canada and the EU share the common experience of overlaying this “new diversity” on top of deeper, “older” diversities of a “sub” or “pluri” national nature. This experience of overlapping diversity affects how the EU and Canada respond to the challenges of “new” forms of diversity.

As a result, American experience does not provide telling stories about the challenges of multi-nationalism and linguistic pluralism. Here comparisons with Canada have more to offer. Whereas there is an undeniable difference in scale between Canada and the EU, the two polities are in the same league on these dimensions. It is the US that is the outlier.

The EU was initially set up as an attempt to overcome the aggressive nationalism that had such devastating effects in the first half of the 20th century in Europe. The EU is uniquely experimental: it is neither a state, nor is it a nation. Yet it embraces democratic principles, which are entrenched in its legal-institutional structure (however deficient this

² For recent exceptions, see Crowley 2004; Fossum 2005, 2007; Thérêt 2002.

may be). The nature of the EU is still highly contested: it has shaped Western – and increasingly central – Europe into a complex mixture of supranational, transnational and international elements. It is without a doubt the institutionally and culturally most diverse political entity in today's world.

For its part, Canada is a state, but it is not a single nation. It has been described as a failed nation-state, and as a multinational and poly-ethnic federation. Some analysts, including some contributors to this book, see it as a “marriage of convenience” or a “community of comfort” (see chapter by Gaudreault-DesBiens). Others see democratic potentials in terms of a more inclusive form of multicultural or multinational democracy (Kymlicka, 1995, 1998; Norman, 2006), or even as a possible case of a post-national democracy (Fossum, 2007). Or it might be an early sign of things to come in the post-nation-state era (which would have some people worried, others reassured).

While the EU, unlike Canada, is not a federation, both are “federal societies” seeking some form of equilibrium between unity and diversity. And as such, both are in search of ties that bind (to ensure cohesion) on the one hand, and wary of ties that bind (and threaten autonomy and cultural distinctiveness), on the other.

Both Canada and the EU have, for decades, been involved in broad-based constitutional discussions and (several failed) constitutional reforms. The processes of constitution-making and of constitutional amendment have traditionally been elite-led, but both polities have experimented with more open and inclusive processes (Fossum 2004, 2005, 2007). While linguistic diversity is much greater in the EU, Canada also knows the limits of “nation-building” in the absence of a single language. Furthermore, neither entity is entirely “stabilised”: the prospect of Québec secession has not receded, while successive enlargements have raised doubts about the capacity to “deepen” the European integration project.

Some think of the EU as a case of coming-together, whereas Canada would be a case of holding-together (Stepan, 1999). This distinction is, however, too simplistic. Canada is a prime example both of federalism of integration and of dissociation, while the EU combines obvious efforts for bringing-together, while seeking to hold-together existing structures and communities. For our purposes, more significant than the process which led to the formation or consolidation of those polities, are the actual ties that seek to bind their various parts, given their profound internal diversities.

A final aspect of convergence between the EU and Canada which warrants attention lies in their relationship to social solidarity. While,

almost by definition, there is no European-wide “welfare state”, the EU has so far not profoundly challenged the existing welfare regimes of its member-states. While the degree of Canada-wide redistribution is important, there are, in fact, thirteen “welfare states” in the country. Clearly in neither case can social welfare be equated with the “nation-state”. This also counters the dogmatic association between welfare and the “nation-state”. Moreover, in both Canada and the EU, discourse regarding social welfare has been instrumental in (and been instrumentalised by) identity politics (Poirier, 2006; Béland and Lecours, 2008). In their love-hate relationship with the United States, both polities have held up their commitment to social solidarity as distinctive traits of their political cultures. The impact of ever increasing socio-cultural diversity on redistribution is thus a source of concern in both cases.

Presentation of the Volume

The main purpose of this book is to critically examine the challenges and opportunities associated with difference and diversity in the European Union and Canada. What are the ties that bind such complex entities? What are the normative implications of the various solutions envisaged to deal with complex diversity in a non-nation-state context? In dealing with these issues, the contributors tackle the most important sources of politically salient difference, including race, ethnicity, language, and religion. They also address potential solutions, that is, ways of accommodating or handling the problems that these forms of difference and diversity represent.

The volume offers a broad range of stances on the challenges of accommodating difference and diversity in complex polities. The focus is largely normative, as opposed to institutional. In other words, the contributions are not primarily concerned with the “techniques” of accommodation – the practical aspects of living together – but with underlying rationale. Yet, because the book brings forth a dialogue that expands across different political realities, the contributions also shed light on grounded experiences. The contributions are cast in the spirit of diversity: it offers a sense of the breadth of positions. Understanding this breadth is important to a deeper appreciation of the problems associated with difference (understood as self-conscious and programmatic assertions of difference) and diversity (the fact of social, ethnic, cultural, racial, linguistic, religious, national – and other – variation).

The chapters are divided into two main sections. A first group of texts deals with the “diagnostic of diversity”. Their aim is to take stock of what difference and diversity entail in the EU and in Canada; to assess the challenges which are raised; as well as focus on the means

and limits of accommodation. The second group of contributions is principally concerned with normative and theoretical responses to the diagnostic; “the handling of diversity”. This being said, as is often the case, the border between diagnosis, treatment and prognosis is porous. On the one hand, mapping diversity in these two societies requires some form of normative framework, lest we fall prey to a merely descriptive exercise. On the other hand, the normative approaches included in this book are clearly informed by context. The transatlantic multilogues are enriched by the resonances between the two main sections of the book.

Part I: The Multi-Faceted Character of Diversity

The first part of the volume is organised around the challenges associated with the increasingly complex make-up of the EU and of Canada, due in part to the phenomenon of immigration and the desire (or at least, the need) to take into account long-term residents who have historically been ignored or marginalized. Themes address the entry/exit dimension of citizenship (including the political rights of immigrants and emigrants, as well as the immigration-induced tensions around religious accommodation), as well as those who suffered from “internal colonization” (aboriginal peoples). The challenge of managing a complex polity given linguistic diversity is also broached.

Immigration

The book opens with an important contribution by Lord Professor Bhikhu Parekh who focuses on the specific challenges posed by immigration. This is justified, as immigrants are: “the archetypal strangers to whom the society does not feel the same degree of commitment as it does to its own minorities and who highlight the dilemmas and tensions of a multicultural society more than they do”.

Parekh discusses the challenges posed by immigration mainly from the theoretical perspective of recognition, although this perspective is not explicitly set out in the chapter. This useful approach enables us to conceive of the problems from the actors’ perspective. Drawing from his immense experience, the author provides a carefully crafted account of the problems facing immigrants when settling in a new country. However, this analysis is not limited to the problems facing immigrants: it offers a balanced account that takes in the concerns facing both immigrants and receiving societies.

Parekh critically assesses the main incorporation strategies that democratic societies have relied on – assimilation and integration. He spells out their respective strengths and weaknesses, before setting out a number of recommendations. In his view, a culturally diverse or multi-

cultural society is one in which “members subscribe to and live by different though overlapping systems of meaning and significance”. The main challenge is to ensure that this overlapping implies a measure of convergence which does not result in subjugation or suppression, but rather in mutual respect and recognition.

Immigration-induced Religious Accommodation

Immigration is not limited to the movement of people. Immigrants bring with them ideas and ways of handling issues that may be considered unfamiliar, run up against cherished traditions, or apparently challenge fundamental values or normative principles in the receiving country. This is most apparent in the area of religion, one of the most fundamental – and contentious – of human concerns.

In her provocative contribution, Melissa Williams addresses the status of multiculturalism in an international climate that is marked more by the politics of fear than by generous multicultural accommodation. Williams’ focus is on Canada, a country that has been held up as a beacon of cultural and religious tolerance. She analyses the tension between fear and accommodation by looking at the reaction to claims made by Muslim communities in a post 9/11 environment.

“Political islam” is often considered a threat to peace and stability, as well as to individual rights and freedoms. Williams canvasses the efforts by the Islamic Institute of Civil Justice in the Greater Toronto area to establish, in 2003, a “Sharia Court” to settle family and inheritance disputes. Its decisions would have been binding under Canadian law. This proposal sparked fears of political destabilisation, despite the fact that such recognition of religious-based decisions by the legal system was already in place for other religions (Christian and Jewish). The fear expressed with regards to this new project was that islam would actually start to colonise the “Canadian” legal system. The proposed measure also generated a strong feminist mobilisation, as it was seen by many as a paternalistic means of undermining the rights of Muslim women.

Through this case study, the author addresses an issue of wider normative-theoretical, as well as of political, importance: “What is the relationship between the claims of justice and the claims of peace in judgments about toleration?” These concerns are frequently seen to inhabit separate worlds in the sense that justice evokes moral concerns, whereas peace evokes merely prudential ones.

Williams takes as her point of departure that in normative terms, claims to justice have normative priority over claims to peace and stability. But she notes that in practice, peace and stability considera-

tions enter into our considerations about justice. They are not simply bracketed off. Williams argues that

we should pay closer attention to the role that concerns about peace and stability play in our judgments about minority practices. If we do so, [...] we will find that our prejudgments about the nature of a group and whether it poses a threat to liberal principles or to political stability have an independent force in shaping our judgments about whether to tolerate their presence or their practices. Toleration may be stretched or truncated depending on our sympathies or fears toward particular groups.

In addressing the practical bounds of toleration, the author proposes a particular approach that seeks to combine the concerns of justice and peace. What she labels “presumptive accommodation” is meant to give “toleration deliberative priority in our moral reasoning”. It entails the clarification of what is required to accommodate the claims of a given group (peace). The answer is then subjected to the test of autonomy and equality (justice). Williams argues that in the case under study, there are ways in which this balancing act can be achieved. The chapter thus ends with a set of concrete suggestions on how profound religious diversity can be reasonably accommodated within a democratic setting.

In his timely chapter, Leslie Seidle traces developments that took place following the Brussels Conference, namely the “Consultation Commission on Accommodation Practices Related to Cultural Differences”. It was established by the Québec government in early 2007, following a number of incidents and public and media reactions to certain “reasonable accommodation” measures for religious groups. The Commission was co-chaired by philosopher Charles Taylor and historian Gérard Bouchard. As editors, we are very pleased to include this account of a concrete and contemporary effort at stock-taking and assessment of political accommodation of diversity.

“Reasonable accommodation” is a legal concept that describes the obligation for a public or private authority (e.g. a school or an employer) to adjust its structures or practices to further substantive equality. As Seidle notes, over the last few years, the term went from a technical expression to a “catch-all expression that many Quebecers came to use as a synonym for virtually any diversity-based adjustment”. This raises, once more, the interesting question of the role of law in identity politics, addressed, in a different context, by Gaudreault-DesBiens in his contribution to this volume.

The mandate of the Bouchard-Taylor Commission was to take stock of accommodation practices in Québec, compare them with those of other societies, consult widely on the topic, and formulate recommendations to the government, so as to ensure that accommodation conforms

with Québec's fundamental values as a pluralistic, democratic and egalitarian society. Taking a broad interpretation of their mission, the co-chairs set out to reflect more broadly on Québec's secularism, its preference for interculturalism (as opposed to multiculturalism), relations with cultural communities and issues related to Québec identity.

The very appointment of such a Commission testifies to the need for public authorities to engage with the public on several of the issues that this book has sought to address. But that is only part of the story. Precisely *how* to engage with the public is of crucial importance when dealing with such contentious issues as religion, multiculturalism, and language. The 'facts' may be located within quite disparate world-views. The upshot is that any commission of inquiry has to contain a strong consultative component.

The Bouchard-Taylor consultation took two main forms. First, nearly 3,500 people participated in 22 'citizens' forums' organised in 17 centres throughout Québec. In that context, individuals were permitted to express their positions for two minutes, with very few interventions by MM. Bouchard and Taylor, who were largely in a listening mode. Secondly, formal hearings were also held, which required prospective witnesses to file a written submission beforehand (573 briefs were actually filed). Throughout the entire process, the forums and hearings were broadcast on television.

While saluting the extent and the audacity of the consultative process, Seidle points out that it "nevertheless caused some strain on Québec's social fabric". The author pinpoints a number of weaknesses, notably with regards to the most audacious part of the process, the citizens' forums. For Seidle,

the forums were hampered by a format that did not allow participants to exchange with each other and the co-chairs. Instead, unfounded and even racist claims went largely unchallenged. Moreover, the commission provided very little information about Québec's religious communities and their practices, particularly those that had received considerable attention prior to its appointment. Additional such material might have contributed to better-informed interventions at the citizens' forums and in the media. In sum, the commission's consultation process was flawed.

Political systems are often ahead of political theory, precisely because many of the practitioners in complex democratic political systems understand the need to fashion adequate responses to critical outcries. In so doing, they sometimes forge new and innovative ways of engaging with the public on seemingly intractable matters. The Bouchard-Taylor Commission is best conceptualised as a form of institutionalised deliberation, not a decision-making body. Its main role is to engage with civil

society, foster structured debate and convey its findings to the formal political apparatus. It thus occupies space in-between Nancy Fraser's strong and weak publics.³

The Bouchard-Taylor Commission is but one example of how complex systems seek to grapple with difficult and enduring questions of accommodation. To understand the ties that bind complex entities together, we need to consider such arrangements as part of the wider repertoire of public mechanisms set up to forge peaceful co-existence through ongoing deliberative and public responsiveness. In that regard, it bears noting that the title page of the Commission's final report, titled *Building the Future: a Time for Reconciliation*, had the following tagline: "Dialogue Makes a Difference".⁴

Immigration – Emigration: The Entry/Exit Mismatch

Parekh's, Williams' and Seidle's chapters deal with challenges associated with immigration, i.e. the entry side of the citizenship and membership issue. But the opposite dimension – the exit side – clearly warrants attention. The challenges posed by emigrants is the particular and distinctive focus of Rainer Bauböck's rich contribution. The author introduces the notion of stakeholderhood to address the claims that individuals have to membership and rights in a world where immigration and emigration combine in a double (entry and exit) mismatch of citizenship status and territorial jurisdiction. Stakeholderhood

can be determined by asking whether an individual's long-term circumstances of life make her fundamental rights depend on protection provided by a particular polity, or by asking whether these circumstances link her own well-being to a particular polity in such a way that she will be seen as sharing with the other members an interest in the common good of that polity.

The notion of stakeholderhood is intended to help resolve the problem of allocating rights and duties in a normatively defensible manner among three categories of people: citizen residents; non-citizen residents; and non-resident citizens who live permanently in another state. Bauböck argues that voting rights for non-citizen residents can be justified, particularly, at the local level. The notion of stakeholderhood also provides a normative justification to uphold, under certain conditions, their electoral rights in their country of origin. Bauböck's scheme thus opens

³ Strong publics refers to institutionalised deliberations "whose discourse encompasses both opinion formation and decision making...", whereas weak refers to public spheres "whose deliberative practice consists exclusively in opinion formation and does not also encompass decision making." (Fraser 1992: 134)

⁴ The report can be consulted at: <http://www.accommodements.qc.ca/documentation/rapports/rapport-final-abrege-en.pdf>.

the door beyond that of state-based citizenship and towards an alternative, cosmopolitan, notion of citizenship.

Aboriginal Peoples

In his stimulating chapter, Paul Chartrand uses the term “citizen minus” model to depict the non-aboriginal legislated classification of Aboriginals and of legislated deprivation of rights of citizenship, including the right to vote. Gradually abandoned in the 1950s and the 1960s, this model was replaced by a second model, the “citizen equal” one, a classic liberal response meant to treat aboriginal individuals as any other Canadian citizen. Chartrand argues that the search for equality carried within it the seeds of assimilation.

Concessions could be made in the form of affirmative action as a partial response to historic disadvantage suffered by aboriginal persons (not peoples). Yet, the legitimacy of affirmative action (“reverse discrimination” in European parlance), enshrined in article 15(2) of the Constitution Act of 1982, not only applies to aboriginal peoples, but to individuals or groups who have suffered disadvantage on the basis of race, national or ethnic origin, colour, religion, age or disability. Consequently, recourse to affirmative action (which is an option, never an obligation on the part of public authorities) is just another means of treating persons of aboriginal origins as any other Canadian.

An apparently more progressive and sensitive approach to the collective dimension of aboriginal reality and aspirations took the form of the “citizen plus” model developed over the last four decades (Cairns, 2000). It is grounded on a recognition that Aboriginals are not only members of historically disadvantaged groups, but are long-standing, distinct political communities whose members are entitled to equal citizenship with the rest of Canadians as well as to specific collective political powers and entitlements, which, however, fall short of self-determination. This third model admits of the collective dimension, which the “citizen equal” model does not. This being said, the “plus” is still to be determined essentially by Canadian institutions within which aboriginal participation has traditionally been marginal.

Chartrand argues that the “citizen plural” model is more consistent with Canada’s international obligations and with Canadian constitutional law, including historic and contemporary treaties concluded between aboriginal communities and Canadian authorities. The “citizenship plural” paradigm alters submission to the Canadian state. In Chartrand’s words: “[A]n Aboriginal people is self-governing, its ‘citizens’ have legal and political relations with two sovereign entities: their

people or nation, and the Canadian state. This concept of dual citizenship informs the concept of ‘citizens plural’”.

The citizenship plural paradigm rests on the recognition of self-determination and self-government. Chartrand does not provide a road-map as to how this major paradigm shift is to be translated into the Canadian federal framework. Such a road-map would arguably contradict the self-determination which constitutes its quintessential element. Nevertheless, the model, with its insistence on dual or multiple citizenship and self-governance within an existing (if necessarily reformed) state, remains informed by federal principles.

While cast in the Canadian context the four models of citizenship constitute a useful scheme for assessing different ways of accommodating diversity in other settings. It applies to Europe, with regard to aboriginal communities (Sami, for instance) but also with regard to a wide variety of ethno-cultural minorities. Denial and oppression (citizen minus), assimilation (citizen equal), protection of minorities (citizen equal with affirmative action and citizen plus) have at least to some extent been tested. Only in some decentralized multinational federal models (as advocated by Alain Gagnon in his chapter) does one find a version of the “citizen plural” model advocated here by Chartrand.

Language

The altered constellation of entry/exit associated with globalisation and transformation of the nation-state reinforces deep-seated concerns in modern polities. Language is an obvious case in point. For Benedict Anderson, the “fatality of human linguistic diversity”, was a central condition for modern nationalism in Europe. Anderson further notes that “[p]articular languages can die or be wiped out, but there was and is no possibility of humankind’s general linguistic unification” (1991: 43). Today, the rise of English as a near-global language may throw doubts on the sagacity of this remark. Its absorption into non-English linguistic environments is a major example of the way in which a globalising mode of communication enters national cultures and is seen to replace established vernaculars.

In another rousing chapter, Philippe van Parijs takes as his point of departure “the ever growing and irreversible dominance of English...” He then outlines several forms of injustice that this process is considered to generate. These include: (a) cooperative injustice, which refers to the unfair burdens confronting those who must learn a language, as opposed to those who have it as their mother tongue; (b) distributive injustice, which refers to the “inequality of opportunity deriving from unequally valuable native competences”; and (c) unequal dignity,

namely “a lack of respect towards these other languages and their native speakers, the ascription of an inferior, humiliating, insulting status to the people whose identities are closely tied to them”. For Van Parijs, it is this latter form of injustice that is the most elemental to those concerned. And it can only be rectified through some form of equal dignity.

The spread of English as a kind of global *lingua franca* can no doubt foster communicative efficiency within the complex European setting. In practice, however, this efficiency imperative constantly runs up against the EU’s commitment to linguistic diversity, with the recognition of 23 official EU languages. Van Parijs argues that neither English universality, nor the symbolic assertion of linguistic equality, works very well. Instead, he opts for a third solution, labelled linguistic territoriality. It “consists in allowing each [language] to be ‘queen’ in some part, large or small, of the EU’s territory, thereby granting a privilege, within the limits of that territory, to the identity associated with the language to which that territory has been ascribed”. To sustain this, a linguistic territoriality regime with legal rules regulating the choice of language within the areas of education and communication is necessary. These regimes may correspond with state borders but need not do so.

Part II: Managing Diversity: Grappling With Normative Responses

The contributions to the first section of this volume identified key challenges facing complex multicultural and multinational polities such as the EU and Canada. The focus of the second section shifts more directly to the “Ties that bind” such entities together.⁵ Both the EU and Canada rest on competing political and cultural projects; hence they cannot draw on the deep-seated sense of fraternity of nationalism (Anderson, 1991; Viroli, 1997). As such, they both lack precisely the form of bond that, for centuries, have been believed to provide the most assured sustenance for community. What, then, might keep these post-national systems together? Are these “ties” democratically viable?

Beyond the Conception of a Sovereign and Unified Nation

Are nation-state based conceptions of community and governing arrangements the most appropriate lenses for considering the ties that bind today’s complex and composite world? If not, the EU and Canada may

⁵ This is not to downplay the normative framework and prescriptive dimensions of many of the contributions in the first part of the chapter. As mentioned earlier, both sections clearly converse with one another.

not be simple aberrations from a given – national – norm, but may carry the germs of new and promising ways of co-existence.

In an incisive analysis, Geneviève Nootens notes that the conjunction between pluralism and new forms of integration – whether at the supra or infra state level – challenges the traditional reduction of the question of public legitimacy to the existence of a *demos*, as understood in the historical nation-state model. Instead, sovereignty must be redefined. It can no longer be related to a single community of citizens “projected” in a nation. Consequently, the socio-political and cultural conditions of democracy must be reassessed. For Nootens, these conditions represent a fundamental challenge to liberal democracy, which rests on the vision of a homogeneous people, as the holder of popular sovereignty. The real question then is not the existence of a *demos* (a question which in Nootens’s formula necessarily leads to a dead-end), but rather that of the legitimacy of the exercise of public authority in the context of social, cultural and national pluralism.

The phenomenon of the multination is another way of depicting cultural and national pluralism within one polity. Analysing Canada as a multi-national entity Alain-G. Gagnon usefully distinguishes between first degree and second degree diversity in Canada. The former basically corresponds to the multiethnic origins of Canadians. Until relatively recently accommodation of this form of diversity has not met with a great deal of political or principled opposition, even if – and perhaps because – the forms taken by this type of accommodation have not been particularly profound or institutionalised.

The second type of diversity applies to national groups within the Canadian state, which claim an official recognition of their national aspirations as well as political autonomy. Gagnon argues that political actors in “English Canada”, following the lead of Pierre Trudeau, have failed to take First Nations or Québec aspirations sufficiently seriously. Worse, they have designed a Canadian national project which disavows those very aspirations.

This political resistance offers a puzzling contrast to the significant impact that several Canadian political philosophers have had on liberal theory over the last twenty years. Authors such as Charles Taylor, Will Kymlicka or James Tully, have underlined the necessity of, and the means for, acknowledging both first and second degree diversity. For Gagnon, the conciliation between Taylor’s vision (which admits of “deep diversity”) and Trudeau’s conception (universalising, atomising, yet paradoxically incensing, Canadian nationalism) requires that political actors endorse a more sophisticated notion of diversity.

The concept of “multination”, half-way between the possible uniform nation-state and secession by internal national groups, has clearly made its way into political theory. The challenge is to have it translated into political programmes and actions. In other words, for Gagnon, the “Ties That Bind” Canadians outside Québec, aboriginal peoples and Quebeckers must be reconceptualised within a novel matrix, one which would take into account mutual recognition, reciprocity, the continuity of legal traditions, the pursuit of multiple conversations and the freely given consent by the various parties to revisited agreements”.

Constitutional Patriotism

The chapters by Nootens and Gagnon underline the need for transcending the inherited nation-state containers. They underline the need for conceptual categories that capture the more complex modes of co-existence that cohabit today’s world of interwoven and culturally heterogeneous communities. Gagnon’s solution might still be steeped in nationalism, but clearly one that is modified through the imperative of co-existence between national communities. In both the EU and Canada we find attempts to forge a sense of belonging, which is weaker than traditional nationalism, but nevertheless consolidated through symbolic and substantive means.

Consider the EU which has been effectively barred from appealing to or propagating anything resembling a form of pan-European patriotism. In its stead, analysts (and politicians) have promoted the notion of constitutional patriotism as a possible vehicle to foster the trust and allegiance that is required to sustain the European construct. Citizens, constitutional patriotism posits, are bound to each other not by traditional pre-political ties that nation-states have appealed to, but rather through subscription to democratic values and human rights (Habermas 1998, 2001).

This type of identity is conducive to respect for, and accommodation of, difference and plurality. It is post-national and thinner than national identity. Constitutional patriotism anchors democratic values and human rights in a concrete political culture.⁶ This, it is posited, will permit the willing acceptance of a system of authority that is embedded in the constitution, and will hold people together. The question that besets most analysts, including several contributors to this book, is whether this is enough to forge a viable community.

⁶ For how this is to take place consider Jurgen Habermas who notes that the “universalism of legal principles is reflected in a procedural consensus, which must be embedded in the context of a historically specific political culture through a kind of constitutional patriotism” (Habermas, 1994: 135).

Jean-Marc Ferry forcefully argues that every democracy, whether “national” or “post-national”, requires some form of affective endorsement by citizens towards certain universalist moral orientations, which are the foundations of a just society. In political philosophy, liberalism does not radically distinguish between legal and moral communities. A basic moral consensus rests mostly on tolerance, the recognition of others, and reciprocity. In this sense, the values of the European Union, as outlined in the “failed” and “recuperated” constitutional project represent the foundations of a “constitutional patriotism”. The practical implementation of these values creates a common political culture, a moral community which allows for the creation of a transnational civic solidarity.

For his part, Francisco Colom González maintains that liberal constitutionalism offers scant support for nation-building, as such. It is premised on a juridical fiction of “We the people”, which is “a presupposition, not a derivate of the constitutive action. By itself the liberal language of rights does not reveal the identity of those summoned to avail of them”. The nation-building involved in the forging of a coherent *demos*, requires historical fictions, myths, and fables. Colom González speaks of the “uncertain *demos*” that stands out as a hallmark of European integration.

Any effort to construct a distinctive European identity by drawing on the past will run up against the already entrenched national constructions that animate the Union’s many nations. Furthermore, the Union is weakest in those components that historically mattered most to the forging of bonds of political obligation (such as taxation, education, redistribution, military conscription). The Union, if it is to be more than an economic market, is bound to have to innovate on national categories of citizenship and identity. In the end, Colom González surmises that what binds Europe together, may be the process of reconciliation rather than the building of a coherent European national identity. This is, arguably, a rather “thin” tie to bind such a complex polity together.

In an insightful contribution, Sophie Heine challenges the classical dichotomy between theoretical positions concerning national identity in the context of European integration. She argues that the main split does not lie between anti-European “nationalists” and pro-European “post-nationalists”, but rather between proponents of cosmopolitanism on the one hand, and communitarian visions, on the other. The author demonstrates that “civic patriots” and “civic Euro-patriots” both subscribe to some form of communitarian identity logic, which posits that a strong moral community is necessary to build democratic political institutions, as well as social justice. By contrast, for Heine, cosmopolitanism de-

nounces any form of collective identification and defends the normative concept of “citizens of the world”.

In a compelling chapter, Daniel Weinstock suggests that former Canadian Prime Minister Pierre Elliott Trudeau’s attempt to combat the binationalist conception of Canada could be interpreted as an attempt to “bind” the diverse Canadian society through a form of constitutional patriotism. Trudeau’s project was based on a nation-building vision with five core components, which Weinstock finds to be internally consistent. These were (a) country-wide bilingualism; (b) provincial equality; (c) a policy of multiculturalism bent on defusing well-entrenched ethno-cultural identities; (d) a reconfigured citizenship through the constitutional amplification of rights in the Charter of Rights and Freedoms; and (e) a strengthened sense of social justice.

The 1982 Charter represents the clearest example of a Canadian effort to foster constitutional patriotism. Weinstock notes that “Trudeau attempted something that arguably has never been tried, which was to fashion a common national identity capable of overcoming the hold of ethno-cultural identities, without resorting to the illiberal means that had been employed by XVIIIth and XIXth century nation-builders in Europe”. This project, Weinstock argues, has failed as it clearly refused to take into account the very aspirations of the aboriginal and Québec nations. Today’s Canada struggles with the fallout and the fissures that this effort itself generated.

Along similar lines, in his provocative analysis, Jean-François Gaudreault-DesBiens argues that the Canadian experience provides a helpful reality check for those who see constitutional patriotism as the “glue” that can bind complex societies together. The assault is not directed against constitutional patriotism *per se*, so much as against the notion that this is the tie that binds the different parts of Canada together. The author posits that there is in fact, constitutional patriotism both in Québec and in English-speaking Canada. However, the constitution and the object of patriotism differ.

In other words, constitutional patriotism inside and outside of Québec does not revolve around the same constitutional features. Whereas most Canadians outside of Quebec have an existential rapport with the Canadian Charter of Rights and Freedoms and more of a functional one with federalism and the formal division of competences that it entails, Gaudreault-DesBiens argues that it is generally the opposite for the majority of Quebecers. Their constitutional patriotism tends instead to revolve around the provisions of the Canadian constitution that enshrine that federal distribution of powers, particularly the provisions that confer upon provinces competence over areas which are perceived as

being critically important to their identity (such as education and private law).

In the context of the struggle between the (rest-of-)Canada and Québec, the author denounces the “fetishism of formal law”, where formal recognition in legal text is conceived as essential, irrespective of the degree of autonomy and vitality that a political community actually experiences. This conveys a type of “textual obsession” to which a vast number of Quebecers have fallen prey. This vision of legal recognition as “performative” is misguided. On the other hand, Canada outside Québec has succumbed to “textual enchantment”. The Charter of Rights, as the foundational text of modern multicultural Canada, is seen as both profoundly transformative, and as untouchable.

For Gaudreault-DesBiens:

[b]oth this textual enchantment and that textual obsession are pathologies related to legal fetishism, as both imply a reification of legal instruments beyond what they can ever accomplish [...P]resuming the solidarity-inducing effect of the law may pose a problem for those proponents of constitutional patriotism who have forgotten that a mutual recognition by the parties involved in that conversation is a prerequisite to the emergence of such patriotism.

The author concludes that what binds Canada together may simply be a degree of “comfort”. It bears noting however, that such “comfort” may require a common commitment to the fundamental values posited by constitutional patriotism. And while this may be necessary, it is clearly not enough.

Gaudreault-DesBiens thus cautions against overburdening constitutional patriotism with normative expectations. This might be warranted insofar as people seek to derive allegiance-formation directly from legal arrangements. But this is not how Habermas casts constitutional patriotism. He has repeatedly underlined that patriotism emanates from the manner in which the legal norms become culturally embedded. One problem, then, is that for constitutional patriotism to work in a world made up of states, it easily ends up assuming a measure of “thickness” that makes it quite similar to nationalism (Fossum 2008). Furthermore, it is plausible that “comfort” figures in a setting which has the historical and institutional ties of an already constituted political community such as Canada. One may legitimately wonder, however, whether it could ever be sufficient to ground an emerging political community, such as the European Union.

Diversity vs. Solidarity

Europe and Canada clearly cannot draw on the strong sense of a common national bond in their efforts to come or to stay together. But, in terms of distributive justice, does diversity actually – empirically – matter? In a thought-provoking concluding chapter, Keith Banting takes stock of socio-cultural diversity but questions whether this diagnosis actually has the pathological implications which many observers fear.

It is undeniable that the fraternity inherent in nationalism finds its strongest manifestation in the commitment to economic redistribution. While federations again challenge orthodox analysis, there has been a tendency to conflate the welfare state with the “nation-state” (Poirier, 2008). Despite neo-liberal onslaughts and cut-backs, Canada still has a welfare state that most citizens identify with, and attach pride to. The EU is largely barred from setting up a similar system, but has thus far not seriously challenged or undermined Europe’s diverse welfare regimes. Yet, dominant analysis posits that contemporary democracies face a trade-off between the accommodation of ethnic diversity on the one hand and support for redistribution on the other. Given increasing levels and degrees of diversity, the erosion of support for these redistributive ties should simply be a matter of time.

Banting highlights that this so-called “progressive dilemma” is largely grounded on the experience of the United States. Evidence of the weakening of bonds of solidarity in the face of ethnic – and probably mostly racial – diversity in that country has raised concerns about the limits and dangers of multiculturalism. Canada provides a telling counter-narrative to these findings. As a different type of multicultural society, Canada’s recent history contradicts certain widespread contemporary theories. Empirical studies demonstrate that multiculturalism does not *per se* weaken the commitment to social sharing. Hence, examining Canada, as opposed to its Southern neighbour, sheds a new light on the complex relationship between diversity and redistribution. From this we can surmise that increased diversity need not translate directly into weakened bonds of social solidarity.

This is certainly an invitation to be cautiously positive about the impact of complex diversities with which both the European Union and Canada must grapple. These findings also vindicate one of the original convictions on which this project was based: that there is inherent utility in comparing Canada and the EU, and in nurturing this dimension of the transatlantic dialogue.

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