Federalism-e

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~Le journal de premier cycle sur le fédéralisme~
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Federalism-E

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Introduction

Welcome To The 2010 Edition of Federalism-E

On behalf of the writers and editors welcome to the eleventh edition of Federalism-e. Our mandate is to produce an annual volume of undergraduate papers addressing various issues within the study of federalism such as political theory, multi-level governance, and intergovernmental relations. Both of us feel it is important to highlight the fact that this journal exists for undergraduate students. Federalism-e provides a forum encouraging research and scholarly debate amongst undergraduates which will hopefully germinate further interest in this field of study.

This year, the theme of our journal was the ways in which federalism helps diverse societies address current issues like globalization, ethnic violence, climate change and separatism. As you will see, several of our authors propose innovative policy recommendations within the rubric of multi-level governance.

Federalism-e is an excellent avenue for students beginning a career within the realm of academia for a variety of reasons. First, Federalism-e is a rare opportunity for undergraduate students to have their works published, exposing them to the process of dealing with an academic journal. Our editorial board consists of a number of well known academics in the field of federalism whom have provided feedback creating the opportunity for writers to utilize this scholarly criticism to improve upon their papers. Finally, Federalism-e allows undergraduates from across Canada and the world to interact with one another, sharing ideas and commenting on each other's work. It provides a forum for networking which, we hope, will be utilized and expanded upon in the future.

Bienvenue à l'édition 2010 de Federalism-e

Au nom des auteurs et des éditeurs, nous vous souhaitons la bienvenue à l'édition 2009-2010 de Federalism-e. Pour nous, le mandat est de produire un recueil annuel des textes du premier cycle, et qui traite de différents sujets, comme la théorie politique, le partage des pouvoirs et les relations intergouvernementales. Nous voudrions réitérer que ce recueil est mis de l'avant pour les étudiants du premier cycle. Nous souhaitons que Federalism-e procure un forum promouvant la recherche et les débats académiques parmi la communauté du premier cycle, faisant grandir l'intérêt pour ce champ d'intérêt.

Cette année, le thème de Federalism-e a été la façon dont le fédéralisme permet diverses sociétés aborder les questions actuelles comme la mondialisation, la violence ethnique, le changement climatique et le séparatisme. Comme vous le verrez, plusieurs de nos auteurs proposent des recommandations de politique d'innovation dans la rubrique de la gouvernance multi-niveaux.

Federalism-e permet aussi aux étudiants de débuter des carrières académiques, et ce pour de multiples raisons. Premièrement, Federalism-e est une des rares opportunités pour publier en tant qu'élèves de premier cycle, tout en étant exposés aux procédures liés aux journaux académiques. Notre comité éditorial est constitué de plusieurs académiques connus dans le domaine du fédéralisme, et ceux-ci ont fourni des rétroactions aux auteurs, leur permettant donc d'améliorer leurs ouvrages. Finalement, Federalism-e permet aux étudiants du premier cycle du Canada et partout dans le monde d'interagir ensemble, de partager des idées et de commenter les travaux des autres. Nous espérons que Federalism-e deviendra un vaste réseau de connexions qui se perpétuera d'éditions en éditions, encourageant toujours plus les étudiants à couvrir les multiples facettes du fédéralisme.

La question de la sécession dans une fédération: Une critique des mauvaises interprétations

Åsbjørn Melkevik

Introduction : la question de la sécession

Nous avons intitulé notre essai « la question de la sécession » à dessein ; cela implique nécessairement qu'il y ait une question à poser et sur laquelle il convient de réfléchir. Michael Ignatieff, mesurant bien toute l'importance de la question de la sécession au Canada, écrivait : « Members of my generation have spent their entire adult political life wondering whether the country either can or deserves to survive.[1] » En effet, cette question suscite des passions profondes, qui malheureusement entraînent souvent, de la part du sujet passionné, soit un appui total ou un rejet total d'une possible sécession. Au contraire, il ne faut pas rejeter *a priori* l'interrogation ou affirmer simplement qu'elle est *déjà* réglée. Autant les attitudes rejetant complètement la possibilité d'une sécession que les attitudes attribuant à la sécession une certaine valeur transcendantale inévitable sont dangereuses pour le fédéralisme et pour la discussion démocratique devant nécessairement précéder un retrait formel d'une entité fédérée. Ainsi, le principal danger pour le fédéralisme n'est pas tant la possibilité d'une sécession en soi, que la radicalisation des idées sur la sécession. D'un côté, il est dangereux de tomber dans le piège du holisme, soit la pensée voulant que le tout soit plus grand que la somme de ses parties ; d'où l'idée erronée voulant que les provinces n'ont d'importance que par rapport

[1] Michael IGNATIEFF, *Blood and Belonging. Journeys Into The New Nationalism*, Toronto, Penguin Canada, 1993, page 174.

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à l'État central. D'un autre côté, l'idée que les parties sont inlassablement opprimées par le tout et que leurs réelles valeurs ou identités ne peut exister ou survivre que par une éventuelle séparation du tout est très certainement erronée, dans la plupart des cas. Ces deux types de préconception entraînent toutes sortes d'arguments idéologiques inappropriés qui tentent de fixer ou de « régler » la question de la sécession une fois pour toute ; au contraire, selon nous, la question doit rester *ouverte*.

Dans le présent essai, nous nous attarderons donc à réfuter les mauvaises interprétations de la question de la sécession voulant détruire cette possibilité d'une intelligence politique – d'une raison prudentielle aristotélicienne. Nous tenterons, dans notre première partie, de souligner l'insuffisance du Droit dans le discours concernant les sécessions. Dans notre deuxième partie, nous envisagerons, à la suite du Renvoi de la Cour suprême du Canada, la sécession comme une procédure devant impliquer un dialogue – nous verrons comment cette notion de négociation fut dévaluée autant par une loi fédérale qu'une loi provinciale québécoise. Dans notre troisième partie, nous critiquerons les théories s'attachant à mettre trop l'accent sur le côté négatif des projets sécessionnistes, soit principalement la théorie de Stéphane Dion de la peur et de la confiance ; nous terminerons par proposer notre vision positive.

1. L'insuffisance du Droit dans le discours sur la sécession

L'évocation de la notion de « Droit » est un argument qui revient sans cesse dans les discussions entourant la possibilité d'une sécession pour une entité fédérée. Or la notion de Droit – peu importe ce que l'on entend par là, c'est-à-dire soit le « droit international », soit le droit étatique – ne saurait véritablement être concluante concernant la question et risque bien de se réduire à être une simple « justification » d'une position idéologique. Plutôt que le concept de Droit, c'est la question de la procédure *politique* qui doit nous préoccuper – et dont nous reparlerons dans notre prochaine section. Or, le fait que le droit et les règles procédurales peuvent être créés par le même organe étatique – la Cour suprême, dans le cas du Canada – ne doit en aucun cas

nous faire mélanger la question procédurale avec la question du Droit[2]. Dans la présente section, nous nous attarderons donc à montrer que le recours à la notion de Droit international n'est souvent simplement pas approprié.

Le droit à l'autodétermination des nations

Le droit international inclut un « droit à l'autodétermination des nations », ou encore un « droit des peuples à disposer d'eux-mêmes », qui – selon certains intellectuels – justifierait un « droit » à la sécession. Les justifications invoquées de ce principe ne nous intéressent pas ici en tant que telles, sinon l'idée qu'à un « peuple reconnu[3] » correspondent des droits. Or, cette conception nous semble largement erronée. Naturellement la reconnaissance de l'existence d'une « nation » ne fournit aucun « droit » en soi. Une nation est simplement un *fait politique* avec lequel il convient de composer ; le fédéralisme ou la décentralisation sont ainsi des outils qui permettront d'assurer que la nation en question puisse effectivement participer à l'exercice du pouvoir. S'il y a une indépendance, elle se fera par des citoyens et non par une immanence ou par une transcendance découlant d'un fait national distinct à l'intérieur d'une fédération. Le fait d'être une nation distincte ne justifie donc aucunement une indépendance[4]. En ce sens, nous pourrions dire que la justification d'un « droit de sécession » pour les nations se situe dans ce que Hume appelait le paralogisme naturaliste. Il y a passage non logique de la factualité à la normativité ; du *fait* national au *projet* de sécession. Les faits ne peuvent pas *justifier* des intentions, ce serait inscrire dans la réalité des intentions qui n'y sont pas. Au contraire, les sécessions doivent se comprendre comme des projets collectifs –

[2] Le Droit ne doit pas devenir un terme générique, qui perd ainsi son sens propre ; par exemple, pour Kelsen toute production de l'État est soit création ou application du droit. Cela a pour conséquence que le droit devient un mot valise, sans utilité pour faire des distinctions conceptuelles. Hans KELSEN, *Théorie générale du droit et de l'État*, Paris, Bruylant, Librairie Générale de Droit et de Jurisprudence, E.J.A., 1997, page 318.

[3] Mentionnons ici que l'idée de reconnaissance est aussi problématique. Cela rentre, dans une certaine mesure, en contradiction avec l'idéal libéral de l'État qui ne reconnaît pas de groupe particulier, mais s'efforce de maintenir une séparation avec la société civile.

[4] « It is important to reject the notions that every ethnically or culturally distinct people, nation, or group has an automatic right to its own state or that ethnically homo generous states are inherently desirable. » Hurst HANNUM, « The Specter of Secession: Responding to Claims for Ethnic Self- Determination », *Foreign Affairs*, vol. 77, no 2, mars - avril, 1998, pp. 16.

comme nous le défendrons dans notre troisième section – ce qui implique un certain *jugement* des citoyens ; ce jugement ne peut pas être remplacé par un droit.

Les nations menacées de destruction

Être une nation ne donne ainsi pas de « droits » de sortir de l'État de droit, de manière purement artificielle. Cependant, certains diront que ce droit de sécession peut être reconnu lorsqu'une entité fédérée est menacée de destruction par l'État central ; la primauté de la procédure politique ou constitutionnelle peut alors être écartée sans trop de risque. Concernant le droit à l'autodétermination des nations, Michael Ignatieff, qui reconnaît ce droit, écrit : « Mais l'autodétermination n'implique pas nécessairement le droit à la sécession. La sécession et l'indépendance se justifient pour une nation menacée de destruction, et seulement si la possession des pouvoirs d'un États souverain garantit son salut.[5] » Il convient alors de se poser une question : le fait qu'une nation soit menacée de destruction donne-t-il un « droit » à la sécession ? Selon nous, la réponse est non. Il ne peut pas y avoir une telle chose qu'un « droit » de se protéger. À ce sujet, Hobbes soulignait déjà que lorsque l'on est menacé de mort par quelqu'un – y compris par l'État – on sort automatiquement de l'État de droit et peut naturellement défendre sa vie[6]. Bien que les parallèles entre les individus et les groupes soient souvent trompeurs, nous croyons qu'ici la comparaison est juste. Si une province ou une nation est menacée par l'État fédéral – dans le sens physique ou politique du terme et non pas culturellement –, la notion de droit n'est simplement pas nécessaire[7] : la sécession sera alors un moyen tout naturel, voire politique, parmi d'autres de se protéger.

En conséquence, l'argument du droit de sécession, lorsqu'il se réfère à un droit international, n'est souvent simplement pas approprié ; soit le droit de sécession n'est pas vraiment utile, comme dans le cas des nations menacées physiquement, soit il repose

[5] Michael IGNATIEFF, *La Révolution des droits*, Montréal, Boréal, 2001, page 121.
[6] Thomas HOBBES, *Léviathan*, Paris, Éditions Sirey, 1971, page 128. « il est interdit aux gens de faire ce qui mène à la destruction de leur vie ou leur enlève le moyen de la préserver, et d'omettre ce par quoi ils pensent qu'ils peuvent être le mieux préservés. »
[7] Dans certains cas, la notion pourrait être utile ; les nombreux démocides du XXe siècle en témoignent.

sur une interprétation trop large du droit à l'autodétermination[8] et n'est que du *wishful thinking* : « Despite continued claims to a "right" of secession by groups in Asia, Africa, Europe, and the former Soviet Union, no such right has yet been recognized by the international community. International law does not prohibit secession, whether voluntary or violent, but it has neither recognized a right to secede nor identified even tentatively the conditions that might give rise to such a right in the future.[9] » Ainsi, dans l'éventualité d'une sécession à l'intérieur d'une fédération, il ne faut pas se référer à un droit international, mais bien prioritairement à la procédure démocratique interne.

2. La question procédurale d'une sécession

La sécession dans un régime fédéral est, selon la définition de John R. Wood[10], un retrait formel d'un membre par rapport à l'autorité centrale. Cette définition a l'avantage de ne pas faire référence à de grands principes et de rester somme toute assez simple. Or, le mot « formel » doit être souligné ; la formalité implique nécessairement une *procédure* de dévaluation du pouvoir vers la nouvelle entité politique. Si nous avons rejeté le droit international comme étant non pertinent dans l'éventualité d'une sécession, l'importance de la procédure doit être soulignée et ne surtout pas être confondue avec la notion de droit. Un droit implique quelque chose qui est dû et qui peut être revendiqué à une autorité – la sécession n'est due à personne et ne peut pas être revendiquée à une autorité quelconque. Par ailleurs, une procédure implique simplement que lorsque l'on veut atteindre un certain but, il est nécessaire de suivre une démarche formelle pour atteindre ce but. Il peut être avantageux de comprendre le politique comme essentiellement procédural ; ainsi les différentes variations de systèmes politiques sont autant de procédures pour atteindre certains buts : la démocratie, le fédéralisme, le parlementarisme et même le totalitarisme peuvent être compris dans cet esprit. La sécession en tant

[8] Il ne faut pas confondre les *politiques* adoptées par l'ONU, en vue de favoriser le processus de décolonisation, avec un *droit* reconnu et invocable par tous ; cela n'est pas un droit de sécession invocable. Il semble assez clair que le Québec n'est pas une colonie et ne peut donc pas bénéficier des politiques anti-colonialistes.
[9] Hurst HANNUM, *op. cit.*, page 13-14.
[10] WOOD, John R., « Secession: A Comparative Analytical Framework », *Canadian Journal of Political Science*, vol. 16, no 1, 1981, page 110.

qu'événement politique peut par conséquent aussi être envisagée en termes de procédures. Nous allons, dans la présente section, premièrement nous expliquer sur ce point de *politique procédurale*, pour deuxièmement examiner la manière dont cette procédure se déploie au Canada et comment elle fut interprétée par la Cour suprême et dévaluée par les réactions fédérale et provinciale.

Le fédéralisme procédural

Selon le philosophe Karl Popper : « Il est faux […] de mettre l'accent […] sur la question : " Qui doit gouverner ? Le peuple (la plèbe) ou les quelques meilleurs ? Les (bons) travailleurs ou les (mauvais) capitalistes ? La majorité ou la minorité ? La gauche, la droite, ou le parti du centre ? " Toutes ces questions sont mal posées. Car il importe peu de savoir qui gouverne, tant que l'on peut se défaire du gouvernement sans effusion de sang.[11] » Le problème principal de la démocratie serait donc : « comment doit-on gouverner », soit un raisonnement insistant sur les *limites* de l'exercice du pouvoir et sur le *processus pacifique* du changement de gouvernement. Il y a en effet une importante dichotomie entre un questionnement qui insiste sur une fin – la prise du pouvoir par le prolétariat par exemple – soit un raisonnement foncièrement téléologique, et un questionnement insistant sur les moyens, soit un raisonnement procédural. Le fédéralisme doit être compris dans le même ordre d'idée que la démocratie, c'est-à-dire comme essentiellement procédural. Ce système offre une autre réponse à la question de « comment doit-on gouverner », qui n'est évidemment pas incompatible avec la démocratie – bien au contraire –, mais qui se démarque d'un modèle d'union centralisée, qui serait une autre réponse appropriée à la *question politique*[12]. Ainsi, le fédéralisme est une procédure visant à assurer la fonctionnalité d'un pays confronté par exemple à un immense territoire ; à une pluralité de nations ou d'identités[13] ; à des problèmes de sécurité ; ou à des problèmes économiques de marché intérieur *etc*. Dans le cadre d'une

[11] Karl POPPER, *Toute vie est résolution de problèmes*, tome 2, Arles, Actes Sud, 1998, pages 74-75.
[12] Carl J. FRIEDRICH, *Trends of Federalism in Theory and Practice*, New York; Washington; Londres, Praeger Publishers, 1968, pages 3-4.
[13] « Federalism thus provides the only voluntary approach to the task of coordinating disparate national elements. » *Ibid*., page 34.

fédération, la sécession implique par conséquent qu'une entité fédérée envisage une réponse *contradictoire*[14], à celle donnée par la fédération, concernant la question politique du vivre ensemble – cela implique un *projet* de société. La sécession, comme nous le défendrons, doit être d'une part *projet* et d'autre part *procédure*. La procédure d'une sécession doit, comme nous allons le voir avec le Renvoi de la Cour suprême du Canada, faire référence essentiellement à la notion de négociation ; il doit y avoir un dialogue entre les acteurs d'une fédération, puisqu'il s'agit ici d'une question aussi essentielle qu'un changement de citoyenneté.

Le Renvoi de la Cour suprême sur la sécession du Québec

Il est intéressant, pour examiner l'importance de la procédure qui doit précéder une sécession, de se pencher sur le Renvoi de la Cour suprême sur la sécession du Québec. La première question posée à la Cour suprême – celle qui est intéressante pour notre propos – porte sur la possibilité de l'unilatéralité d'une sécession : « 1. L'Assemblée nationale, la législature, ou le gouvernement du Québec peut-il, en vertu de la Constitution du Canada, procéder unilatéralement à la sécession du Québec du Canada?[15] ».

La Cour suprême répond, de manière assez sage, en rappelant un fait essentiel, mais souvent oublié : « La démocratie, toutefois, signifie davantage que la simple règle de la majorité.[16] » Elle ne rejette évidemment pas cette règle, mais souligne que la majorité n'est pas suffisante – on ne peut pas sortir de l'État de droit par une simple majorité[17] : « Le Québec ne pourrait, malgré un résultat référendaire clair, invoquer un

[14] « Quand les objectifs locaux particularistes sont suffisamment forts et cohérents pour maintenir ou pour constituer en groupes autonomes les subdivisions territoriales du pays, alors la structure politique adéquate est la Confédération. En revanche, l'Organisation fédérale apparaît quand les objectifs opposés (intérêts, traditions, intentions) ne sont pas encore, ou ne sont plus suffisamment forts pour maintenir des éléments autonomes. » Carl J. FRIEDRICH, *La démocratie constitutionnelle*, Paris, Presses Universitaires de France, 1958, page 164.

[15] *Renvoi relatif à la sécession du Québec*, [1998] 2 R.C.S. 217.

[16] *Ibid.*

[17] Au contraire de Carl Schmitt, dont Renaud Baumert synthétise ainsi la pensée : « La pensée démocratique suppose – principe d'identité oblige – que le peuple soit souverain et qu'aucun frein ni

droit à l'autodétermination pour dicter aux autres parties à la fédération les conditions d'un projet de sécession. Le vote démocratique, quelle que soit l'ampleur de la majorité, n'aurait en soi aucun effet juridique et ne pourrait écarter les principes du fédéralisme et de la primauté du droit, les droits de la personne et des minorités, non plus que le fonctionnement de la démocratie dans les autres provinces ou dans l'ensemble du Canada.[18] » La Cour suprême fait ensuite quelque chose de remarquable politiquement en insistant sur la notion de *négociation*. C'est le politique qui doit prendre ses responsabilités ; les différents acteurs de la fédération doivent, dans l'éventualité d'une majorité claire donnant une légitimité à un projet sécessionniste clair, engager un dialogue sur les conditions d'une sécession. « Les négociations qui suivraient un tel vote porteraient sur l'acte potentiel de sécession et sur ses conditions éventuelles si elle devait effectivement être réalisée. *Il n'y aurait aucune conclusion prédéterminée en droit sur quelque aspect que ce soit*.[19] » La phrase précédente exprime magnifiquement que ce n'est donc pas le droit, mais la politique qui doit s'occuper de la question d'une sécession. La principale procédure que nous pouvons faire ressortir de ce Renvoi est qu'une sécession doit nécessairement impliquer un dialogue sincère et sérieux. Cela permet ainsi d'introduire ce que l'on pourrait appeler, à la suite de Jürgen Habermas, la démocratie délibérative, ou dans ce cas-ci le fédéralisme délibératif.

Le Renvoi de la Cour suprême était, selon nous, essentiellement intelligent et réfléchi[20] dans son utilisation de la notion de négociation. Or, le portrait se gâte par la suite avec les deux réactions à ce Renvoi, respectivement fédérale et provinciale, soit la *Loi donnant effet à l'exigence de clarté formulée par la Cour suprême du Canada dans son avis sur le Renvoi relatif à la sécession du Québec*, ci-après nommée Loi sur la clarté,

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contrepoids ne puisse entraver son exercice du pouvoir. Par définition même : le libéralisme est modération, la démocratie est radicalisme. » Renaud BAUMERT, « Carl Schmitt contre le parlementarisme weimarien. Quatorze ans de rhétorique réactionnaire », *Revue française de science politique*, volume 58, no 1, 2008, pages 11-12.

[18] *Renvoi relatif à la sécession du Québec*, [1998] 2 R.C.S. 217.

[19] *Ibid*., *Nous soulignons*.

[20] Mentionnons par ailleurs que l'identification de la nécessité de modifier la Constitution en cas de sécession est quelque peu ridicule, lorsque l'on sait la complexité d'une telle tâche au Canada. La loi sur la clarté résume ce principe ainsi : « au Canada, la sécession d'une province, pour être légale, requerrait une modification à la Constitution du Canada ».

et la *Loi sur l'exercice des droits fondamentaux et des prérogatives du peuple québécois et de l'État du Québec*. Le problème avec la Loi sur la clarté de Stéphane Dion est justement qu'elle met l'accent sur la *clarté*, quand l'aspect le plus important du Renvoi est, selon nous, la notion de *négociation*. L'accent mis sur la clarté n'est pas innocent ; c'est évidemment à l'avantage du gouvernement central de pouvoir décider si une question est claire et si une majorité est claire. La Chambre des communes se réserve la possibilité d'examiner : « a) l'importance de la majorité des voix validement exprimées en faveur de la proposition de sécession; b) le pourcentage des électeurs admissibles ayant voté au référendum; c) tout autres facteurs ou circonstances qu'elle estime pertinents[21] ». Voilà qui est tout de même assez vague *et pas très clair* pour une loi sur la clarté ; le message est que le parti sécessionniste doit être clair, mais que le gouvernement fédéral n'est pas obligé de l'être quant à ses critères évaluatifs. Cela permet au gouvernement canadien de délaisser presque complètement la notion de négociation et d'affirmer à plusieurs reprises : « Aucune négociation en cas d'ambiguïté. » Les notions de procédure et de dialogue deviennent donc complètement dévaluées et le processus politique d'une sécession devient obscur et rigide.

La réponse québécoise[22] n'est pas mieux, sinon pire. Le préambule s'ouvre avec 15 « CONSIDÉRANT que » ; qui sont allégués comme étant des *faits*[23]. Ces 15 faits aboutissent immédiatement à l'article 1, qui proclame que « *Le peuple québécois peut, en fait et en droit, disposer de lui-même*. Il est titulaire des droits universellement reconnus en vertu du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes » ; et puis, dans l'article 2 : « Le peuple québécois a *le droit inaliénable de choisir librement le régime politique et le statut juridique du Québec* » ; cela se

[21] *Loi donnant effet à l'exigence de clarté formulée par la Cour suprême du Canada dans son avis sur le Renvoi relatif à la sécession du Québec*, L.C., 2000, c. 26, C-31.8

[22] *Loi sur l'exercice des droits fondamentaux et des prérogatives du peuple québécois et de l'État du Québec*, L.R.Q., chapitre E-20.2. Nous soulignons.

[23] Mentionnons par ailleurs que si la plupart des considérants n'ont qu'une portée déclaratoire, certains relèvent davantage du jugement politique ; par exemple : « CONSIDÉRANT que le Québec fait face à une politique du gouvernement fédéral visant à remettre en cause la légitimité, l'intégrité et le bon fonctionnement de ses institutions démocratiques nationales » Cf. Yves-Marie MORISSETTE, *Le renvoi sur la sécession du Québec. Bilan provisoire et perspectives*, Montréal, Les éditions Varia, coll. Histoire et Société, 2001, page 23.

complique encore avec l'article 3 : « *Le peuple québécois détermine seul*, par l'entremise des institutions politiques qui lui appartiennent en propre, les modalités de l'exercice de son droit *de choisir le régime politique et le statut juridique du Québec* » ; et encore avec l'article 4 : « Lorsque le peuple québécois est consulté par un référendum tenu en vertu de la *Loi sur la consultation populaire* (chapitre C-64.1), l'option gagnante est celle qui obtient la majorité des votes déclarés valides, soit *50 % de ces votes plus un vote*. » C'est à se demander si les auteurs de cette loi ont compris quoi que ce soit au fédéralisme ou à la démocratie. Premièrement les faits ne justifient rien. Deuxièmement, du droit des peuples à disposer d'eux-mêmes nous ne pouvons pas faire découler ces « droits » qui sont proclamés, presque comme évidences. Troisièmement et principalement, la vision de la démocratie qui est présentée ici n'est absolument pas appropriée. Concernant la règle du 50% plus 1 vote, le professeur Jean-Pierre Derriennic a montré de manière assez convaincante la difficulté d'une telle règle dans les cas de sécession : « Nous acceptons la légitimité d'une décision prise par un vote que nous avons perdu, parce que nous savons qu'il y aura d'autres votes que parfois nous pourrons gagner.[24] » Dans une sécession, il n'y a pas cette possibilité « d'autres votes » – qu'il suffise de dire qu'une sécession emportant 56% des voix, même avec un fort taux de participation, serait soumise à de très fortes difficultés pour être effective. Mais là où nous voulons mettre l'accent, c'est que dans cette loi, la notion de délibération a *totalement disparu* : aucune négociation comme le souligne particulièrement l'article 3. Yves-Marie Morissette souligne que « la Loi no 99 tente d'assujettir entièrement et une fois pour toutes la norme constitutionnelle de clarté au seul contrôle de l'Assemblée nationale[25] ». Le Québec, par l'entremise de son parlement, aurait donc un « droit » de déterminer *seul*, sans aucun dialogue ou consultation avec le reste du Canada, le régime politique et le statut juridique du Québec. L'application absurde de ce principe est de dire qu'il suffit de 50% plus 1 des voix à un référendum pour que le Québec décide soit de devenir un régime républicain ou de se

[24] Jean-Pierre DERRIENNIC, *Nationalisme et démocratie : réflexions sur les illusions des indépendantistes québécois*, Montréal, Boréal, 1995, page 93. Ajoutons la célèbre citation de Rousseau : « plus les délibérations sont importantes et graves, plus l'avis qui l'emporte doit approcher de l'unanimité » *Du contrat social*, Livre IV, ch. II.
[25] Yves-Marie MORISSETTE, *op. cit.*, page 24.

séparer du Canada ; évidemment nous exagérons, mais le principe de cette loi reste complètement inapproprié.

3. La sécession comme projet négatif ou positif

Dans la plupart des pays, il n'y a aucune procédure ou droit de sécession reconnu. La possibilité même de l'éventualité est rejetée catégoriquement par l'autorité centrale – le Canada à cet égard est plutôt une exception. Ce rejet du droit de sécession est dans un certain sens positif, puisqu'il coupe court aux revendications farfelues ; Hurst Hannum écrit : « In general, policymakers should continue to reject the notion that there is a legal right of secession. This principle will properly force nationalists to abandon their claim that "we are a nation and therefore have a right to a state."[26] » Toutefois, l'absence de droit ou de procédure de sécession ne rend pas l'entreprise futile ; toutes les revendications de sécession ne sont pas farfelues. La sécession devient alors beaucoup plus problématique, mais ne doit pas être considérée comme impossible. L'important est, comme nous allons le souligner, d'avoir un projet collectif – politique – qui rencontre un fort consensus dans la population et qui est mené à terme selon une procédure appropriée. Or, ici encore, des théories – comme celle de Stéphane Dion que nous allons examiner – tentent de réduire la sécession à un simple calcul utilitariste entre les coûts et les bénéfices, ou entre la peur et la confiance. Cette réduction minimaliste de la sécession – bien que parfois utile – est problématique sous de nombreux aspects. Seulement s'attacher à des éléments superficiels, mesurables, c'est oublier ou écarter le fait que la sécession n'est pas quelque chose de mesurable ou de prévisible par un calcul et que bien souvent les experts sont surpris par les événements ; le politique est le domaine du possible *et* souvent de l'inconcevable. Nous examinerons ici premièrement une théorie négative de la sécession, pour deuxièmement proposer notre vision positive.

[26] Hurst HANNUM, *op. cit.*, page 16.

La peur et la confiance

Stéphane Dion défend, dans son article « Why is Secession Difficult in Well-Established Democracies? Lessons from Quebec[27] », que la possibilité d'une sécession est soumise à deux états émotifs : la peur et la confiance[28]. La logique en est que la peur entraînée par le gouvernement de l'union fédérale est essentielle pour une sécession autant que la confiance dans le projet sécessionniste : « They must fear the union and have confidence in secession.[29] » Cela permet à Stéphane Dion de considérer la sécession comme un projet *négatif* et d'écarter, dans une certaine mesure, le côté *positif* du projet – la sécession *contre* et non *pour* quelque chose. Une sécession serait selon Dion très improbable si l'État fédéral n'inspirait pas la crainte[30]. Encore une fois, l'application absurde de ce principe est de dire que le Québec n'a que très peu de chance d'être indépendant si le Canada ne menace pas directement la province, culturellement, économiquement ou politiquement. Cela est évidemment faux ; il y a plusieurs *bonnes raisons* qui peuvent mener à la sécession dans un État – fédéral ou non. L'examen des sécessions réussies – soit pacifique –, comme la Norvège et la Tchécoslovaquie, montre que si la peur joue un rôle, ce rôle est d'une importance dérisoire. Par contre, un examen des sécessions qui furent des échecs flagrants – sur le plan des moyens, donc dans lesquelles il y eut plusieurs morts, ce qui n'exclut pas qu'ils sont devenus de fait indépendant par la suite – pensons aux républiques fédérés yougoslaves, ou aux diverses tentatives de fragmentation en Afrique, l'examen montrerait qu'à ces endroits la peur fut bien un des facteurs qui entraîna la violence. Évidemment, il est impossible d'écarter la violence comme possibilité, si le Québec se séparait, mais de là à affirmer que la peur est en partie nécessaire à une sécession, c'est condamner *toutes* les sécessions à un *risque* de violence très élevé. La théorie de Dion n'est pas innocente ; introduire ce germe de peur,

[27] Stéphane DION, « Why is Secession Difficult in Well-Established Democracies? Lessons from Quebec », *British Journal of Political Science*, vol. 26, no 2 (avril, 1996), p. 271.
[28] « Fear is defined here as the sense among members of a regional group that their cultural, economic or political situation will deteriorate within the existing union. Confidence is the sense among the group that it can perform better on its own and that secession is not too risky. » *Ibid*., page 271.
[29] *Ibid*., page 273.
[30] « Secessionist leaders have no chance if the union does not inspire fear among a significant proportion of the regional group's members. » *Ibid*., page 272.

et donc de possibilité de violence, dans la théorie même de la sécession lui permet de condamner le projet sécessionniste encore plus efficacement.

L'ambivalence des projets sécessionnistes

Selon nous, le nationalisme sécessionniste, pris dans son sens d'autodétermination, peut à la fois être très bien – s'il est fondé sur un réel projet politique avec un réel consensus de société – et très dangereux – s'il commence à être compris en termes de différence et de reconnaissance. Si le Québec aspire à être indépendant, souverain, son argumentation ne doit pas s'attacher à souligner que le Québec est une *société distincte*, mais doit bien plutôt expliquer le projet politique, les objectifs et la vision d'une société civique se reconnaissant dans un projet de souveraineté politique – l'argument ne doit donc pas être culturel ou historique, mais bien politique. La *sortie du politique* est sûrement le pire danger du nationalisme. Il faut selon l'expression de Hannum adopter une politique démocratique de « putting people first » : « Self-determination should be concerned primarily with people, not territory.[31] » Stéphane Dion se trompe encore lorsqu'il affirme que « There has never been a single case of secession in democracies if we consider only the well-established ones, that is, those with at least 10 consecutive years of universal suffrage.[32] » Cela est évidemment faux[33]; la Norvège était bien une démocratie des plus sérieuses depuis 1898 lorsqu'elle a fait son indépendance de la Suède en 1905 – démocratie et sécession ne sont pas incompatibles.

L'important est, selon nous, de ne pas restreindre en théorie la possibilité d'une sécession en pratique. La sécession est réfractaire aux considérations « en théorie ». Ainsi, le propos de Hannum est insuffisant lorsqu'il écrit : « There are two instances in which secession should be supported by the international community. The first occurs

[31] Hurst HANNUM, *op. cit.*, page 15.
[32] Stéphane DION, « The Dynamic of Secession: Scenarios after a Pro-Separatist Vote in a Quebec Referendum », *Canadian Journal of Political Science*, vol. 28, no 3 (Sep., 1995), pages 533-551
[33] La limite de 10 ans de suffrage universel est purement artificielle pour mesurer le sérieux d'une démocratie et nous ne la prenons donc pas en compte.

when massive, discriminatory human rights violations, approaching the scale of genocide, are being perpetrated. […] A second possible exception might find a right of secession if reasonable demands for local self-government or minority rights have been arbitrarily rejected by a central government – even without accompanying large-scale violence.[34] » Nous sommes en accord avec ces deux cas de figure pour lesquels la communauté internationale devrait reconnaître la sécession, mais ces deux cas ne sont pas exclusifs; il y a d'autres circonstances acceptables pour une sécession. La sécession se situe quelque part entre la procédure et le projet ; donc la sécession doit être faite de manière démocratique, pacifique et transparente d'une part et d'autre part reposer sur un réel projet de société. Évidemment que si l'immense majorité d'un État fédéré veut se séparer d'un État central et que cette volonté est confirmée par un référendum avec une question claire et qu'un sain dialogue s'établit entre les acteurs politiques pour discuter des modalités de la sécession, alors nous pourrons dire que la sécession doit être reconnue, en théorie et en pratique. Nous n'avons aucune bonne raison de croire qu'un tel scénario est impossible, sinon nos préjugés.

Conclusion : une question non résolue

Le type d'argumentation que nous avons essayé de développer tout au long de cet essai consiste à rejeter les dogmatismes ou les idéologies trop faciles. Charles de Gaulle disait : « Des chercheurs qui cherchent, on en trouve. Des chercheurs qui trouvent, on en cherche. » Or, justement, l'important est de chercher et d'être assez raisonnable pour ne pas affirmer avoir trouvé. Il ne faut pas fixer la question de la sécession – que l'on soit pour ou contre – ni par le Droit, ni par une quelconque politique rigide ou obscure ; la sécession est une question politique et il faut par conséquent que ce soit le politique qui développe un projet collectif qui soit partagé par la population. Après, qu'il y ait une société distincte, une langue différente, un bagage historique commun ou non n'est pas l'élément déterminant en soi. Les différences sont souvent imaginées et créées artificiellement plus qu'autre chose : « Moins les différences sont importantes entre deux

[34] Hurst HANNUM, *op. cit.*, page 16.

groupes, plus ils doivent lutter pour dépeindre ces différences comme absolues.[35] » Disons donc au contraire de Ignatieff – qui affirme que « Le pouvoir est le vecteur qui transforme le mineur en majeur[36] » – que le politique est précisément le vecteur qui permet de concilier les différences majeures en une harmonie sommes toutes fonctionnelle ; le fédéralisme en est très sûrement une expression. Or, si les différences, peu importe leur nature, sont telles qu'elles poussent à la désunion, alors « alea jacta est ».

[35] Michael IGNATIEFF, *L'honneur du guerrier*. *Guerre ethnique et conscience moderne*, Québec – Paris, Les Presses de l'Université Laval – Éditions La Découverte, coll. Prisme, 2000, page 50.
[36] *Ibid*., page 49.

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Natural Resources and the Environment: Constitutional Challenges Facing Climate Change Policy in Canada

Yvonne Leung

The problem of anthropogenic climate change is arguably one of the foremost pressing issues facing the world today. With that, governments around the world have been working together to put forward binding targets and agreements to reduce greenhouse gas emissions in their respective jurisdictions. The most famous example of these multilateral efforts has culminated in the Kyoto Protocol, which was formally ratified by the Canadian government in 2002. However, despite this ratification, the federal government has failed to meet its reduction targets or legislate any substantial policy that would effectively regulate and reduce emissions. Indeed, rather than seeing emission levels fall, Canada's overall GHG emissions have increased substantially.[1]

There are various political and economic factors that contribute to the reason why Canada has failed to live up to its Kyoto targets and overall commitments to reduce its greenhouse gas emissions. However, this paper will focus on the constitutional obstacles that Canadian governments have faced in their attempts to implement Kyoto, as well as alternative policies to fight climate change.

This paper will begin by looking at the Kyoto Protocol and examining the jurisdictional conflicts that have resulted from its signing, as well as the problems that

[1] In 2006, Canada's GHG emissions increased by 27% over 1990 levels.
Mark Winfield and Douglas Macdonald, "The Harmonization Accord and Climate Change Policy: Two Case Studies in Federal-Provincial Environmental Policy," in *Canadian Federalism: Performance, Effectiveness, and Legitimacy*, eds. Herman Bakvis and Grace Skogstad (Don Mills: Oxford University Press, 2008) 278.

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arise with attempts at its implementation. With that, I will then look at the possible constitutional conflicts between federal and provincial governments over greenhouse gas reduction policies. Ultimately, this paper aims to explore and understand how climate change policy in Canada is affected by jurisdictional tensions and how governments, both federal and provincial, should proceed in future to effectively tackle climate change.

The Kyoto Protocol: Canada's Failure

The Kyoto Protocol is a legal, binding international agreement, put forward by the United Nations Framework Convention on Climate Change and was signed by the federal government in 1998. As a signatory country, Canada is committed to "adopt national policies and take corresponding measures with the aim of reducing greenhouse gas emissions to 1990 levels."[2] With that, Canada had committed itself to a 6% decrease of emissions by 2008.[3] However, as previously mentioned, Canada has failed to live up to its Kyoto targets and instead has seen a 27% increase in emissions over 1990 levels. Moreover, Canadians continue to be one of the world's largest per capita emitters, with Canada emitting 2% of the world's GHG emissions but only accounting for 0.05% of the world's population.[4]

The Environment: Concurrent Federal/Provincial Jurisdiction

So, what accounts for this grand failure? There are numerous factors, but the most salient is a lack of effective policies and conflicting federal/provincial government agendas. Having a large country with a federal system of government can often make environmental legislation and implementation difficult, particularly when the Canadian constitution makes no direct reference to the environment and which order of government is responsible for matters pertaining to it.[5] Indeed, both federal and provincial governments have legitimate claims to areas of environmental concern: with provinces

[2] Alastair R. Lucas, "Legal Constraints and Opportunities: Climate Change and the Law," in *Hard Choices: Climate Change in Canada*, eds. Harold Coward and Andrew J. Weaver (Waterloo: Wilfrid Laurier University Press, 2004) 181.
[3] Winfield and MacDonald, 278.
[4] Ibid.
[5] Glen Toner, "Contesting the Green: Canadian Environmental Policy at the Turn of the Century," in *Environmental Politics and Policy in Industrialized Countries*, ed. Uday Desai (MIT Press, 2002) 77-73.

responsible for natural resources, local works and undertakings, property and civil rights, provincially-owned land and resources, as well as anything that can be understood as "matters of a local or private nature."[6] Meanwhile, the federal government has powers over seacoast and inland fisheries, federal land and waters, and a broad provision permitting the federal government to legislate anything in the interest of the "Peace, Order and Good Government" (POGG) of Canada.[7]

As a result, matters of the environment fall under *both* federal and provincial jurisdiction, and climate change, like many other issues of environmental concern, is a problem that does not heed to political borders. Consequently, the implementation of international treaties like Kyoto or even domestic policies aimed at GHG reduction, often will require a cooperative, collaborative effort from more than one level of government in order to be effective. Constitutionally speaking, only the federal government can sign on to international treaties. However, if the subject of the treaties fall under areas of provincial jurisdiction, it is up to the federal government to negotiate with the provinces the implementation of these treaties; otherwise, the federal government has no control over how or what the provinces do, as they are autonomous in their area of jurisdiction.[8]

Natural Resources and Provincial Jurisdiction

With that, a major challenge the federal government has faced when trying to implement GHG reduction policies, is that the main sources for Canada's emissions lie in areas of provincial jurisdiction. In a report to the United Nations, as obligated in its Kyoto commitments, the Canadian government found that the major sources for our emissions are in electricity and heat generation, fossil fuel production, mining, farm animals and waste.[9] All of these sources are areas that fall under s.92 of the Constitution, which was emphasized when the provinces were assigned *exclusive* jurisdiction over the

[6] Ibid.
[7] Ibid.
8 Sylvia LeRoy and Jillian Frank, "Kyoto and the Constitution," in *Fraser Forum* (October 2002) 5.
[9] Jeffrey Simpson, Mark Jaccard, and Nick Rivers, "Why a Warmer Canada is Bad News," in *Hot Air: Meeting Canada's Climate Change Problem* (Toronto: McClelland and Stewart, 2007) 23-24.

"development, conservation, and management of nonrenewable resources in the province, including forestry and hydroelectric facilities," in the 1982 Constitutional amendment.[10]

Moreover, the provinces are not only heavily responsible for the *sources* of greenhouse gas emissions; they are responsible for many of its possible *solutions* as well. A key component in GHG reduction is the protection of valuable carbon sinks, natural resources that absorb carbon out of the atmosphere. This includes lakes and oceans, as well as forests and agricultural land.[11] Despite the fact that the vast majority of Canada's forests and green areas are in provincial jurisdiction, federal governments, both Liberal and Conservative, have been quick to announce safeguards of these natural resources.[12]

Furthermore, it is also important to recognize that Canada's economy is heavily dependent upon the exportation and exploitation of our natural resources. As a result, provinces can be very protective of their natural resources and what they might see as federal attempts to entrench on their authority to control them.[13] With that, federal efforts to protect and conserve the natural environment can often interfere with a provincial government's own efforts to develop their Crown resources.[14] The most obvious example of intergovernmental conflict in this area is demonstrated by the expanding oil and gas production in Canada's western provinces. In recent years, emissions in Alberta and Saskatchewan have grown the fastest and have the highest per-capita emissions of all the provinces.[15] If Canada is to reduce its emissions to below 1990 levels, the reductions of these two provinces must be greater. For some, this means an unfair economic burden on these provinces, and with that, any federal suggestions to slow the growth of oil and gas industries have been met with fierce opposition from these governments.[16]

Alberta v. Ottawa: Constitutional Challenges to Come?

Indeed, one should also recall that the signing of the Kyoto Protocol was seen by many as a unilateral act of the federal government, which gave no warning or preparation

[10] Toner, 73.
[11] Kathryn Harrison, "Passing the Environmental Buck," in *New Trends in Canadian Federalism*, 2nd ed., eds. Francois Rocher and Miriam Smith (Toronto: Broadview Press, 2003) 337.
[12] LeRoy and Frank, 6.
[13] Harrison, 315.
[14] Ibid., 314.
[15] Simpson et al. 24
[16] Ibid., 25.

for the provinces to deal with its ambitious 6% reduction target.[17] Opposition to Kyoto has been most virulent in the oil and gas-producing province of Alberta, where days before Jean Chrétien's government introduced its *Climate Change Plan for Canada* in 2002, Ralph Klein's Alberta government put forward their own *Climate Change and Emissions Management Act*.[18] This act reaffirmed the province's ownership of natural resources as protected in s.92(a) of the Constitution, which was further defined in the act to include both carbon dioxide and methane, claim property rights to carbon sinks, and quite possibly set the terms of reference for what could turn into a heated constitutional battle with Ottawa in the future.[19]

The act's assertion that carbon dioxide and methane are natural resources, which "are inextricably linked with the management of other renewable and non-renewable natural resources," is particularly relevant should the federal government attempt to regulate carbon emissions through what is known as a cap-and-trade system. Under cap-and-trade, the government sets a regulated, aggregate cap on emissions, and then allows firms to buy and sell "carbon credits" among themselves to meet their individual obligations, thus, creating a carbon market.[20] Consequently, a national, emissions trading program that is imposed top-down has the potential to infringe upon provincial powers. Nevertheless, it is put forward by many environmentalists and economists alike that the most effective way to deal with climate change is through the implementation of a carbon-pricing policy, which a cap-and-trade system accomplishes.[21]

POGG and Climate Change

Moreover, the act also puts forward that carbon dioxide and methane, the two major greenhouse gases responsible for climate change, "are not toxic under atmospheric conditions."[22] While this is factually true, this language fails to acknowledge the harm increased levels of carbon dioxide and methane have on the Earth's atmosphere and

[17] LeRoy and Frank, 5.
[18] Ibid.
[19] Sylvia LeRoy, "A Constitutional Firewall Against Kyoto," in *Fraser Forum* (January 2003) 17.
[20] Simpson et al., "Dion and Harper: New Leaders, Discredited Ideas," 171-2.
[21] Ibid., 172.
[22] LeRoy, 18.

climate. With that, the Alberta government is likely trying to avoid the possible future application of the federal government's extensive POGG powers, as demonstrated in the 1988 case of *R. v Crown Zellerbach*. In this case, the Supreme Court of Canada found that Parliament had the authority to regulate polluting activity that had extraprovincial effects.[23] Justice Gérard La Forest put forward that, "in an application of the doctrine of national dimensions of the general [POGG] power, Parliament may take steps to prevent activities in a province, such as dumping substances in provincial waters or *emitting substances into the air*, which pollute or have the potential to pollute…outside the province."[24] Consequently, *R. v. Crown Zellerbach* may support the case for federal regulation and legislation over GHG emissions.

The federal government's POGG powers are found in the opening of s.91 of the Constitution, where it states that the Government of Canada has the authority to enact laws for the "Peace, Order and good Government of Canada."[25] In practice, the scope of these powers was limited as a residual power at first, but has gradually broadened its application to national emergencies and matters of a national concern, as well as matters of interprovincial concern or significance.[26] Should the federal government attempt to implement Kyoto or any future climate change policies that will undoubtedly overlap with provincial jurisdiction, it may be possible for the federal government to assert these powers to override provincial opposition and constitutional challenges. However, given that climate change legislation affects large areas of provincial jurisdiction, such as natural resources and property/civil rights, the Supreme Court of Canada may be hesitant to give Parliament such sweeping power over the environment.[27] Ultimately, looking at Alberta's climate change legislation, and recognizing that the federal government is under increasing pressure to put forward hard policy measures to reduce emissions, these conflicts may give us an idea of constitutional arguments to come.[28]

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[23] Patrick J. Monahan, "Peace, Order and Good Government," in *Constitutional Law*, 3rd Edition. (Toronto: Irwin Law, 2006) 271.
[24] *R. v. Crown Zellerbach Canada Ltd*., [1988] 1 S.C.R. 401.
[25] Monahan., 253.
[26] Ibid., 252.
[27] LeRoy and Frank, 6.
[28] LeRoy, 18.

Post-Kyoto: How Should Governments Take Action?

With that in mind, after the ratification of Kyoto in 2002, multilateral negotiations between the federal government and the provinces broke down. These negotiations were plagued with ineffective, "lowest-common-denominator" agreements, caused by compromises made to appease all the parties involved.[29] On the other hand, recognizing that provincial and federal governments will often have conflicting interests, particularly in regards to natural resources, the possibility of constitutional challenges is very real should the federal government decide to take a unilateral approach to climate change. These cases are often time-consuming, highly confrontational and do not encourage collaboration and cooperation where it is desperately needed. Thus, in order to avoid constitutional battles and court challenges, I feel the best way to deal with climate change in Canada is through intergovernmental consultations between federal and provincial governments.

However, in order to avoid the "lowest-common-denominator" outcomes of the past, a bilateral approach to GHG reduction may be the most desirable and harmonious method. Indeed, by spring 2006, the federal government had entered six bilateral agreements with the provinces, coupled with federal funding to help reduce emissions.[30] While the agreements to do not stipulate specific plans of action, they do provide the provinces and federal government with a framework to build on for future negotiations.[31]

Hard Policy Initiatives: Carbon Tax and Cap-and-Trade

Moreover, while federal governments, both Liberal and Conservative, have been environmental laggards in regards to putting forward and implementing effective policies to reduce emissions, provincial governments have stepped up exponentially. In 2008, British Columbia introduced its own carbon tax,[32] while Ontario and Quebec signed a Memorandum of Understanding on a cap-and-trade initiative. This MOU would "build on both provinces' participation in North American sub-national cap-and-trade systems,

[29] Winfield and Macdonald, 268.
[30] Ibid., 278.
[31] Ibid.
[32] CBC News, "B.C. carbon tax kicks in on Canada Day," June 30, 2008, http://www.cbc.ca/canada/british-columbia/story/2008/06/30/bc-carbon-tax-effective.html; accessed 20 February 2009.

such as the Western Climate Initiative,"[33] of which other provinces have also expressed similar intent or interest. While these policies have been modest and the negotiations have yet to bear fruit, it shows considerable progress and understanding that soft, voluntary government policies will not work to reduce emissions. Though perhaps optimistic, I feel that there is a real possibility for an interprovincial carbon trading system and am encouraged by the ongoing provincial negotiations.

Furthermore, with the election of President Barack Obama in the United States, the federal government has also recently indicated that it is interested in a unified North American cap-and-trade system.[34] Provincial governments have long expressed their support for a continental emissions trading program, but have stated that intergovernmental cooperation is dependent on their being part of the consultation process.[35] With that, it is evident that the provincial governments were not against the principles of Kyoto and the aim of reducing emissions; rather they simply would have liked to been consulted before the federal government set its targets. Given that the responsibility of implementation is ultimately within provincial jurisdiction, I think that provincial concern over unilateral federal climate change policy is legitimate.

Unfortunately, cap-and-trade systems are infamously bureaucratic and can take a long time to setup. For this reason, it would be ideal if the federal government exercised its extensive taxation powers to implement a carbon tax in the meantime. While provincial governments could lay claim to their authority over natural resources under a cap-and-trade system, the federal government, as stated in s.91(3) of the Constitution, has the authority to legislate "the raising of Money by *any* Mode or System of Taxation." An effective, economy-wide carbon tax would be entirely within the legislative authority of the Government of Canada; however, considering the outcome from the last federal election in 2008, the current possibility of a carbon tax is very unlikely.

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[33] Ontario, "First-Ever Joint Meeting of Ontario and Quebec Cabinets," *Office of the Premier*, June 2, 2008, http://www.premier.gov.on.ca/news/Product.asp?ProductID=2279; accessed 20 February 2009.
[34] The Canadian Press, "Provinces express support for continental cap-and-trade talks at conference," *Macleans.ca*, February 17, 2009, http://www.macleans.ca/article.jsp?content=n021784A; accessed 21 February 2009.
[35] Ibid.

Conclusion

Ultimately, this paper has found that the competing interests and legislative jurisdiction of federal and provincial governments have strongly contributed to the inability of either orders of government to put forward hard policies to reduce greenhouse gas emissions. With that, effective climate change policies that address the reduction of GHG emissions, like carbon taxes and emissions trading, have only recently emerged in Canadian politics. However, given recent provincial developments, there is reason to be optimistic of further progress.

Moreover, while both federal and provincial governments have constitutional claims to legislative authority over issues of environmental concern, I feel it is in the best interest of Canadians for these governments to work together collaboratively rather than waste valuable time and resources over court challenges. Climate change is quite possibly one of the greatest threats facing humanity today and it is imperative that governments work quickly, not only for the interest of Canadians, but for the sake of the entire world.

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Ethnofederalism in Ethiopia: An Analysis on the Implementation and Impact of Ethnofederalism in Domestic Ethnic Conflict within the State of Ethiopia

Erin McGeachie

Attempts are currently being made to resolve the problem that a colonial history has created within multi-ethnic states, by granting autonomy to groups whose culture and identity has been suppressed in the *unity* of modern nation-state[1]. The system of ethnofederalism was created to allow conflicting ethnic communities to obtain a level of autonomy and self-government from the central authority without resorting to secession[2]. Specifically ethnofederalism allows for regional political communities to provide a non-violent means of dealing with differences between these groups[3]. This paper will argue for the effectiveness of ethnofederalism when a state's constitutional structure supports the equilibrium of power between central and state autonomy. This will be argued in terms of the necessity for a successful division of fiscal power, equity between the ethnic groups, federal toleration for political dissent and the implementation of fail-safes to prevent federal domination over regional governance.

To support my thesis I will look at the case of Ethiopia and dissect the reasons for the unsuccessful execution of ethnofederalism within this conflicting multi-ethnic state. I

[1] Herther-Spiro, Nicole B. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:322.
[2] Clapham, Christopher. 2009. "Post-war Ethiopia: The Trajectories of Crisis." *Review of African Political Economy* 36:183.
[3] Herther-Spiro, Nicole B. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:322.

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will begin with the history of ethnofederalism in Ethiopia. Following this I will analyze this constitutional structure and analyze the reasons for its failure, namely an unsuccessful division of fiscal power, a lack of equity between ethnic factions, little federal toleration for political dissent and a federal domination over regional governance. This paper will suggest changes to be implemented in Ethiopia according to the theoretical framework of ethnofederalism, as an effective means of reducing state conflict. Finally I will discuss the implications of Ethiopia's failed attempt to execute federalism as positive for the development of the theory of ethnofederalism.

There has been a persistent history of authoritarian rule and suppression within Ethiopia, beginning with Emperor Menelik II from 1889-1913. Menelik's imperialist attitude led to his empire's territorial and demographic expansion southwards[4].This led to the inclusion of various ethnic and national groups under the Christian northern Ethiopian empire, who were discriminated against as non-Christians and for their language differences[5]. This discrimination persisted with Emperor Haile Selassie who ruled prior to the 1974 coup, where his coercive assimilation tactics involved heavily restricting language and religion rights of the non-Amara majority[6].

Following the 1974 coup the Derg, an authoritarian socialist regime, came to power and began the Red Terror campaign which silenced political opposition towards the government[7]. After the Derg government fell in 1991, leaving rebel groups in control of the country, the Tigrayan Peoples Liberation Front (TPLF) formed to create a transitional government. After the 1992 election, a Constitutional Commission was formed which established the Federal Democratic Republic of Ethiopia[8]. Under this constitution a two-tiered ethnofederal system was instituted which would create partially autonomous states whose borders were to be drawn along ethno-linguistic lines[9].

[4] Ibid., 334.
[5] Ibid., 334.
[6] Ibid., 344.
[7] Ibid., 344.
[8] Adegehe, Asnake K. 2009. *Federalism and ethnic conflict in Ethiopia: a comparative study of the Somali and Benishangul-Gumuz regions*. Leiden: Leiden University Press: 14.
[9] Herther-Spiro, Nicole B. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:336

The transitional government formed a coalition with several other popular political parties under Meles Zenawi[10]. He founded the Ethiopian People's Revolutionary Democratic Front (EPRDF) which declared its intent to establish a new social order based on equality, rule of law and self-determination[11]. The EPRDF claimed that Ethiopia's problems were derived from a history of economic exploitation which could be remedied[12]. This would be achievable by nationalizing land and vesting its control in peasants associations[13]. Through this Ethiopia would become free from exploitation and could thus build a united state under a socialist and nationalist government[14].

Ethiopia is generally considered a prime example of the success of ethnofederalism internationally and an illustration of "good governance"[15]. However, the persisting ethnic conflicts and mismanagement by the state exemplify the failure of ethnofederalism to be effectively implemented. Ethnofederalism is only a successful system towards the goal of ending ethnic conflict if it is administrated properly through a successful balance of power between state and central authority. The theory of ethnofederalism surrounds the idea that the local governments would harmonize inter-group conflicts through non-violent expressions of opinion, which would not otherwise have been accessible[16]. Ethnofederalism is executed through the territorial sub-division of a state along ethno-linguistic borders in an attempt to divide political power according to each distinct ethnic faction[17].

According to the theory of ethnofederalism, the effect of a territorial division would be a reduction in ethnic conflict because it provides ethnic groups the official recognition they seek without dissolving the state[18]. Furthermore the recognition of

[10] Clapham, Christopher. 2009. "Post-war Ethiopia: The Trajectories of Crisis." *Review of African Political Economy* 36:182.
[11] Ibid., 182.
[12] Ibid., 183.
[13] Ibid., 183.
[14] Ibid., 183.
[15] Ibid., 183.
[16] Herther-Spiro, Nicole B. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:330.
[17] Ibid., 323.
[18] Ibid., 322.

differences would assist in mitigating past conflicts[19]. The main goal is the attempt to account for the contested nature of ethnic identity in contemporary Ethiopian politics, such as through minority rights, referendums and ethnic-based political parties, to determine ethnic identity[20]. This may not necessarily involve eliminating conflicts, because conflict has many positive benefits for a state, including progression. Rather the solution would be creating a system which allows for citizens to express their opinions and differences in a non-violent manner[21]. This would allow for cooperation among political elites and enhance government accountability as a tool of reducing ethnic conflict[22]. Thus by creating a system which acknowledged differences, rather than trying to ignore or assimilate them, resolutions that are acceptable for the majority of the population can be reached and greater autonomy will be accessible for minority ethnic groups. Thus Ethiopia seeks a new national interest of its citizens' rights, freedoms and justice, rather than that of the dictatorship that controls the state.

The Constitution of 1994 declared a new ethnofederal system to be in place in Ethiopia, where a two-tiered federal system would ensure representation of minorities through state borders being drawn on ethno-linguistic lines[23]. Notably ethnic groups separated through state borders were the Amara, Tigrayan, Oromo and Eritrean factions who represent large portions of the population. The central government was declared a Parliamentary system with a House of Peoples Representatives and a House of Federation. Within the House of Peoples Representatives, individuals are elected in direct elections for a term of 5 years; in addition provisions are made for minority nationalities[24]. In the House of Federation each nation, nationality, and peoples are given

[19] Ibid., 322.
[20] Smith, Lahra. 2007. "Voting for an ethnic identity: procedural and institutional responses to ethnic conflict in Ethiopia." *Journal of modern African studies* 45:565.
[21] Herther-Spiro, Nicole B. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:332.
[22] Smith, Lahra. 2007. "Voting for an ethnic identity: procedural and institutional responses to ethnic conflict in Ethiopia." *Journal of modern African studies* 45:567.
[23] Herther-Spiro, Nicole B. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:335.
[24] Ibid., 336.

at least one representative; in addition for each million of its population the ethnic group will receive an additional representative[25].

While ethnofederalism in Ethiopia has not been wholeheartedly successful, evident through unfair elections and a centralized abusive federal government, there has been a vast improvement in ethnic representation and autonomy. The previously alienated peoples in periphery areas were given a level of autonomy[26]. Adoption of a capitalist economy created some economic success[27]. The political sphere was more accessible and the government received additional international aid because of its more western state ideals of federalism[28].

Meles Zenawi, who was President of Ethiopia from 1991-1995, Prime Minister of Ethiopia from 1995 to the present and chairperson of both the TPLF and EPRDF, stated:

> Sometimes, people in Africa feel that they can wish away ethnic difference. Experience in Rwanda has taught us this is not the case. Experience in Liberia has taught us that this is not the case. What we are trying to do in Ethiopia is to recognise that ethnic differences are part of life in Africa, and try to deal with them in a rational manner. Rather than hide the fact that we have ethnic difference, we are saying people should express it freely. That, I think, pre-empts the type of implosion we've had in Rwanda[29]

Zenawi has been successful in improving life under the ethnofederal regime. He has improved living condition for citizens, built new roads, clinics and primary schools[30]. In addition crime rates have been reduced and the economy has stabilized and is expected to grow by 10% in 2009[31]. However, despite the undeniable success

[25] Ibid., 336.
[26] The Economist. 2009. "The two sides of Meles Zenawi." *Canadian Points of View Reference Centre* 392:43.
[27] Clapham, Christopher. 2009. "Post-war Ethiopia: The Trajectories of Crisis." *Review of African Political Economy* 36:183.
[28] Ibid., 183.
[29] Tucker, Steven P. 1998. "Ethiopia in Transition." *Writenet, Unpublished Manuscript*: 23.
[30] The Economist. 2009. "The two sides of Meles Zenawi." *Canadian Points of View Reference Centre* 392:43.
[31] Ibid., 44.

the new regime has had in Ethiopia, the problem of ethnic conflict has still not been resolved.

In May 1998 a border dispute led to the Eritrean-Ethiopian War that lasted until June of 2000[32]. A binding decision was reached through arbitration; however, the EPRDF refused the decision and was engaged in a stalemate with Eritrean until 2006 when the Somalia border became a threat[33]. The 2005 general election left approximately 200 civilians dead in the capital city of Addis Abada, shot by police after protesting the results of the election following claims of ballot fraud by the government[34]. Over 10,000 arrests were made during the protests that followed the election; most individuals were detained without a trial or hearing and released weeks later while others still were transferred to a prison camp[35]. Norwegian election monitors declared the EPRDF's victory to be "neither fair, free, nor impartial"[36]. This demonstrates the persisting ethnic conflict between the minority governing class of the Tigrayan ethnic group and the other factions present within the country.

The federal government is alleged to have tortured and imprisoned opposition politics and critics of the new regime[37]. 76 politicians, journalists and civil society activists were accused of treason and genocide and were placed in jail and brought to trial month later[38]. Within the Oromia state, authorities tortured and imprisoned believed supporters of the Oromo Liberation Front (OLF), an armed rebel group, and the Oromo National Congress (ONC), an opposition political party[39]. Within the Gambella state, the Ethiopian military force is alleged to have killed, beaten, raped, tortured and arrested citizens without cause[40].

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[32] Human Rights Watch. 2006. "Ethiopia: Events of 2006." *Human Rights Watch Online*.
[33] Ibid.
[34] The Economist. 2009. "The two sides of Meles Zenawi." *Canadian Points of View Reference Centre* 392:44.
[35] Human Rights Watch. 2006. "Ethiopia: Events of 2006." *Human Rights Watch Online*.
[36] Herther-Spiro, Nicole B. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:337.
[37] Human Rights Watch. 2006. "Ethiopia: Events of 2006." *Human Rights Watch Online*.
[38] Ibid.
[39] Ibid.
[40] Ibid.

Even in the most recent 2008 local and by-elections the EPRDF victory has been believed by many to be fraud because the only major opposition party, the Coalition for Unity and Democracy (CUD) was unable to campaign due to internal problems[41]. In addition many opposition candidates and parties experienced powerful registration difficulties from the Federal government and were forced to withdraw from the race[42].

Ethnic federalism is only successful when a balance in power-sharing is achieved among regions and the central government. If the states do not have enough autonomy, the ethnic conflicts will continue, but if they have too much then it will cripple the ability of the central government to rule effectively[43]. Within Ethiopia, the major cause of the lack of equilibrium of power is that the federal government has remained overly centralized[44]. The EPRDF formed as a coalition between the TPLF and other popular political parties formed the majority of local and federal seats by eradicating opponents during the elections through force and intimidation[45]. The reason for the failure of this ethnofederalism system and the degradation into a Tigrayan ethnic dictatorship was a state failure by the federal government to decentralize power. Rather than facilitate dual-identity, ethnic federalism in this case is reinforcing divisions in society through regional resistance towards the controlling central government[46].

The state's constitutional structure does not support a balance of power between the two levels of government within Ethiopia. The constitution was created by the EPRDF, formed by the Tigrayan faction representing an Ethiopian minority at approximately 10% of the population, while the Amara and Oromo factions represent

[41] International Crisis Group. 2009. "Ethiopia: Ethnic Federalism and Its Discontents." *International Crisis Group – Nairobi/Brussels*.
[42] Ibid.
[43] Herther-Spiro, Nicole B. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:324.
[44] Ibid., 337.
[45] Ibid., 337.
[46] Hale, Henry E. 2004. "Institutional Sources of Ethnofederal State Survival and Collapse." *World Politics* 56:165.

35% and 36%[47]. A single minority creating the constitution is clearly in opposition to democratic federalist ideals.

This arrangement has created formal ethnic regions without significantly altering power relations in Ethiopia[48]. Much like history, the majority of Ethiopia is again being dominated by a minority. However, the system of ethnofederalism does not need to fail in Ethiopia; rather it can be successful if several key changes are made within the constitutional structure. It is the federal government's attempt to tightly control regional political processes that is undermining the ethnofederal system because the autonomy of the ethnic states are lost[49].

There are several core reasons why the equilibrium of power between the central and state authority has failed. The issue of fiscal power is a key to understanding the ethnofederalism relationship between central and regional governance. Without fiscal independence, a state cannot be autonomous[50]. The central government controls the allocation of funds to states, in addition federally-collected funds are dispersed at the will of the central government, thus making the states extremely dependant on the good will of the central government[51]. This has caused an increase in ethnic competition over federal resources in terms of land, natural resources and government budgets[52].

By not having state fiscal independence within Ethiopia, a state cannot act independently of the federal government in fear that this will affect the state's income received from the government. Thus states are obliged to represent the best interests of the EPRDF within their own state, which may not necessarily by the same as their own ethnic group's national interest. This partition of interests is a major contributing factor towards the ethnic faction conflicts as resent towards the Tigrayan people mounts as the federal government pushes their interests above the rest of the ethnic groups. To solve

[47] Ethiopia Central Statistical Agency. 1994. *Population and Housing Census of 1994.*
[48] Samatar, Abdi I. 2004. "Ethiopia Federalism: Autonomy versus Control in the Somalia Region." *Third World Quarterly* 25:1131.
[49] Ibid., 1133.
[50] Herther-Spiro, Nicole B
. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:358.
[51] Ibid., 359.
[52] International Crisis Group. 2009. "Ethiopia: Ethnic Federalism and Its Discontents." *International Crisis Group – Nairobi/Brussels*.

this problem, initiating a system where federal transfers to states are an automatic and equitable process, regardless of state compromise towards the will of the federal authority, would provide a more successful system for ending fiscal dependence. Without this dependence on the federal government, states would be able to achieve a greater level of autonomy which would allow them to pursue the national interests of their ethnic factions and not that of the faction in federal political power.

In terms of developing a theoretical framework for the implementation of ethnofederalism as a constitutional system within a state, it is clear that certain objectives must be achieved for this system to be effective. Specifically this paper argues for the necessity of the division of fiscal power between state and federal governments. This is due to the fact that a state is unable to be autonomous while still heavily dependent on the federal government for financial transfers. By instigating a system where a state is no longer totally dependent on imitating the views, in an effort to please, the federal government, a state will be able to properly represent the ethnic faction within. Thus this will achieve the objective of official recognition and representation that much of the ethnic conflict has been fought over.

Additionally the issue of equity between the ethnic factions is central to the success of an ethnofederal system. This is evident in Ethiopia where political parties align themselves with specific ethnic groups; the EPRDF has stated "ethnicity as the most important determinant for political and economic activities"[53]. Thus citizens must seek to protect themselves from the ethnic majority central government by declaring loyalty to an ethnic party which will protect their interests, further facilitating the ethnic divisions in society.

The theory behind ethnofederalism is that each ethnic group will have their interests represented. However, when a single ethnic group is in control of all the power, a successful ethnofederalism cannot function because the system is a facade. In actuality the ethnofederalism in Ethiopia has degraded into a dictatorship by the ethnic faction in power. This lack of equity between the ethnic groups, where the Tigrayan people have

[53] Herther-Spiro, Nicole B. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:338.

superiority in the state and other ethnic groups are severely underrepresented, is a catalyst to the ethnic conflict.

In developing a theoretical framework for the implementation of ethnofederalism, the importance of equity between the factions cannot be forgotten. While an ethnofederalism supports the idea of ethnic-based political representation, it cannot allow for Ethnonationalist domination by a single faction, because that would be a slippery-slope to a dictatorship. By allowing for the involvement of opposition parties and political representation by the non-ruling class there will be less ethnic conflict because the factions will accomplish their aim of representation within the government.

The EPRDF's failure to allow for political dissent is also a major problem towards the successful implementation of an ethnofederal system. Without the ability to form legitimate opposition parties and critique government actions a valid multi-party federalism cannot exist[54]. This has caused a further division between ethnic factions as the Ethiopian National Defense Force (ENDF), which has a monopoly in the use of power within the state, is mostly constructed of Tigrayan peoples and particularity comprised of the remnants of the Tigrayan Peoples Liberation Army[55]. Much of the violence reported within Ethiopia is inflicted by the ENDF on the other ethnic factions as a result of historical animosity. In addition the Prime Minister Zenawi claimed that "Eritrea is hell-bent on destabilizing Ethiopia" and that Eritrea is encouraging Oromo rebels and Somali separatists[56].

With a Prime Minister engaging in the ethnic conflict by marginalizing ethnic groups, Ethiopia cannot successfully end these ethnic conflicts. A means of correcting this problem, towards ending faction conflict, would be tighter federal control over the actions of the ENDF which is involved in much of the conflict violent faction conflict. In addition, the federal government's strict attention to fair and free elections would end much of the resentment felt towards the EPRDF. In terms of developing a theoretical

[54] International Crisis Group. 2009. "Ethiopia: Ethnic Federalism and Its Discontents." *International Crisis Group – Nairobi/Brussels*.
[55] Kingma, Kees. 1997. "Demobilization of combatants after civil wars in Africa and their reintegration into civilian life". *Policy Studies Journal* 30:152.
[56] The Economist. 2009. "The two sides of Meles Zenawi." *Canadian Points of View Reference Centre* 392:44.

framework for the implementation of ethnofederalism as a constitutional structure, the acceptance of political dissent and peaceful protesting is vitally important towards ensuring an end to faction violence.

Finally, there is a need for a fail-safe to be implemented which will act to prevent the federal domination of regional governance. For the national majority, Amara, and the EPRDF's Tigrayan peoples the ethnofederalism system provides a strong and unified state; however, for minorities within Ethiopia ethnofederalism remains artificial[57]. The EPRDF instigated a system of People's Democratic Organizations (PDO) which has proved entirely useless. The federal government formed these representations of local people interests through DERG prisoners' of war, low-level government employees and schoolteachers[58]. Thus these individuals are viewed with suspicion by the community and are often loyal to the government because they are financially dependent on it for their job[59]. PDO's imitate the interests of the federal government as a result, which furthers ethnic conflicts as local factions are still unable to gain legitimate representation within the government.

In this case, the training of local political elites could provide an answer to this problem of federal dominance over regional governments. By training these individuals with adept political skills, namely discussion, bargaining, compromise and recognition of alternative courses of authority, the state might be able to achieve a greater level of autonomy and ethnic representation which is the major cause of ethnic conflict[60]. For the development of a theoretical framework for the implementation of ethnofederalism it is imperative that fail-safe's are integrated into the system to prevent federal dominance of regional governance which could have the impact of overthrowing the entire system of ethnofederalism.

The importance of a successful balance of power, between federal and regional governments as necessary for a successful implementation of ethnofederalism, would be

[57] International Crisis Group. 2009. "Ethiopia: Ethnic Federalism and Its Discontents." *International Crisis Group – Nairobi/Brussels*.
[58] Samatar, Abdi I. 2004. "Ethiopia Federalism: Autonomy versus Control in the Somalia Region." *Third World Quarterly* 25:1152.
[59] Ibid., 1152.
[60] Ibid., 1142.

hugely beneficial for reducing ethnic conflict. The major obstacle to a successful ethnofederalism system, where ethnic conflict is largely eradicated, appears to relate to the EPRDF's devolutionary policies which seek to control all aspects of the political process[61]. The fear of creating a balance of power between state and federal governments is that this equilibrium will lead to Ethiopia's disintegration, specifically because the 1994 Ethiopia constitution guarantees the right to self-determination up to secession[62].

History can proved the legitimacy of this claim, as multi-national federations can be seen to be very unstable and commonly disintegrate over time[63]. Notable examples include the Soviet Union's disintegration in 1991 and Canada's near disintegration from the Quebecois in 1995. Thus the fear of the secession of multiple states within the ethnofederation of Ethiopia is a valid concern. However, this situation need not come to pass if the ethnic conflict within the country can be remedied. Already some advances have been made, recognisable the formal recognition of Somalis as an ethnic group within Ethiopia who are now the fourth largest population group and went unrecognized prior to the instigation of this constitutional system[64].

Ethnofederalism is a viable solution for the ethnic conflict within Ethiopia; however, it has been the unsuccessful implementation of this constitutional system that as caused it failure to end faction violence. Specifically in terms of an unsuccessful division of fiscal power, lack of equity between ethnic groups, little federal toleration for political dissent and the federal domination of regional governance. The correction of these issues would further the success of the ethnofederal system and enforce an end to faction conflict. The silver lining of Ethiopia's unsuccessful attempt to instigate ethnofederalism, and the subsequent violence that has ensued, is that it has allowed for an unsuccessful ethnofederalism system to be studied. Specifically the vital importance of a balance of power between the federal and state autonomy in order to end ethnic conflict would be a major issue to be addressed in correcting unsuccessful an ethnofederalism.

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[61] Ibid., 1142
[62] Ibid., 1132.
[63] Herther-Spiro, Nicole B. 2007. "Can Ethnic Federalism Prevent 'Recourse to Rebellion?': A Comparative Analysis of the Ethiopian and Iraqi Constitutional Structures." *Emory International Law Review* 21:338.
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Autonomy versus Authority: Approaches to Canadian Municipal Reform

Melissa Oldreive

Since Confederation in 1867, Canada has become a highly urbanized nation. In fact, just over half a century later, Canada was classified as an urban nation (Tindal and Tindal, 2009, 65). Since the early part of the twentieth century, Canada has continued to become increasingly urbanized. This has had, and will continue to have, profound implications on how government is structured and how it represents its citizens. This paper argues that governments must address the interests of urban populations and governments in cooperative forums as opposed to strictly formal institutional means. Beginning with the importance of municipalities in the Canadian context, this paper will outline why the municipal question, regarding what level of autonomy municipalities and local governments should be granted, cannot be ignored. This paper will then go on to explain the different historical approaches to municipal reform at the federal level as a reaction to the increasing urbanization of Canadian society. Giving weight to both municipal *autonomy* and municipal *authority* arguments, this paper will express the importance of addressing municipal concerns, and that the best way to go about doing so is through pragmatic cooperation.

The importance of municipalities cannot be underestimated in the Canadian context. In 2006, 68% of Canadians lived in Canada's 33 census metropolitan areas (known as CMAs) (Statistics Canada, 2009-01-20) with 80% (a little more than 25 million people) living in urban areas.[1] Further, the "big three" (Toronto, Vancouver,

[1] Note the distinction between CMAs and urban areas: CMAs are defined as areas that "have at least 100 000 population, including an urban core with at least 50 000 people" while urban areas are labeled as

Montreal) are the most populous areas in the nation: "The Montreal and Vancouver CMAs and the Greater Golden Horseshoe (GGH) in Ontario now contain almost half the population of the country" (Tindal and Tindal, 2009, 65). With nearly all of the electorate living in urban areas, upper levels of government must recognize the importance of local governments. Similarly, this population density requires effective and efficient governments at the local level. As such, Canadian governmental policy is heavily affected by the settlement patterns of the nation: Where people live has, or should have, a large impact on policy making.

The distribution of the Canadian population also has profound implications on the country's governance. Because most Canadians live within "a belt reaching only about 150 miles north of the border" with America (Martin, 1990, 50), Canada is a nation influenced by its dominating neighbour to the south. As indicated in the title of his book, *The Limits of Boundaries*, Andrew Sancton argues that the effects of a large municipality reach beyond its own borders: Often times, people living in smaller, adjacent municipalities benefit from the economic strength of a larger municipality because, he argues, boundaries are artificial (2008, 133).[2] Similarly, the border between Canada and America does not block the effects of economics. In fact, this economic *interaction* between the two countries has led to their economic *integration* (Grinspun and Shamsie, 2007). Further, "North American integration has played a central role in defining the direction of [Canadian] public policy" (Grinspun and Shamsie, 2007, 4). Because of the majority of the population's closeness to the United States, Canadian integration with the American economy is not only inevitable, but is also influential in matters of governance.

As alluded to above, city regions are extremely important to the Canadian economy. In fact, in all countries, city regions serve as drivers of national economies as "[g]lobalization has had a positive impact in making cities and city regions increasingly important as key players in the world economy" (Tindal and Tindal, 2009, 197). In the Canadian context, in 2006, the Toronto CMA contributed to 49% of Ontario's Gross Domestic Product; Winnipeg 65% to its province's GDP; and the Montréal Region

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"places with a population of 1000 or more, with a population density of at least 400 people per square kilometere" (Tindal and Tindal, 2009, 64-65).

[2] These communities have been defined as "free-riders" and "edge cities" (Tindal and Tindal, 2009, 66).

contributed a total of 51% (Tindal and Tindal, 2009, 65).[3] Because of their economic importance, influence, and spread, municipalities cannot be ignored in the Canadian context.

This is not to say, however, that municipalities are consulted in intergovernmental negotiations and agreements. In fact, they are quite often ignored as local governments are bound to legislation and agreements agreed upon by upper level of governments, and, as such, must adhere to international agreements that do not always benefit them. Such agreements include the North American Free Trade Agreement (NAFTA) and the Canada-US Free Trade Agreement (CUFTA).[4] While municipalities are drivers of the economy, it must be realized that they are "also affected, directly and indirectly, by the globalization of the economy and the international organizations and agreements related to that process" (Tindal and Tindal, 2009, 194-195). The fact that municipal governments are not required participants in international agreements clearly demonstrates the constitutional, or lack thereof, nature of local governments. As "creatures of provinces" (enshrined in Section 92(8) of the Canadian Constitution), local levels of government have no authority to make international agreements, and, as such, are subject to the agreements made on their behalf by their respective provincial governments.

This lack of control and power has sparked many municipal autonomy movements, particularly in Canada's CMAs (largely in Toronto). Seeking a level of autonomy similar to the Québécois anthem, "maître chez nous" (masters of our own house),[5] advocates for municipal autonomy call for radical constitutional change in order to create city-states. Urban autonomists seek equality with other "orders" (as opposed to "levels") of governments because, as mentioned above, urban centres are drivers of national and provincial economies, and also because they view the way local governments are subjected to provincial will as an undemocratic process. The way to address these deficits in representation and democracy, autonomy advocates argue, is through creating individual city-states out of Canada's largest CMAs (Toronto, Montréal, Vancouver) that are equal in autonomy to their provincial counterparts. Autonomy

[3] The original source of this data comes from Federation of Canadian Municipalities, *Our Cities, Our Future*, Big City Mayors' Caucus, June 2006, p. 21.
[4] Tindal and Tindal, as well as Grinspun and Shamsie discuss this throughout their texts.
[5] This metaphor is discussed in Alan Broadbent's *Urban Nation*, 2008, pg 2-3.

advocate Alan Broadbent, in his treatise *Urban Nation*, argues that the need for urban autonomy is focused on the true Canadian reality: The "economic nature of the country has changed dramatically" from rural resource extraction to urban concerns such as production and manufacturing (2008, 16-17), and as a result, populations have moved from rural to urban areas (15). This proves problematic as the distribution of the seats in the House of Commons still shows "a strong bias towards rural representation" (Broadbent, 2008, 14) as based on older population patterns. This leaves city-regions extremely under-represented in the parliamentary system, and as a result, leads persons like Broadbent to call for constitutional change, via urban autonomy, to correct this problem.

In contrast to those who view municipal authority as limited and rigid, often referred to as Dillon's Rule where municipal authority is only what is granted by a province, there are those who view municipal control as being over "anything that is not explicitly prohibited by state (or provincial) legislation" (Tindal and Tindal, 2004, 196). This is referred to as "Home Rule." Advocates for this approach to municipal control acknowledge the importance of the urbanization of Canada, but unlike municipal autonomists, they seek to work within constitutional constraints and remain creatures of provinces. As such, local governments are forced to find ways to govern creatively within their own areas of jurisdiction. In the case of NAFTA, some advocates note that despite "policy constraints imposed by free trade […] local governments in Canada still control many policy levers that can be used to reverse [the negative results]" of free trade (Grinspun and Shamsie, 2007, 6). This view acknowledges the near impenetrability of the Canadian Constitution, and seeks to worth within its frameworks as opposed to fighting them.

In this way, the latter view is neither explicitly Home nor Dillon's Rule, but a compromise of the two, referred to as the "Mushy Middle." Known as the space where personality matters, the Mushy Middle seeks a compromise between the rule of law and the realities of local government; Andrew Sancton points out that such "cooperative arrangements among municipalities within cities are obviously desirable and necessary" to effective local governance (2008, 5). These are pragmatic notions centered on the idea

of cooperation in contrast to municipal autonomy that seeks radical municipal change. Sancton points to another pragmatic concern: "Canadians are searching for cheaper, more efficient government as a means of improving their overall economic situation," and it is therefore "not surprising that some are advocating [for] fewer governments" (1994, 97), in contrast to the preference of city-state advocates.

These two views, autonomy and authority, are two different approaches to municipal reform in light of Canada's increased urbanization since Confederation. Since 1867, Canada's city-regions have not only increased in number, but also in their individual population. Statistics Canada shows that Canada went from being 19% urban in 1871 to 80% urban in 2006 (2009-09-02). As a result, cities are no longer acting just as geographic settlements, but are now acting as political expressions of people within their territory (via local governments), and, in addition to their economic importance, are becoming increasingly important in the Canadian political system.

As discussed above, political reactions to this increased urbanization have been varied. Perhaps the first true political acknowledgement of Canada's urbanization was in Prime Minister Pierre Elliot Trudeau's creation of the Ministry of State for Urban Affairs (MSUA) in 1971. MSUA's goal was horizontal in nature as is sought to integrate urban issues across governmental departments rather than to provide direct services to cities. While being a formal institution of government, MSUA also initiated the beginning of tri-level relationships between federal, provincial, and municipal governments, allowing for cooperation and informal governance. The ministry was abolished not long after as the decade marked a shift towards regionalism and away from a concern over urban affairs. This ended the first phase of the federal-municipal relationship.

That is not to say that regionalism took over the federal agenda. In the period of the Meech Lake and Charlottetown Accords (1987-1992), discussion on the constitutionality of the Canadian Constitution abounded, leading many to discuss the possible changes that could be made to Section 92(8), and how local governments could gain more authority and/or autonomy. With the failure of the Accords, discussion of more constitutional change was halted as Canadians began to suffer from 'constitutional fatigue' (Robinson and Simeon, 2004, 119). As such, municipal hope for a changed

relationship rested with individual provinces. Even urban autonomists have come to realize that the "mechanism [of Constitutional change has been locked] away for a generation or more" (Broadbent, 2008, 167) making their goal of a different constitutional status less attainable.

In the wake of this period, politicians were forced to address urban concerns through extra-constitutional means. Upon his election in 1993, Prime Minister Jean Chrétien launched a series of infrastructure renewal projects that sought to appease local governments as such projects have a direct impact on the areas these governments represent. By appeasing city autonomy and authority movements through its spending power, the federal government was able to work with municipalities without provincial mediation. Such is the current strategy of Stephen Harper's "open federalism," a policy that respects provincial jurisdiction, but operates within municipal frameworks through the federal government's constitutional spending power. This approach to federal-municipal relations has even been referred to as "agenda by stealth."

Perhaps the best example of the federal response to both the city autonomy and city authority movements is that of Paul Martin's Liberal government (2004-2006). Using both formal institutions of government and informal cooperative governance, Martin sought to address Canadian policy with an "urban lens." The former was established through the creation of the Ministry of State for Infrastructure and Communities and the Parliamentary Secretariat responsible for cities; the latter was implemented through the creation of advisory committees, GST rebates, and similar tax cuts like the Gas Tax Transfer. In this way, Martin's approach to municipal demands was based on processes of both government and governance; however, his notion of an "urban lens" favours urban authority movements as cities were granted no more power than they previously held, but instead better informal (i.e., non-elected) representation in federal affairs. In summary, Martin's policies were created to please urban *authority* rather than urban *autonomy* advocates.

Many of these policies have been continued under the Harper government. Like the Martin government, Harper's policies are flexible and negotiable as they deny constitutional change. In this way, these policies exist within the Mushy Middle as they

are pragmatic, highly dependent on compromise, and heavily reliant on the ideologies of leaders. This view acknowledges that a municipality's autonomy is not only defined by constitutional legislation, but also by the practicalities that exist in its governance. This approach to municipal governance proves effective in the Canadian political system as it acknowledges the limitations put on governments by the Constitution while also making adjustments to policies in response to Canada's increasing urbanization.

Other tri-level agreements exist in light of the near impenetrability of the Constitution. City Charters exist to express the uniqueness of a province's relationship to a particular city. *The Greater Toronto Charter* (2001) articulates the autonomist Torontonian desire to "form an order of government that is a full partner of the Federal and Provincial Governments of Canada."[6] Other agreements, such as the *Stronger City of Toronto for a Stronger Ontario Act* (2006), acknowledge the importance of a city to its province and country. Still, other agreements, such as the *Vancouver Agreement* (2000), facilitate more municipal power through cooperative "partnerships between [all three governmental levels], community organizations and businesses" (Vancouver Agreement, 2009). Each of these methods has become a valid option for both municipal autonomy and authority advocates as all acknowledge how far away and seemingly impossible constitutional change is. These agreements and legislations show an acknowledgement of the increasing importance of Canada's urban areas, particularly its larger CMAs, and that informal governance options are the only effective ways to empower municipalities within the Canadian governmental system.

In conclusion, governmental action in Canada can be seen as being mediated through a global lens that often leaves municipal governments constrained by agreements they are not a part of. As such, "the likelihood that central governments would become *more* involved in major issues relating to urban growth and development than they have been in the past" (Sancton, 2008, 131) rises as these governments recognize the increasing importance of city-regions to the national economy. In addition, local governments are forced to find ways to act creatively within their own areas of jurisdiction. This has led to different reactions at the local level: Some seek for municipal

[6] This is quoted in Sanction, 2008, 17. The original source is: "The Greater Toronto Charter," in Broadbent et al., *Towards a New City of Toronto Act*, 2005, 40.

autonomy, others for greater municipal authority. The first seeks constitutional change in the formal structures of government while the latter seeks cooperation between orders of governments to best govern within the constitutional confines placed upon them; however, both views seek a level of decentralization of authority to local governments. In this way, to label Canada as an 'urban nation' is to acknowledge the need to decentralize power to a particular point. As this paper has shown, this decentralization gives local governments more authority than autonomy.

While the debate between municipal autonomy and authority will still continue in the years to come, there is no debate about the growing importance of city-regions and the various levels of local governments in Canada. Both autonomy and authority advocates agree that urbanization "is a powerful trend driven by positive attraction, and that no amount of intervention will hold it back" (Broadbent, 2008, 42), and, as such, "cities are becoming increasingly important as sources of innovation and wealth in our society" (Sancton, 2008, 3). As cities continue to be the main areas of population growth, for nearly 90% of Canada's population growth took place its 33 CMAs in 2006 (Statistics Canada, 2009-01-20), the implications of urbanization will continue to be an important dimension of Canadian politics. As a result, urban autonomy movements will continue to arise, calling for constitutional change and equal representation and powers given to upper levels of government. At the same time, urban authority movements will also arise, and it is in these forums that effective and efficient governing will occur. As evidenced in the "urban lens" of Paul Martin's Liberal government, an acknowledgement of the urbanization of the country is best done through policies of cooperation (i.e., governance) rather than through constitutional change (i.e., government). The mix of formal institutional change and informal cooperation is both successful and realistic; this form of municipal governance occurs in the pragmatic Mushy Middle, and not in the idealized notions of Home Rule and the creation of urban city-states.

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Canadian Federalism and the Anti-Globalization Movement: Managing Violence through Evolution

Officer Cadet Matthew Hou

Federalism, in the Canadian experience, has been an adept form of political organization in response to the integrative economic processes of globalization. Canada's ability to successfully transition from a domestic development economic model to a liberal free trade model without accompanying political shocks in the 1990s illustrates the resilience of its federal political structure to negotiate competing interests. Globalization's economic impact, multiplied by innovative communication technology, influences every aspect of economic and political decision-making today.[1] The accompanying reaction to globalization, anti-globalization, poses a range of challenges to extant economic and political methods of organization. The origins of the anti-globalization movement are more substantial than a general sense that globalization is fraying at the seams.[2] Anti-globalization, to some extent, is an outgrowth of substantial resistance to a status quo that does not adequately manage the claims of the dissatisfied. To better understand the current movement, globalization's principle processes will be analyzed to illuminate the three divergent strands of resistance. Furthermore, a reconciliation between contemporary Canadian federalism and the claims of the anti-

[1] Ian Adams, *Political Ideologies Today* (Manchester: University of Manchester Press, 2001), 281.
[2] Naomi Klein et al., "The Fraying Seams of Globalization," *New Perspectives Quarterly* (2008): 1.

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globalization movement illustrate the potential for further development on the federal model to address the ideological origins of anti-globalizationist protest.

The definition of globalization remains unresolved as a function of the movement's complexity. Most discussions of globalization view the phenomenon, unfortunately, as a homogenous and impersonal movement.[3] Typically, globalization is seen to be an interrelated transformative process involving ideas, technology, social networks, international institutions and local cultures in the domains of culture, politics and economics. As international integration accelerates, the relative power of the nation-state is in decline while that of multinational corporations is in the ascent.[4] David Held's thesis, that globalization involves four spatio-temporal facets, provides a useful definition of the "widening, deepening and speeding up of global interconnectedness."[5] Globalization has an impact on the extensity, intensity, velocity and impact of human relations:

> The concept of globalization implies that social, political and economic activities are increasingly extending across nation-state borders and, consequently, appear to give rise to a global plane of human relations. Second, this global or transnational connectedness intensifies because of the greater frequency and regularized patterns of interaction that form the transnationally embedded networks. Third, the growing extensity and intensity of global interconnectedness implies a speeding up of transnational interactions and processes. Fourth, globalization implies that the repercussion of decisions or events in one part of the planet can be felt elsewhere.[6]

Held's argument is unique in that it provides an analytical framework which surmounts the divide between globalists and sceptics. Two, largely incompatible, perspectives exist on the origins and nature of globalization. The sceptic's approach would have it that contemporary globalization is an extension of processes – international trade, capital flows, mass migration, economic integration – begun in the pre-1914 European

[3] Jagdish Bhagwati, *In Defence of Globalization* (New York: Oxford University Press, 2004), 7.
[4] Robert Gilpin, The *Challenge of Global Capitalism: The World Economy in the 21st Century*, (Princeton: Princeton University Press, 2000), 19.
[5] Richard Devetak, "Globalization's Shadow," in *The Globalization of Political Violence* (New York: Routledge, 2008) 2.
[6] Ibid.

imperialist era; the Cold War and two World Wars of the twentieth-century interrupted extant processes which have resumed and accelerated after 1991.[7] Colonialism and imperialism before 1914 led to economic extensity through haciendas, mines and colonies while the intensity of globalization was fuelled by the vast movement of slaves, indentured servants and displaced peasants.[8]Thus for the sceptic, the extensity and intensity of globalization are not new. In an extreme variant of the sceptic perspective, globalization began when people first ventured beyond their village to trade or to explore.[9] Armand Mattelart contends that globalization and liberalism are an extension of the Enlightenment project to achieve human perfection through technological development.[10] The implication of the sceptic's perspective is that globalization, as the experience of the twentieth-century demonstrated, can be halted by states. Furthermore, the sceptic views the current discourse on globalization, as an inevitable and inexorable process, a hegemonic element of our Weltanschaunng that is fundamentally a fallacy. That is to say the globalist view is interpreted by the sceptics as an approach that denies the possibility of change from the status quo when a plethora of other viable options – change – is possible. Mattelart's ability to connect the intellectual foundations of liberal freedom, economic growth and reason's primacy is an example of the sceptic's narrative wherein globalization is viewed as "a particular manner of thinking which was in the interests of, and justified the actions of, powerful institutions."[11]

Globalists typically concede that rapid economic integration has been a salient element of the international system since before the 1990s; where they disagree, however, with sceptics is in the belief that the *type* of globalization today is fundamentally distinct from that of yesterday. For the globalists, globalization is an outcome of significant structural changes in technology and policy.[12] The level to which governments have progressively reduced trade barriers while simultaneously encouraging international

[7] Schirato and Webb, *Understanding Globalization* (London: Sage Publications, 2003): 7.
[8] André C. Drainville, "Resistance to Globalization from the Periphery," *International Social Science Journal* (2009): 238.
[9] Nayan Chandra, "Runaway Globalization Without Governance," *Global Insights* (2008): 119.
[10] Schirato and Webb, 27.
[11] Schirato and Webb, 27.
[12] Schirato and Webb, 8.

investment has increased the extensity of globalization.[13] Specifically, technological innovation has permitted a more rapid ability to transfer capital, technology, ideas and goods to the extent that the velocity of current globalization is qualitatively different from that of the past.[14] Also, globalists contend that the intensity and extensity of globalization has fostered a newfound sense of economic vulnerability rooted in increased competition. Since capital and technology are mobile whereas labour is still relatively fixed to a physical place, the ability to produce anything anywhere compels an unprecedented agility and flexibility from corporations, states and individuals. Finally, globalists note that the current phase of globalization is unique from the pre-1914 period because the state, as a result of the post-1945 rise of the welfare state, is expected by its citizens to provide a higher level of general welfare. The establishment of a social liberal model of governance in the advanced market economies offered an attractive and stable alternative to the competing ideologies of the twentieth-century.[15] The state's enhanced capacity and mandate to act is put under stress by the extensity of modern globalization. In other words, the state's relative ability to act is smaller because of globalization but the state's expectations are larger.

The ideological components of anti-globalization do not individually compose a holistic critique of globalization. Rather, anti-globalization as a counter-movement represents the interests of environmentalists, indigenous groups, religious fundamentalists, liberals, communitarians, neo-Marxists, neo-anarchists, trade unionists, feminists, nationalists and libertarians among many others. While a motley mix, the anti-globalization movement can be generally noted by its lack of agreement with extant socio-economic structures and a desire to "level [current] hierarchies."[16] Like globalization, anti-globalization is a contested concept with distinct and competing components; the leftist reaction can be alternatively called the global justice and solidarity movement, the alter-mondialisation movement, the alter-activist movement and

[13] Bhagwati, 11.
[14] Bhagwati, 12.
[15] Kemal Dervis and Ceren Ozer, A Better Globalization, (Washington D.C.: Center for Global Development, 2005), 14.
[16] James E. Cameron and Shannon L. Nickerson, "Predictors of Protest Among Anti-Globalization Demonstrators," *Journal of Applied Social Psychology* (2009): 738.

transnational social movements. The distinct self-conceptions of anti-globalizationists illustrate the interest groups that are aggregated within each tribe. Interestingly, most groups purport to represent the entire anti-globalization movement though they have unique ideological rationales.

The global justice and solidarity movement, a relatively recent social grouping, is primarily motivated by a desire to mitigate the perceived injustice of a global neoliberal market economy in the interests of augmenting democracy.[17] Thus the global justice variant of anti-globalization is founded on a critique of the economic-political order because the benefits of globalization are perceived to be inequitably distributed in favour of the wealthy or powerful. This strand of anti-globalization is primarily composed of middle-class and middle-aged activists with duties to families and a career.[18] Furthermore, global justice and solidarity activists typically follow a hierarchical command structure with an elected leadership that make most routine decisions.[19] Global justice and solidarity can be viewed as a continuation of the social-democratic desire to regulate markets to mitigate risk or to redistribute goods through the mechanism of the state. In one sense, global justice and solidarity is a movement that seeks a return to the Keynesian model's emphasis on the state as a unitary distributive actor. The democratic ideal is thought to be left impotent in the face of increasing economic and political inequality.[20] The discourse of global justice proponents, in a more international strand, invokes the language of rights and responsibilities within the tradition of cosmopolitan liberalism.

Alter-mondialisation or alter-globalization is a re-assemblage of the traditional left, socialists and Marxists, and non-governmental organizations (NGOs) with networks that include unions, reformist groups and continental European socialist parties.[21] Similar to the global justice and solidarity strand of anti-globalization, alter-mondialisation's

[17] Maria Zackariasson, "Angry Young Men? Masculinities and Emotion Among Young Male Activists in the Global Justice Movement," *The Journal of Men's Studies* (2009): 32.
[18] Jeffrey S Juris, *Networking Futures: the Movements against Corporate Globalization*, (Durham: Duke University Press, 2008), 71.
[19] Ibid.
[20] Stephen D'Arcy, "The Militant Protester as Model Citizen," *Peace Review: A Journal of Social Justice* (2008): 294.
[21] Jeffrey Shantz, "Re-Building Infrastructures of Resistance," *Socialism and Democracy* (2009): 103.

primary contention is that the existing economic-political structure neglects the interests of those without power. Alter-mondialisation differs from the other versions of anti-globalization in the trust placed in socialist, neo-Marxist and neo-anarchist remedies for the problems of globalization.[22] Alter-mondialists place an emphasis on centralization in their organization structure and seek consensus decision-making outcomes with open participation.[23] An outgrowth of alter-mondialisation's less conventional forms has been alter-activism. While primarily engaged in a similar discourse as to the rationale for anti-globalization action, alter-activism is distinct from alter-mondialisation in the latter's belief that the methods of resistance are more important than the reasons for resistance. Alter-activism views lived experience to be the primary means of legitimization for political action; alter-activists, logically, prefer less hierarchical or local organization and organize globally using information technology.[24] As a reflection of alter-activism's abhorrence of vertical organization, the alter-activist strain of anti-globalization is composed of a younger, urban and primarily middle-class demographic as opposed to the leadership of older working-class and community members in alter-mondialisation.[25] Alter-activists organize themselves within and largely identify with small anti-capitalist communes that make decisions through consensus.[26] While alter-activism seeks more communal forms of socio-economic structure, alter-activism does not favour a return to the state as the primary arbiter of justice or to neo-Marxist solutions. In fact, alter-activism can be identified as a strand of anti-globalization that appeals to youth who are disengaged with the conventional apparatus of democracy.[27] The paucity of language concerning alter-activism's goals reflects the greater emphasis placed on the tactics of protest. Neo-anarchism lends itself to alter-activism given the atomized nature of alter-activism coupled with its focus on nonconventional protest outside democratic institutions.

[22] Shantz, 102.
[23] Juris, Networking Futures, 71.
[24] J.S. Juris and G.. Pleyers, "Alter-activism: emerging cultures of participation among young global justice activists," *Journal of Youth Studies* (2009): 58.
[25] Juris and Pleyers, 58.
[26] Juris, Networking Futures, 71.
[27] Juris and Pleyers, 60.

Finally, the term 'transnational social movements' encompasses a complex system of indigenous anti-globalization movements. Although the preceding versions of anti-globalization largely focus on the socio-economic distributive components of globalization, transnational social movements are unique in the degree to which modernity itself is rejected.[28] The acceleration of export agriculture is an important catalyst for the increased size and intensity of these movements.[29] Given the local and highly connected nature of indigenous society, transnational social movements are a component of anti-globalization without significant global networks of protest.[30] Furthermore, the historical nature of indigenous people's claims to sovereignty makes the transnational social movements aspect of anti-globalization indistinguishable from a critique of previous forms of modern political organization. Alter-mondialisation and the global justice movement are in some ways fundamentally incompatible with the transnational social movements' desire for pre-state models of organization. Michel Foucault's postmodernist delegitimization of the modern project's search for universal truth, and universally applicable values, through reason offers a foundational ideology for transnational social movements. The work of communitarians like Will Kymlicka and Charles Taylor might, intriguingly, offer a useful rubric to organize the claims of transnational social movements within the structure of the democratic state.

Canada's federal political structure has remained relatively unchanged despite substantial global economic integration largely as a function of the unsystematic approach to negotiating substantial international economic agreements. The inability of either the federal or the provincial level of government to constitutionally assert a primacy in economic affairs to the exclusion of the other has been a structural component incentivizing cooperation on critical and specific economic issues. Intergovernmental negotiation at the deputy minister and minister's level has therefore evolved as a norm when Canada both negotiates and implements treaties catalyzing further global economic integration. For instance, Ontario and Quebec have regularly participated, albeit

[28] Thomas D. Hall and James V. Fenelon. "Indigenous Movements and Globalization: What is Different? What is the Same?" *Globalizations* (2008): 2.
[29] Andre C. Drainville, "Resistance to Globalization from the Periphery of the World Economy," *International Social Science Journal* (2009): 239.
[30] Hall and Fenelon, 2.

unofficially, as members of the Canadian delegation to important fora like the World Trade Organization.[31] During the negotiation of both free trade agreements with the United States, a committee level mechanism established by Ottawa facilitated provincial interest aggregation.[32] The use of cooperative ministerial conferences has even mitigated provincial intransigence to the implementation of specific global initiatives like Alberta's resistance to the Kyoto Accord.[33] Similarly, provinces are able to influence federal negotiating positions both before and during the treaty-making process. In contrast to Canada's experience, the regionalization of economic processes in Germany, as in most advanced democratic federations, has contributed to political centralization away from the Lander.[34] Federalism is, in the Canadian context, a manner in which the relative distribution of economic power between levels of government has remained intact.

The emphasis on an ad hoc intergovernmental negotiation process to address the claims of economic integration might similarly mitigate several ideological rationales for anti-globalist resistance. As a movement united by a quest to level social hierarchies, anti-globalization is abetted when the vertical distance between federal and provincial levels of government is minimized. A cooperative intergovernmental process for issues like socio-economic inequality might prove to be as successful as the international treaty making process. Similarly, intergovernmental cooperation is a necessity to mitigate the potential for politically inspired violence at events with symbolic importance to the anti-globalization movement; the level of integration between provincial and federal command structures in the preparation and the execution of security for the Vancouver Winter Olympics is an ideal type to replicate for the G20 Summit in Toronto. Two structural factors suggest that Canada will be able to responsively address the interests of anti-globalizationists into the future. First, the relatively decentralized regional nature of Canada's federation allows the aggregation of interests within provinces in a manner

[31] Douglas M. Brown, "The Evolving Role of the Provinces in Canadian Trade Policy," in *Canadian Federalism: Meeting Global Economic Challenges?* (Kingston: IRPP, 1991): 91
[32] Geoffrey Hale and Christopher Kukucha, "Investment, Trade and Growth: Multi-Level Regulatory Regime in Canada," *Carleton University School of Public Policy and Administration* (2004): 9.
[33] Christopher Kukucha, "The Role of the Provinces in Canadian Foreign Trade Policy: Multi-Level Governance and Sub-National Interests in the Twenty-First Century," (2005): 147.
[34] Axel Hulsemeyer, Globalization and Institutional Adjustment: Federalism as an Obstacle?, (Cornwall: Ashgate, 2004): 56.

wherein a policy response to the same phenomenon is unique in Victoria as it is in Toronto. An implication of this decentralization is that a multiplicity of distinct responses to anti-globalization is likely to emerge from local exigencies. The best practices that emerge can then be cross-applied to address similar anti-globalizationist claims. Second, the relatively minor population base of Canadian provinces results in a closer relationship between the provincial level of government and the public. Anti-globalization arguments, therefore, are more likely to be expressed and interpreted at the provincial level in a small federation like Canada. Furthermore, the flexibility of provincial governments in such a setting consequently leads to a greater ability to respond to the intensiveness of globalization. While the capability of the provinces to manage the claims of the global justice and solidarity strand of anti-globalization is sound, the more compelling question into the future will be whether the anti-state outlook of alter-activism or the neo-Marxist impulse underpinning alter-mondialisation can be addressed through a federal structure.

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