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Nationalism, Liberalism, and Federalism: Elements of Canada's Constitutional Crisis

It has sometimes been argued that since nationalism seeks to preserve a particular national language and culture, nationalist demands may be satisfied and nationalists may be disarmed by an imperial government conceding autonomy in cultural matters to the different nations under its rule

But such attempts to stem the tide of nationalist discontents are seldom successful, since nationalists consider that political and cultural matters are inseparable and that no culture can live if it is not endowed with a sovereign state exclusively its own.

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The current "Canadian Crisis" arises out of a difference of opinion concerning the possibility of diverse peoples living together under a single constitutional system. This, of course, has been the central Canadian question from the beginning, and thus far it has led to five different constitutional experiments, not all of which were based on an affirmative answer.¹ Hitherto, those who discounted the possibility of a dualistic society tended to predominate among English Canadians, who translated their beliefs into the practical policy of assimilation. Generally speaking, however, the assimilationist, finding his proposal to be impossible, has not tended to advocate the only other policy compatible with an assumption of the impossibility of dualism—namely, separatism—but has changed his assumption instead. Thus, while it is subject to the difficulties inherent in all generalizations, it may be said that English Canada as a whole is clearly opposed to "separation", "independence", "sovereignty-association", or whatever other label one wants to apply, without, however, being assimilationist. Today it is the Québécois separatist who primarily represents the negative answer to our central question.

To say that English Canadians oppose separation, however, is not to say that they are firmly attached to the *status quo*; increasingly their intellectual leaders are calling for yet another major constitu-

tional overhaul. The crux of the issue, of course, is the federal-provincial distribution of powers, and since there is no political party in Quebec which will rest content with the existing arrangement, it is argued that English Canadians must realize that the choice is between separation and constitutional revision, and that if they wish to prevent the former they had better set about doing the latter. The very fact that this would be constitution number six, however, should lead us to pause and ask what precisely are the requirements of constitutional government in a culturally plural community, and whether it is possible to meet these conditions in the present circumstances. One does not have to be either an assimilationist or a separatist to take this problem seriously; all that is required is a determination not to let wishful thinking dominate one's political horizon.

In approaching the question of the requirements of constitutional government in the Canadian context, it is instructive to recall that modern constitutionalism had its origins in the attempt to make it possible for members of different *religions* to participate peacefully in a single political order. The proposed solution is what we now know as "limited government"—limited in the particular sense of pursuing only such policies as are compatible with the political equality of men. But the only kind of policies compatible with equality are those which do not contravene the freedom which flows from that equality; namely, the freedom to pursue happiness as one sees fit, limited only by the requirements of a similar freedom for others. Political equality leads to this freedom because if all men are equal then no man can judge better than I in what my happiness consists. This means, for example, that government is barred from concerning itself *directly*² with the salvation of the souls of its citizens, for to do so would necessarily be to adopt and enforce a particular theological view of the nature and requirements of salvation; which would imply that the proponents of that theology are decisively superior, and have, as such, a right to rule the rest. Such a government is not limited by notions of equality and individual freedom and cannot therefore be considered constitutional.

The non-constitutional character of this sort of government is further revealed by the fact that we identify constitutionalism with peaceable government; peaceable because it is based on the universal consent of its citizens. But only a regime based on equality can command such consent; a theocracy can never count on more than prudential acquiescence from its dissentient minorities, and, far from peaceableness, such a situation holds out the perennial potential of

civil war. In a word, modern constitutional government, as represented by such classic exponents as John Locke, requires the separation of church and state.

But is religion the only sphere of human activity which must be banished from the public sector in order to facilitate constitutional government? Surely the Canadian experience raises the question of whether culture is also such a sphere, and, as I have argued elsewhere, the Canadian followers of Lord Acton suggest that it is. "As with an established church," I wrote, "the Actonians contend [that] an established nation implies a claim to rule, legitimates the limitation of freedom, destroys the ground of consent, and paves the way to civil strife, if not civil war. Thus the state must limit itself to the pursuit of religiously *and* culturally neutral goals, and allow every individual the freedom to follow whatever religious and cultural path attracts him."³

According to Locke, however, the separation of *church* and state is only possible if all powerful religions agree that there exists a religiously neutral sphere of activity in which members of different religions can as fellow citizens carry on a common life; which is why he argued that one cannot tolerate the intolerant. Otherwise, those churches which deny a neutral sphere will continually attempt to establish themselves, thereby disrupting the possibility of limited government. By the same token, it would appear that the separation of *nation* and state is possible only if all nationalities within the state agree that there is a sphere for common action which is culturally neutral. As in the case of religion, moreover, they must also agree that the public power must limit itself to this neutral sphere. At this point it becomes apparent that the answer to the question of whether or not Quebec can or should continue within a Canadian federation depends on the extent to which these two conditions of constitutionalism are met.

Let it be added immediately, however, that these conditions need not be fulfilled in their entirety in order for the country to work. This is surely proven by the relative success of the fifth of our constitutions, the B.N.A. Act, which was never strictly speaking based on a full separation of nation and state, but has always been a sort of half-way house between separation and cultural establishment. At the level of the federal government there was indeed to be such a separation, but one of the strongest reasons for the establishment of a second level of government was the belief, at least among French-Canadians, that governmental power could not be entirely separated from religion or

culture, or that it could not be completely limited to the religiously and culturally neutral sphere in which the federal government was to operate. Thus, the solution was not completely to separate culture from the state, but to give the public power concerned with these matters to the provincial level of government. George Brown expressed the intention of this project as well as anyone:

. . . I am further in favour of this scheme because it will bring to an end the sectional discord between Upper and Lower Canada. It sweeps away the boundary line between the provinces so far as regards matters common to the whole people . . . and the members of the Federal Legislature will meet at last as citizens of a common country. The questions that used to excite the most hostile feelings among us have been taken away from the General Legislature, and placed under the control of the local bodies. No man need hereafter be debarred from success in public life because his views, however popular in his own section, are unpopular in the other—for he will not have to deal with sectional questions, and the temptation to the government of the day to make capital out of local prejudices will be greatly lessened, if not altogether at an end.⁴

Such a solution, however, could only have worked if the provinces, to whose governments the culturally related powers were given, had been culturally homogeneous. But such homogeneity never existed, which meant that the non-neutral powers exercised by the provincial governments tended to be used on behalf of one group to the detriment of the other. Since one could not expect the cultural kinsmen of the oppressed minority in the rest of the country to remain indifferent, the culturally related conflicts on the provincial level were bound to cause reverberations in Ottawa. Indeed, the B.N.A. Act itself provided the constitutional basis for the entry of such "local questions" into national politics through the powers of disallowance, reservation, and remedial legislation. These powers are perhaps anomalous in light of the desire to take "away from the General Legislature" "the questions that used to excite the most hostile feelings among us." One suspects, however, that even in the absence of such anomalous powers, a separation of nation and state on the federal level could never be perfectly effective without a corresponding separation on the provincial level.

This ambiguity is further illustrated by the attitude toward the federal government of George Etienne Cartier, who is perhaps even more famous than George Brown for formulating the theory that the jurisdiction of the central government was culturally neutral. In

Cartier's famous words, the union would "form a political nationality with which neither the national origin, nor the religion of any individual would interfere".⁵ Yet Cartier is also famous for his proposal that French-Canadians protect their interests as *French-Canadians* within the federal sphere by acting as a cohesive bloc. But would this not be to create a French party dedicated to French interests, and would this not, à la Laurier,⁶ cause the English to coalesce into an opposing party, thereby turning federal politics into the cultural politics which Confederation was designed to avoid? Ramsay Cook has argued that this was not Cartier's intention:

It is important to realize that when Cartier spoke of bloc politics he was not thinking of a French Canadian or a Catholic party. Indeed, that was the very antithesis of his conception, for that would emphasize the minority position of the French-Canadians or the Catholics by automatically creating an English Canadian or Canadian or Protestant party. Instead, he felt that a French Canadian bloc should work in cooperation with English Canadians *within the structure of one of the religiously and racially neutral Liberal and Conservative parties.*⁷

Cook is surely right about Cartier's intention, yet one must wonder whether it makes sense to speak of a religiously and racially cohesive bloc "within the structure of one of the religiously and racially neutral . . . parties". Why should the French stick together as a bloc except to use their united power to protect their interests as *French-Canadians*, which is to say their religiously and culturally related interests? But is this not to suggest that the federal sphere of jurisdiction is *not* entirely neutral on religious and culture matters, and that therefore the federal parties could not be?

One might reply, of course, that Cartier saw the French bloc as necessary only as a precautionary measure; that is, only to protect against the eventuality that the English majority might try to overstep the proper neutral jurisdiction. But it is precisely in such situations that the bloc would not work, for then one would indeed have an English Party facing a French Party. In a word, the ability of the French Canadians acting as a bloc to defend their cultural interests depends upon the English understanding their sphere of jurisdiction as culturally neutral, and acting upon that understanding, in which case the bloc would be unnecessary. Nevertheless, however contradictory Cartier's strategy may have been, it does reflect the inherent ambiguity of Confederation. As long as there remained any concession to cultural establishment, even on the provincial level, the staunchest

supporter of separation on the federal level could not help importing the cultural question back into the federal arena, by the side door as it were.

Nevertheless, despite the series of culturally related crises which Confederation has sustained because of this mixture of principles, it has, at least until recently, worked remarkably well. It has worked because, although French Canadians were never willing to accept a complete separation of nation and state, they did accept the existence of a sphere which, if not culturally neutral, was at least seen to be culturally indifferent, and which could therefore be as safely entrusted to a central government as if it *were* culturally neutral. In part, this was the result of the identification in Quebec of French Canadian culture with the Catholic religion, and the view of that religion that the kinds of activities over which the Federal government exercised jurisdiction were not an essential part of French-Catholic culture. In short, the limits between which political powers were culturally relevant, and which were not, were defined in such a way that a substantial number of things fell into the latter category. Thus, although culturally related crises were perhaps inevitable, they were also occasional.

The crisis of today has its roots in the fact that more and more of what used to be considered culturally indifferent by French Canadians, has, for reasons fully explained elsewhere,⁸ come to be seen as culturally relevant. Under such circumstances the half-way house solution of Confederation reveals its fundamental weakness, and what was a series of occasional crises becomes a continual one. Retaining the original notion that culture should not be separated from the state—hence, that culturally relevant powers ought to be given to the provincial governments—but, contending that the 1867 conception of what is culturally relevant is drastically deficient, the new nationalists have long been demanding a substantial revision of the distribution of powers. For the separatists, the culturally neutral sphere has diminished to such an extent that it no longer makes sense to think of a common, or central, government.

Thus, although our history proves that the conditions of constitutional government in a religiously and culturally plural community—namely, the separation of church and nation from the state on the basis of a neutral sphere of activity—need not be fully met, it seems equally apparent that they cannot be entirely rejected by one of the cultural groups. Some reasonably significant sphere of activity must be generally accepted as culturally neutral, otherwise the basis for the

legitimacy of the federal government among members of the minority culture disappears; and with legitimacy goes the consent which is the life-blood of constitutional government.

Before we plunge wholeheartedly into yet another constitutional project designed to include the Province of Quebec, then, we must first satisfy ourselves that the essential conditions of constitutionalism exist. There must be some hard thinking about the precise meaning of culture, for example, and if this thinking should lead to the conclusion that culture is as wide as life itself, then perhaps the "Canadian experiment" should be realistically abandoned. If, on the other hand, one were to conclude that the Fathers of Confederation were right in thinking that there is a culturally neutral sphere in which the two communities could cooperate, one would have to define fairly precisely the boundaries of this sphere, and decide whether it was indeed wide enough to make a continued federation either possible or worthwhile. (Remember that even the Parti Québécois recognizes a neutral sphere which can justify "association", but if it is as narrow as its members contend one would probably have to agree with it that only association, and not a common *government* is desirable.) And lastly, even if one were to answer these questions in a manner favorable to a "new Canada," one would still have to appraise the state of public opinion in Quebec—whether, in other words, a significant majority of Québécois perceive the issues similarly, or can be persuaded to do so in the politically relevant future. For as we all know, in politics it is not always the facts, but what one *believes* the facts to be, that is decisive.

NOTES

1. The Royal Proclamation of 1763, the Quebec Act of 1774, the Constitutional Settlement of 1791, the Act of Union of 1840, and Confederation, 1867. Of these, the constitutions of 1763 and 1840 were clearly assimilationist.
2. This does not necessarily preclude non-discriminatory aid to all religions. The separation of church and state, in other words, does not require the state to be neutral between religion and irreligion, only between particular religions. Thus, "separation" does not require a "wall of separation." See Walter Berns, *The First Amendment and the Future of American Democracy* (New York: 1976), chs. 1 and 2. By analogy one might suggest that the separation of nation and state does not preclude a policy of impartial "Multiculturalism."
3. Rainer Knopff, "Language and Culture in the Canadian Debate: The Battle of the White Papers," *Canadian Review of Studies in Nationalism*, VI: 1 (Spring 1979), 74. For an argument that Quebec nationalism does indeed constitute such a claim to rule, see my "Democracy vs. Liberal Democracy: The Nationalist Conundrum," *The Dalhousie Review*, 58:4 (Winter 1978-79), 638-646.

4. Quoted in Donald Smiley, *The Canadian Political Nationality* (Toronto: 1967), 7-8.
5. Quoted in *Ibid.*, iii
6. The reference here is to Laurier's famous "Political Liberalism" speech of 1877. See Ulric Barthe, *Wilfrid Laurier on the Platform* (Quebec: 1890), 51-80, especially 72.
7. Ramsay Cook, *The Maple Leaf Forever* (Toronto: 1971), 73-74. Emphasis added.
8. See for example, Richard Jones, *Community in Crisis* (Toronto: 1972), and Dale Posgate and Kenneth McRoberts, *Quebec: Social Change and Political Crisis* (Toronto: 1976).