



DEMOCRACY IN THE AMERICAS NATIONAL IDENTITIES AND GLOBALIZATION IN THE AMERICAS

Jules DUCHASTEL

Chair Holder, Chaire MCD

Full Professor, Department of Sociology, Université du Québec à Montréal

Lecture given on May 1st, 2002 for the seminar *Democracy in the Americas* held by Andrew Arato and David Plotke. Graduate Faculty of Political and Social Science, New School, New York, NY.

Preliminary remarks

We are very happy to have been invited to this most important seminar. We do not frequently have the opportunity to exchange ideas with our colleagues from the United States. Is it to say that we have the same tendency to forget our great neighbour just a few miles away? We recently received a visit from the Dean of the UCLA School of Public Policies who admitted that American scholars have a tendency to look south, but rarely north wise. Her visit was meant to change this. I do hope that this present occasion will create a new link between our two sociological communities.

When I was in New York a few weeks ago, I bought, in a second hand bookstore, a book titled "The Birth of the Modern", by Paul Johnson. I was very interested by what he said on the misapprehensions of Americans about the Canadian situation at the beginning of the 19th century. As you well know, you tried to conquer us in 1812. Your greatest mistake was to underestimate the differences between the British Colonies of the North and the ones situated in what has become the United States. This mistake led to a defeat that would be inconceivable today. The Americans thought that Canada would be a soft target because of the existence of numerous colonies, of which one was French. What they ignored was the fact that Lower Canada (present day Quebec) had obtained concessions in the Quebec Act of 1774 that contributed to preserving its culture, language and religion and granted it some political power. Upper Canada (present day Ontario) and the eastern colonies (present day maritime provinces) had very close ties to Britain and their economy relied heavily on that relation. On top of that, the US troops were not very well trained. The result was a complete defeat. This is to say that you should be aware of our peculiarities if you ever want to try to conquer us again!

When I read the syllabus of this seminar, I was interested in the variables that it identifies as shared by the different countries of the Americas. Before I go on with my presentation, I would like to indicate which of those variables fit with the Canadian situation.



- Colonial rule*: Like all the other countries, ours was, and remained for a long period, a colony - first of France, then of Britain. Particular to the Canadian situation is the internal colonial relation. Since the conquest by the English, French Canada has considered itself colonized within its own country. I must add that of all the peoples that have settled in the new world, the only one that has not obtained a country of its own is the Quebecois people.
- Slavery*: was a marginal phenomenon in Canada of which we have learned only very recently (past 20 years), historians having neglected to report on its existence.
- War of independence and revolutionary process*: There was no war for independence. Complete autonomy from British rule was obtained only in 1982 and Canada was founded by a group of very conservative politicians close to the business community who did not even bother to consult the people.
- Republican foundation*: No such foundation, in the sense of the process that created the political system of the United States, took place in Canada. Our system is parliamentary, in the British tradition. But if we refer to the French conception of republicanism, I would say that Canada is more oriented towards the Statist conception than towards the liberal or individualistic conception of the US.
- Civil war*: There was no civil war but rather rebellions, in 1837-38. These were considerably influenced by the revolutionary ideas of the Americans. After the rebellions were quelled, the British Government proposed the Union Act, thereby constituting the French people as a minority in a new parliament for both Upper and Lower Canada. On the French side, the counter effect of the defeat was the rise of "Ultramontanism", the ideological base of the then traditional and religious ruling of Quebec society.
- Massive immigration*: There were some immigration waves at the beginning of the 20th century, but nothing to compare with what happened in the United States. The substantial growth of immigration started with the end of the Second World War and had a significant impact on the transformation of Canadian identity in the 70s and the 80s.
- Struggle for rights*: The big difference with the US is that the struggle for rights is not associated with the race question. As you might know, there was not a very important visible minority population until the immigration waves after the war. This question was not central to the Canadian debate. The struggle for rights was more closely associated with the growing claims of the new social movements that came into their own in the 60s.

Introduction

April 17-02 was the 20th anniversary of the repatriation of the Canadian Constitution and of the entrenchment of the Charter of Rights and Freedoms in the Constitution. Curiously, whilst celebrating this major event, federal politicians have neglected to comment on the way the repatriation was conducted, insisting rather on the importance of the Charter for Canadian identity and democratic life.

What you must know:



- The Federal Government under the leadership of Pierre Elliott Trudeau orchestrated the repatriation in 1981 with the complicity of the nine English-speaking provinces, against the will of the Quebecois (politicians as well as citizens). The Province of Quebec did not sign the Constitution of 1982 and a unanimous resolution from our National Assembly, two weeks ago, has reiterated its objection to signing the document.
- The repatriation of the Constitution and the entrenchment of the Charter has led to major changes in the political economy of Canada:
 - One of the most important changes is in the conception of the relation between the provinces and the federal system. We definitely moved from a conception that once represented Canada as the result of a compact between two *founding peoples* (the French and the English) towards a representation of ten equal provinces.
 - The second most important change concerns the balance of power between the provinces and the Federal Government. The rules were established so the Constitution could be amended by either the totality of the provinces and the Federal Government or by a majority of 7 provinces and 50% of the population, depending on the subject matter. The veto that was until then implicitly recognised for Quebec no longer stands. At the same time, Quebec is unable to obtain any substantial change in its status within Canada (both the Meech Lake Accord and the Charlottetown Agreement aborted), and is exposed to unwanted modifications of its jurisdictions.
 - The entrenchment of the Charter represents a major shift in the balance of the institutions. Some are arguing that we now have a “government of judges”. The judiciary has gained power over Parliament through its capacity to overrule legislation created by Members of Parliament on the basis of Charter interpretation.
 - The Charter has also had profound effects on the conception of citizenship, which - as I will try to show later on - has moved from a universalistic standpoint to a particularistic one. On the other hand, the Charter has had a great influence in the redefinition of Canadian national identity.
- In conclusion to this introduction, I want to insist on the fact that the Canadian situation is typical of the ongoing transformations of political regulation that can be observed in the context of globalization and at the same time can be compared with the introduction, in many national contexts, of declarations or charters of rights. The typicality of the Canadian situation resides in the specific weight attributed to the Charter in the political system by its entrenchment in the Constitution.

Development

I would now like to briefly explain the transformations of the Canadian political system and their incidence on the evolution of democracy, the political community, citizenship and “Identities” in Canada, this from three perspectives:



- A historical perspective: taking into account the particularities of the political regime: parliamentary democracy and a federal system;
- A perspective focused on the State: e.g. the transformation of the form of the State in such a regime;
- The perspective of the globalization and fragmentation of societies.

If we compare again with the US, we will have to take into account:

- A completely different historical and political background;
- Major differences in the conception of the role of the State, Canada standing somewhere between the “liberal” conception and the “social democratic” conception of the Esping-Andersen typology (even if the author classifies Canada as liberal);
- A higher degree of convergence stemming from the liberalisation of the role of the State and a shift towards the prevalence of rights over political institutions, Canada moving closer to positions held by the US. We could further discuss these apparent similarities. The American and Canadian conceptions of State intervention still differ profoundly and their respective philosophies behind the interpretation of rights are not the same (more oriented towards the defence of individual rights and liberties in the US as opposed to an orientation mixing the defence of both fundamental and particularistic rights in Canada).

The rise of multiculturalism and the increase of claims for categorical equity are some of the more salient phenomena in the recent evolution of western democracies. They are the signs of a profound crisis of the political institutionalization process inherent to modernity. This crisis can be summarised in three movements:

- First, a crisis of the public space where the debate over power and the resolution of conflicts take place and, concurrently, a crisis of the capacity of democratic institutions to achieve necessary compromises;
- Second, a crisis in the legitimacy of political institutions as we observe a shift in the balance of power from legislative bodies to executive, bureaucratic and judicial institutions;
- Third, a crisis of the political community as "a source of mutual recognition and trust" and as "a common moral horizon", and of citizenship as a universalistic attribute of all individuals.

The failures of the political institutionalization process are closely related to the erosion of the Nation-State, challenged in its capacity to remain the main instance of reproduction of social relations.

- On the outside, globalization and the world market tend to deprive the State of its capacity to regulate the economic and social processes.
- From the inside, the fragmentation of the political community and citizenship challenges the State's ability to insure political regulation.



Two series of questions arise from this situation. Firstly, are the erosion of the Nation-State and the fragmentation of identities irreversible processes? Secondly, up to what point are these processes problematic?

- In the case of the Nation-State, is it not possible to consider that the weakening of the deliberative institutions is compensated by the consolidation of the rule of law? In other words, aren't the tribunals better able to defend minorities from majority rule?
- Isn't the multiplication of communities and categorical groups more representative of progress - the conquest of an ever-expanding set of rights - than it is of society's fragmentation?

We will first indicate very rapidly how the fragmentation of identity is taking place in the process of the constitutional debate in Canada. Secondly, we will raise the question of the existence of a political legitimacy crisis in Canada. The narrowing of public space and the weakening of the political community will be examined in the general context of western societies. We will then conclude on some propositions for the reinvention of the political community and of citizenship, as it could be applicable in the Canadian case.

The fragmentation of identity in Canada.

In Canada, both the constitutional question and the formation of a national identity have long been problematic. One need look no further than the fact that Canada had not been capable of repatriating its Constitution before 1982, and that it has acquired full independence only very progressively - sovereignty over its international policies (Status of Westminster, 1931); Canadian citizenship (1946); reference to the British Private Council ending in 1949; repatriation of the Constitution (1982) -, in order to understand why the constitutional question has been an unending one. In this context, Canadian identity as such, and its relations to other competing identities, developed as a very complex process.

We argue that the identity-formation process is closely linked to the evolution of both the political regime and the form of the State.

- Because of the initial choice of a federal regime rather than a legislative union, both the "Quebec question" and the "regional question" were already present at the outset of Confederation. The Constitution of 1867 was a conservative compromise between the elites of the British colonies who were incapable of resolving the problem of stable coexistence between the "two founding peoples". Regional tensions and the existence of Aboriginal nations were more or less ignored in the original arrangement and have since tended to manifest themselves through changing demands.
- The other factor relating to the formation of identity is the transformation of the role and of the form of the State. We believe that the historical passage from one form of the State to another has had an effect on the representation of Canadian identity. During a first period, characterized by a liberal form of the State and ending with the second World War, Canadian identity was more or less split into



two *ethnic representations*: Anglo-Saxon and Protestant extraction on the one hand, French-Canadian and Catholic extraction on the other hand. An original Canadian identity did not emerge before the 40s and the rise of the Welfare State. The introduction of social policies contributed to the formation of a proper *civic Canadian identity*, based on common belonging to a social citizenship. I must add here that this identity was competing with the *national identity* of the Quebecois.

Since the beginning of the 80s, with the neoliberal turn, we have observed a new transformation of Canadian identity, from a universalistic citizenship towards a *particularistic identity*. Besides the adoption of the Canadian Charter of Rights and Freedoms, many factors have contributed to this shift.

- First, the inherent incapacity, throughout the history of Canada, of defining a consensual national identity has generated many contradictory ways of representing political identity.
- Second, the complex character of social relations associated with the development of the Welfare society, has contributed to a multiplication of groups defending their specific rights.
- Third, the current transformation of the State, towards a neoliberal form, is favouring the dissolution of collective solidarities.

We believe that the 60s should be considered as a turning point in the dynamic of the new definition of Canadian identity, leading to the political deadlock of the 80s and 90s. Many factors have contributed to the transformation of Canadian identity during this period. Of these, the rise of Quebec nationalism is probably the main impetus. The “Quebec question” evolved during the 60s through the passage from the Liberal State to the Welfare State. Quebec's nationalism evolved from a purely ethnic configuration in the 50s into a political and cultural configuration in the 60s. The political nature of this new nationalism was — and still is — defined by the existence of both a specific space and a State of Quebec. Its cultural nature has taken form in its will to integrate citizens in a common political French culture. This new nationalism translated itself into demands for political recognition. The Federal Government's answer to Quebec's demands for recognition was the Official Language Act (1970). This choice may be considered as the first step in the particularisation of Canadian identity in Canada. Rather than recognising in the Constitution the political rights linked to the existence of a national minority, the Federal Government chose to give language rights to citizens based on their common belonging to a cultural community. Language rights were given to individuals as long as they belonged to specific communities. What needs to be stressed here is that the Federal Government initiated, at that moment, the identification of particular beneficiary groups (in this first case, the English-speaking and the French-speaking).

Other factors also contributed to the transformation of Canadian identity as it had been defined in the 40s. The recognition of beneficiary groups on a particularistic basis has had deterrent effects on the universalistic perspective on which rested Canadian civic nationalism. The failed attempt to integrate Aboriginal peoples through the Indian Bill in 1969, which aimed at abolishing special privileges and rights in exchange for full



citizenship, led to the resurgence of yet another counter-nationalism. The refusal of a biculturalism policy and the adoption of a multicultural policy at the beginning of the 70s led to increased demands from many cultural communities. At the same time, categorical claims were favoured by the official policies of the Secretary of State of Canada, thereby facilitating the organisation of a multiplicity of beneficiary groups, feminist organisations for example.

In the context of the Welfare State, the denial of national minorities' claims and the particularistic answers given to linguistic, cultural and social minorities contributed to constitutionalize a particularistic citizenship, resting on the Charter of Rights and Freedoms. We must insist that the recognition of these rights should not be attributed only to the Canadian constitutional process. But the constitutional process led to the constitutionalization of these rights, a fundamental difference with other countries.

Is there a crisis of political legitimacy in Canada?

The crisis of political legitimacy in Canada can be best illustrated by the successive failures of the political process in the constitutional domain since 1982 (failure of the constitutional conferences on the "Aboriginal question" (1983-1987); failure of the Meech Lake Accord (1987-1990) on the *distinct society* status for Quebec; failure of the Charlottetown Agreement (1992); the Federal offensive (Bill C-20) rendering any further referendum impracticable, following the very close results of the 1995 Quebec referendum on sovereignty and the judgment from the Supreme Court of Canada on the legitimacy of the referendum process with a stipulation on clarity ; feeble reactions to the recommendations of the Dussault-Erasmus Report on Aboriginal peoples (1996)).

If undoubtedly there is a legitimacy crisis at the level of constitutional debates, there is no political or theoretical unanimity about the interpretation of this crisis. Beyond any dispute is the presence of profound changes in the economic, social and political structures. The debate starts with the interpretation of these transformations, and of the challenge they represent for institutions. In the following lines, I will examine two central questions related to the potential existence of a crisis of legitimacy: first, the democratic deficit and the judicialisation of the political process, and second, the weakening of the political community and of citizenship.

Democratic deficit and judicialisation of the political process

The importance and centrality of deliberative institutions are currently being challenged. The shift from legislative institutions to judicial ones and the move from a universalistic to a particularistic conception of citizenship are signs of this dynamic. But again, it is possible to evaluate very differently these movements towards the differentiation of entitled groups and the guaranties that their rights will be defended by the courts of law.

-A first opposition can be noted at the level of political philosophy (for example, between French republicanism and American liberalism). Some will argue that the courts can best defend individuals and minorities' rights. Others will insist on



- the necessity of public deliberations on questions concerning the common good, including the policies concerning minorities.
- A second opposition resides between modern and post-modern perspectives. For the moderns, rights must be at all time universalistic. For the post-moderns, the extension of rights for an increasing number of social categories represents the progressive affirmation of a "real" citizenship for the dominated and the excluded.

To what extent do particularistic rights challenge the foundations of modern political institutions? The formation of the Liberal State was characterized by the proclamation of a formal and universal citizenship, which remained through its transformation into the Welfare State. But civil, political and judicial rights ignored the inequalities in the relations between classes, genders, generations, cultures. By addressing directly the question of inequality, the Welfare State (at least in its corporatist or social democratic forms) has enlarged the scope of universalism. With the emergence of the Neoliberal State, at least in Canada, we see the transformation of this universalistic orientation into a particularistic approach. In the field of social security, universalistic measures are replaced by particularistic policies targeting specific social categories. In the field of rights recognition, categorical and cultural rights are given to many new entitled groups, on a more or less biological, behavioural or ethno cultural basis, thus negating a fundamental postulate of universalism.

The shift in the division of power between the political and the judicial realms is probably the best angle from which to try to answer our questions. It's a fact that the increasing subordination of parliaments to courts and to technocratic apparatus leads to the reinforcement of the legal process, administrative or constitutional in nature, to the detriment of the legislative process. The entrenchment of the Charter in the Canadian Constitution as a basic reference for establishing the validity of the legislations and the power given to the Supreme Court of Canada in controlling the constitutionality of laws adopted by the legislatures illustrate this shift in power (This power, I think, does not exist as such in the American Constitution). There are two ways of appreciating the effectiveness of these changes.

- The first is to examine the Supreme Court's philosophy. It seems that judiciary activism has prevailed over judiciary restraint. Many judges have expressed themselves on the role of the Court, whether in rulings or in personal statements. Consider this statement from a ruling (Vriend case, protection of sexual orientation), which I have freely translated: "The notion of democracy does not limit itself to the rule of majority. Democracy implies that the legislator takes into account the interests of the majority at the same time as it takes into account the interest of minorities, otherwise its decisions won't concern every citizen. If the legislator neglects the interests of minorities [...] the judiciary power is legitimated to intervene and rectify the democratic process."
- The second way of asserting the changes is quantitative. There are a number of compilations of Supreme Court rulings that clearly demonstrate the great importance of these rulings in all areas of social and political life. In particular, I would like to give the example of many rulings that have reduced the importance



of linguistic legislation in Quebec. This intervention of the Court illustrates the contradiction between different kinds of rights, some of them referring to fundamental rights while others refer to a collective quest for recognition and others yet to categorical claims.

An important question arises from this new dynamic: given the positive aspect of proclaiming new rights and of insuring their judicial protection, evidence shows that courts are often conservative and don't always decide in favour of weak citizens. Are there substantial reasons to believe that the courts will better defend citizens' rights than the political system?

We wish to stress the fact that both the weakening of modern universalism and the judicialisation of social relations are realities with which we must deal. While it is true that democracy is challenged by the introduction of a multiplicity of entitled groups referring to the judicial system, it is also true that no regression towards the previous classical or social universalistic models is possible. The ensuing political task is to imagine forms of universalism that can cope with the complexity of present societies. Democracy must also be reinvented to take into account the complex character of different regimes of inequalities. In that sense, citizenship must be questioned intrinsically in its relation with political institutions. Should citizenship rest on the relations between individuals or groups and the courts, or should it rely on the larger political community in the public sphere? This question is of great importance to the Canadian situation where the combined effect of the constitutionalization of rights and the fragmentation of identities has jeopardised any significant political compromise that could satisfy the collective claim for recognition of the Quebecois or of the Aboriginal peoples.

Weakening of the political community and citizenship

The weakening of the political community can indeed be considered as the second manifestation of the political legitimacy crisis. Both the judicialisation of social relations and the erosion of the Nation-State seem to precipitate the dissolution of social links whose privileged space is that of the nation.

-On the one hand, the community of citizens is more or less deprived of its capacity for democratic action inside the political arenas. Citizenship as such has become problematic in the sense that its universalistic foundation has also been eroded. In a paper titled *The Incorporation of Citizenship*, two colleagues and I have tried to show how, in the process of the extension and comprehension of rights (from civil to political, to social and, more recently, to cultural rights), new types of citizens are invading the public sphere. On one side, the big corporations are legal subjects (we call them *personnes morales*, in French) capable of addressing tribunals to defend their rights against States. On the other side, categorical groups develop corporate claims and try to participate in the political process. I am aware that this is a very sensitive subject because it is questioning the legitimacy of civil society as a political actor, but we can return to that issue later.



-On the other hand, national States' capacity to intervene in their economic and social spheres is greatly diminished by globalization. Economic regulation is not controlled within national borders anymore, as it is now under the supervision of technocratic supra-national institutions like the Organisation for Economic Co-operation and Development (OECD), the World Trade Organization (WTO), the World Bank (WB) and the International Monetary Fund (IMF). National economic policies are merely adapting to more general trends induced by free trade agreements. Social legislation is being regressively adjusted to this general context under the pressure of the financial crisis of the State. Moreover, the political community tends to implode under the pressure coming from the growing assertion of regionalism, of localism and of neo-corporatism. Such phenomena can be interpreted as being new ways through which the political sphere is activated. They can also be viewed as jeopardising the global solidarity that should characterize the political community.

Reinventing political community and citizenship

There is no simple solution to the challenges faced by western societies. On one hand, the restoration of the classical democratic model centred on one Nation, which had prevailed until recently, is unable to prevent the erosion of the Nation-State. On the other hand, both the classical and the social conceptions of universalism are incapable of coping with the fragmentation of identities. We are faced with the necessity to reinvent the political community in the direction of supranational political entities and pluralistic citizenship.

This first question concerns the reconstruction of politically significant institutions. Both the primacy of the market and the growing importance of bureaucratic institutions aimed at its regulation are challenging the traditional role of the Nation-State. The weakening of the political process should be remedied by the construction of supranational political institutions. The only existing example is the European Community, which is still in the process of developing its own political institutions. The core idea is that these institutions ought to be more than mere technocratic apparatus, and should refer to a community of citizens. The formation of a supranational political community should be considered as an occasion to restore the democratic process at the level of global decision-making. This new political community would superpose itself, without erasing national entities, in some domains that can no longer be dealt with at the national level.

The concept of supranationality could be applied to the Canadian, Spanish or British situations, characterized by recurrent national conflicts over the recognition of dominated nations within a Nation-State's borders. As we have seen earlier, the last thirty years of Canada's history have witnessed a process of fragmentation of identities, many demands from cultural or categorical groups adding to the problem of national claims. This growing complexity of heterogeneous identities, without reducing national tensions, has resulted in an increase of actual as well as potential conflicts. We believe that the creation of a supranational political entity would contribute to the resolution of these conflicts. In such a case, the Canadian State would first have to recognise that Canada is a



multinational State, as well as a multicultural society. One solution could be the transformation of the Canadian federation into a Confederal Union in which the constituents would be Quebec, the Aboriginal peoples and the “Rest of Canada”. A common elected parliament having full powers over its jurisdictions would constitute the central institution of this Union. The Constitution of the Union would be based on the recognition of universal rights (political, judicial, economic and social) by the central Government and all other governments of the Union. The cultural and categorical rights should also be asserted in a Charter, without necessarily having the same precedence as the universal rights. We think that these rights would no longer come into conflict with national rights, those being recognised by the political institutions of the Union. Such a political regime would favour at the same time the recognition of the plurality of national political cultures and the formation of a common citizenship inside a supranational political community. Being at the same time a Quebecois and a Canadian, or a Native and a Canadian would no longer be experienced as a contradiction, but rather as the recognition of the inevitable complexity of identities.

Even if this solution can potentially solve the national and cultural conflicts by favouring the expression of multiple allegiances, it does not specify the nature of the new citizenship that would result. In other words, must the particularistic citizenship that has imposed itself in Canada, partly as the result of a political strategy to deny any special recognition of a national status for the Quebecois and the Native peoples, remain the model for a future Union? We think that this kind of citizenship, based on the fragmentation of identities and the judicialisation of social relations, should also be re-examined. The fragmentation process should not be encouraged by the ongoing judicialisation of conflict resolution, but translated into pluralistic policies. A pluralistic citizenship should impose itself over the present form. Political legitimacy should regain its primacy over judicial proceduralism. In our view, problems such as pay equity between genders, access to jobs in the public sector for cultural communities, or the rights of linguistic minorities to their own schools, are better served through the political process than through the courts. That is, the recognition of the pluralistic dimensions of society should be part of the ongoing political debate rather than being left to judicial rulings. Furthermore, the promotion of a pluralistic citizenship could favour the reinvention of new forms of universalism, instead of the particularisation of social policies witnessed in the neoliberal context. For example, the introduction of a universal allocation could be preferred to targeting excluded groups of citizens. This new citizenship is possible as long as a community of interest and solidarity exists. We think that the creation of a supranational political community would be a primary condition for the emergence of this pluralistic citizenship.
