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FRAMEWORK FOR MULTICULTURAL EDUCATION: CANADA

*By Joseph Eliot Magnet**

We live in a world of multinational states. Multinational states produce unique tensions. We witness these tensions recur in state after state, with similar structures but with their own local particularities.

The constitutions of the western democracies are predicated upon a theory of the liberal state, which include deep respect for the Rule of law, for constitutionalism and for respect of minority rights.¹

But theory of the liberal state upon which Canadian democracy is founded has never caught up with reality of multinationality, of multicultural population in States around the globe. The most important theoretical expounder of the liberal State, John Stuart Mill, thought that free institutions were impossible in the multinational state, that there was an incompatibility in liberal institutions being implanted where there was so much difference in language. In his crucially important book, *Representative Government*, he put the point in this way:

Free institutions are impossible in a country made up of different nationalities [...] especially if they speak different languages, the united public opinion necessary to the workings of representative institutions cannot exist [...].

In fact, we see that in the first federations, the founders of the American federation prided themselves and sold the American *Constitution* on the thesis that that was a country that provenance had confided a people who were not multicultural but who were the same in custom, language and religion. John Jay wrote in the *Federalist Papers* on Oct 31 1787:

Providence has give[n] this country to one united people [...] descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs [...].

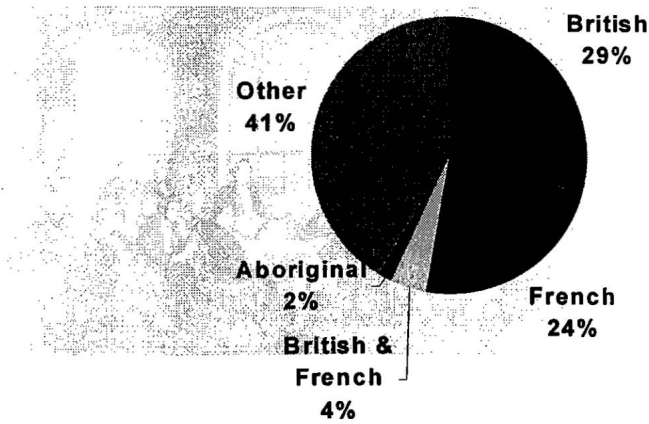
This deep heritage is interesting because it is not a philosophy that animated the Canadian Federation at its inception, nor is it something most Canadians recognize as reflecting an accurate portrait of themselves today. Neither by provenance is the Canadian federation a federation of one people, nor have Canadians chosen to develop their heritage in that way. If we take a snapshot of the Canadian

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¹ In *Reference Re Secession of Quebec*, [1998] 2 S.C.R. 217, the Supreme Court of Canada put the point this way: "there are four fundamental and organizing principles of the Constitution which are relevant to addressing the question before us (although this enumeration is by no means exhaustive): federalism; democracy; constitutionalism and the rule of law; and respect for minorities" (para. 32).

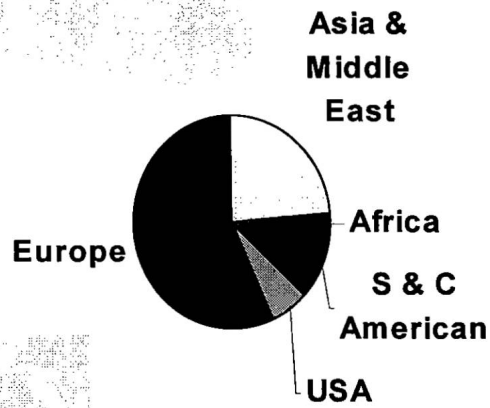
population by ethnic origin now we can see that it has a sizeable British, French Bilingual heritage, but because of its high immigration policies its population is also composed 41% of other cultural groups: 2% of Aboriginal peoples, mixtures of English and French.

Canadian Population by Ethnic Origin



If we look at the breakdown of the ethnic origin of those multicultural groups, again taking a snapshot in 1991, we can see that at that time a large Asian, Middle East population, a significant central and South American population and some Americans.

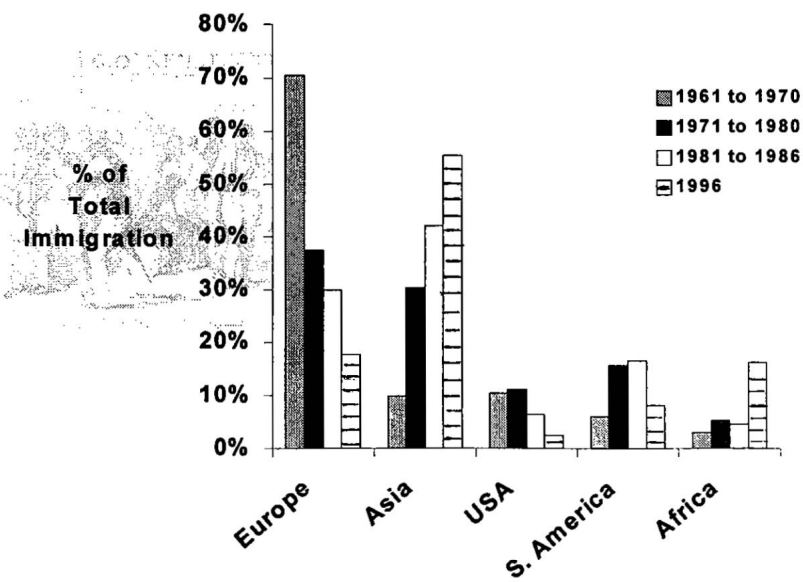
Ethnic Origin Breakdown



1991

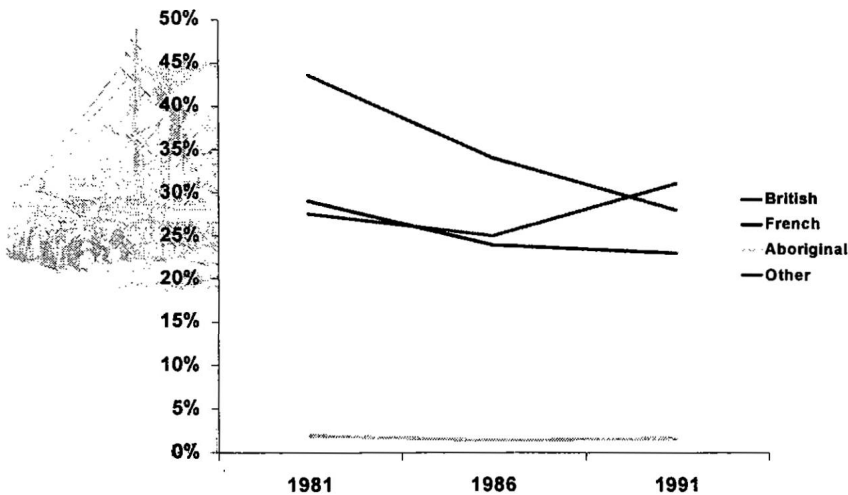
If we follow this into the trends, we can see what has been happening for the last 40 years.

Canadian Immigration from 1961 to 1996



We can see that European immigration to Canada, represented in the first group is going way, way, way down, consistently and we can expect that it is to continue. At the same time, that the Asian immigration to Canada and the African immigration to Canada is going way, way, way up. We can get perspective on this from another chart.

Trends in Canadian Population 1981 - 1991



We can see in the red line declining British, some what declining French immigration and population cross-sections trends. Rising multicultural population and a more or less constant aboriginal population.

In other words, Canada is bi or perhaps multi-national, and multicultural. It has been so from its formation and it is becoming increasingly more so by its conscious choices to have a very high immigration policy which augments the Canadian population with almost 1% of new arrivals every year.

If we think about what J.S. Mill or the authors of federalist papers had to say about the impossibility of constructing a multi-national or multicultural state, we can see that these authors, deeply respected by Canadian constitutional writers, require major revision to reflect Canadian constitutional realities and development. It is clear that we have to look at multicultural developments in Canada from a revised point of view.

The Canadian *Constitution* is a unique document that marries parliamentary institutions to a federal system. Some constitutionnalists think that there is an inherent contradiction in this system. The Westminster model from which Parliamentary institutions come is meant to create a sovereign Parliament. Federalism divides that sovereignty between a central and regional executives and legislatures. That

contradiction, if there be one, is deepened by the addition in 1982 of a *Canadian Charter of Rights and Freedoms* which subjects the idea of Parliamentary sovereignty to further restraints stemming from the theory of judicial review of legislative and executive acts.

It is interesting, within this framework of a parliamentary federation and Charter-based system to look at the further defining characteristics of the Canadian federation.

The *Constitutional Act of 1867* (hereinafter the "1867 Act") created a federal government and four provinces. Subsequently, the number of provinces was extended to ten. The idea at that point was to embrace in a self-governing jurisdiction, the concentrated population of French speaking peoples in the then province of Canada and to imbue them with self-government. So the inspiration in the 1867 Act was bi-nationality. To reinforce this idea of self-government for the French speaking population, an "inflexible" division of powers was created by sections 91-95 of the 1867 Act. This is something we have seen in the development of twenty-three federal systems of government around the world.

The theory of "inflexible" division of powers is something the Federations honour more in theory than in practice. This is true also in Canada, where we find an extremely flexible alignment of roles and responsibilities of the federal and the provincial governments by non-constitutional mechanisms.

In order to accomplish this, Canada has developed a very extensive practice of diplomacy between federal and provincial governments. This process, which has certain formal channels, is largely responsible for program definition, for program responsibility and program management.

The main framework of the federation is superintended by an independent judiciary which has final say over constitutional entitlements as between citizens and State, and also as between governments. All this happens within a very aroused rights-conscious Canadian citizenry. There are also various mechanisms of government support at both Federal and provincial levels for vindication of individual and communal rights. This has the indirect effect of deepening the rights consciousness in various communities to very high levels. Canada also has created strong doctrines of Aboriginal rights and quasi-autonomy for certain aboriginal groups. We might measure this in dollars – annualized expenditures of approximately \$5 billions programming moneys support core aboriginal programs.

I mentioned the *Canadian Charter of Rights and Freedoms* ("the Charter"). It is interesting to take a quick tour as to what this embraces. The Canadian Charter-based system. Rests on a theory of constitutionalism. The *Charter* requires government to observe minimum levels of decency when it engages in legislative or executive acts. The design of regulatory regimes must take these standards into account. The Courts superintend compliance with these standards. The *Charter*, as expounded by the courts, creates a floor of respect for personal autonomy, for liberty but also for the entitlement of various groups in Canadian society, what we sometimes call "collective rights." Among the rights protected are the fundamental freedoms of

conscience, religion, expression, media, assembly and association, the right to life, the liberty and the security of persons, of criminal procedural rights of persons arrested and detained, and very broadly worded equality rights. To reinforce the bi-national nature of the Canadian federation, extensive protection for the use of the English and the French languages are included, as are, in another part of the *Constitution Act*, 1982, an important constitutionalization of the aboriginal and treaty rights of the aboriginal peoples of Canada.

We find also in the Canadian *Charter*, a very unique provision respecting multiculturalism. This provision, s. 27, is an interpretation provision, and, as such, gives an orientation to the totality of the rights contained in the *Charter*, both collective and individual rights. All of these must be seen through the prism of the multicultural heritage of Canadians, which s. 27 requires the Courts to preserve and maintain when engaging in *Charter* interpretation.

As I said, the *Charter* contains special provision on Canada's languages. English and French are stated to be the official languages of Canada. By Court interpretation English and French have constitutional preference — constitutional superiority — over all other languages. English and French are the operating languages of the Canadian government institutions. As well, English and French are specifically guaranteed as a language of government service where populations of English and French speaking persons find themselves in a minority position. The legislatures, the Courts, agencies of the federal government and 3 provinces have to operate bilingually. Federal and certain provincial services are provided bilingually and there is an entitlement, not by constitution but by implementing statutes for equitable participation of the language communities in the federal public service. Equitable participation requires that French speakers should enjoy 27% of federal government position; this is more or less achieved at this time. The rest would be in English. There is also very complicated system of entitlements to work in the federal public service in the official language of choice. As well, most federal government documents must be prepared in English and French although the system does not require universal bilingualism in government operations. A similar system applies to the governments of Quebec, Manitoba and New Brunswick, while Ontario does not have constitutional guarantees, it has implemented a similar system by legislation and administrative practice

In addition to this system, we find that some provinces have extremely large Ukrainian, German, Italian and other populations (e.g. Alberta, Manitoba, Saskatchewan). Programming support is provided for schools in the languages of these communities. To take an example, British Columbia has some 150 organisations which are involved in heritage languages teaching, which goes on in 150 schools and embraces 18 000 students. In Alberta, an amalgamation of institutions offer 500 teachers serving 5000 students in 30 languages, including bilingual Ukrainian institutions at the elementary level.

In short, Canada reinforces bi-nationality with official bilingualism. All of this is superimposed upon what is a highly multicultural population.

As mentioned, 2% of Canada's population is aboriginal. This population is endowed with constitutional guarantees for autonomy and for promoting their participation and development according to their own particular views of what is appropriate for them. There is also support for aboriginal languages. Aboriginal languages are official by statutes of two of the territories. There is provisions made for government services in 6 aboriginal languages by provincial policies. In some of the provinces, aboriginal languages are encouraged to be used, to be developed as the language of the home, of the schools and of the community.

In our constitutional system, education is exclusively the responsibility of the provincial authorities. But our assignment of roles and responsibilities is rather flexible. The federal government has an extremely powerful indirect voice, though it has no formal constitutional responsibility for education. For example, the federal government supports post-secondary education by fiscal transfers. The adage: "he or she who pays the paper cause the tune" partly applies in this case. Dollars are made available for University research through granting Councils. This accounts for the lion's share of University research dollars. The federal government also makes direct grants to individual students. Ottawa also transfers other educational dollars, and as a result has a considerable role in educational and training policy.

Because of the overlapping roles and responsibilities of the federal and provincial governments in education, a large discussion is required to harmonise and align educational initiatives. Much of this takes place in the Council of Canadian Ministers of Education and a lookalike Council of officials on education.

Canada has a unique system of constitutional guarantees for official language minority education for provincial English and French communities where they exist in a minority situation. This system is specified by section 23 of the *Charter*. Section 23 confers rights on Canadian citizens only; there is the further requirement that such citizens be a member of an official language minority in one of the provinces, according to a complicated constitutional definition. The rights protected include a right to instruction in the minority language, a right to management and control of minority language educational institutions and the right to public financing of those institutions from the provincial treasuries.

In 1985, the federal government called upon schools systems to promote cultural diversity by increasing the representation of different ethnic backgrounds in the schools. Most of the provinces responded. To sample the flavour of the provincial programming (which exists at the legislative or administrative, not at the non-constitutional level) it is helpful to refer to certain (older) programming respecting anti-racism efforts in New Brunswick, promotion of self esteem for cultural communities in Newfoundland, ethnocultural equity and anti-racism efforts in Ontario and intercultural training to persons working in the public schools systems in Quebec. There is very broad range of these programs with different components. I expect my colleagues will elaborate on it in some of their other papers.

Canada also has a very unique system of constitutionally protected denominational education. This system gives constitutional guarantees to

denominational minorities in 3 provinces. Recently abolished in Quebec and in Newfoundland, the system still exist with great force and flourish in 3 provinces. These rights are not entirely dissimilar to section 23 of the *Charter* (minority language education rights) in the sense that the rights include public financing, management and control of denominational schools and administrations. Where the rights apply, the constitutional power has been used to create school systems with very distinct religious and cultural missions.

Court challenges against this system have failed. The freedom of religion and equality principles of the Canadian *Charter* have not been able to secure for other denominations the special rights protected for Catholic minorities. The Courts explained that the special denominational rights were as essential compromises made at the formation of the Canadian Federation in 1867. Only a super majority of Canadians acting under the procedures for constitutional amendment can reverse these decisions to protect or privilege denominational minorities. Equally, the Courts explained that equality challenges would not superimpose these requirements on other religious communities, with infinite regression of division for responsibility for education along ethnocultural and religious lines.

The result of the two failed challenges is that although Canada has a highly multicultural population, that population is serviced by school systems that must operate within constitutional guarantees that reinforce bilingualism as well as and special denominational schools. The educational system, in other words, is fractured along the linguistic and denomination divides, particularly in Ontario, Alberta and Saskatchewan.

Two more points about multiculturalism developments and immigration.

Canada was first to have a multicultural policy in 1971. The broad framework of the initial policy was to assist the development of cultural groups, to promote anti-discrimination efforts, and (an interesting Canadian twist) to promote national unity by fostering creative inter-changes among the various cultural groups.

The policy was reinforced by Canada's ratification of the *Covenant on Civil and Political Rights* in 1976, by the proclamation of the Canadian *Charter* in 1982 (section 23) and by the enactment of a federal *Multiculturalism Act* in 1988, with look alike acts at the provincial levels.

The programming that we have is basically a continuity from the 1971 policy embracing these 3 elements.

My last point concerns immigration. This is a responsibility which Ottawa and the provinces jointly share. Ottawa is paramount in the case of any conflict.

Ottawa had extensive programming directed towards settlement and acculturation. Until 1960, the provinces had very little interest in this, and therefore said very little about it.

Since that time, the provinces have become interested. As a result, 5 federal / provincial agreements were signed in the last couple of years. Although initially

proposed to be constitutionally entrenched during the constitutional reform exercises of the 1980s and 1990s, these agreements now exist at the non-constitutional level. The result of this is the transfer of settlement services to British Columbia and Manitoba.

There is concern about the distribution of immigrants between the various provinces. For example, British Columbia would like to have more business immigrants; Manitoba, being very cold and therefore experiencing out-migration, is worried about labour shortages; Saskatchewan wants skills development and New Brunswick and Newfoundland are habitually preoccupied with their economy.

There is programming respecting language training for immigrants. Originally this was a federal responsibility. In more recent times, particularly in this province of Quebec, the linguistic composition of the body politic has become a very special concern. To accommodate this concern, by a 1991 federal / provincial agreement, also non-constitutional, Ottawa and Quebec agreed that settlement adaptation and language training services would be provided by Quebec. As a result, Ottawa transferred \$332 millions to Quebec to carry out these responsibilities. Ottawa also agreed that Quebec may orient its immigration policies to reinforce and maintain its French speaking majority. Ottawa attempted to respond to Quebec's concern about its falling percentage of the Canadian population by agreeing that Quebec would receive a guaranteed share of immigrants.

In conclusion, I have been trying to convey that Canada is committed to policies of very high immigration. Canada has adaptive strategies to facilitate the diversity in its population which the policy of high immigration produces. These take the form of multiculturalism acts and policies, at both federal and provincial levels. These efforts are complicated by a constitutional framework that reinforces binationality through a federal system. The efforts also must respond to Canada's Charter-based system that establishes autonomy, with respect to education, for linguistic, denominational and aboriginal populations. All of which occurs within Canada's bilingual framework.