

# *Where did Trudeau go wrong? On the Question of Nationalism and Charter Patriotism in Canada*

Donald Ipperciel\*

## Introduction

In an attempt to overcome national rivalries, many will invoke the idea of constitutional patriotism. This idea, which serves as a collective cement, is conceived as a rational commitment and loyalty towards the democratic and universal principles of liberal constitutions. The universalism of constitutional principles serves as a shield against national particularisms. Indeed, this was precisely the intention of Jürgen Habermas, one of the most famous advocates of constitutional patriotism. With this political idea, Habermas set out to defeat Teutonic nationalism and its antimodern and chauvinistic manifestations. If nationalist passions can be subdued, it would be with the help of such a “postnational” attitude.

For Habermas, and political thinkers in general, the United States represents the model *par excellence* of such a constitutional patriotism.<sup>1</sup> However, the concept also has a Canadian version that is seldom highlighted in this connection, namely, “*Charter* patriotism.”<sup>2</sup> This Canadian version of constitutional patriotism is also presented, by all participants in the debate, as antagonistic to nationalisms and particularisms of all kinds.

For my part, I argue the following thesis: constitutional patriotism — and hence *Charter* patriotism — should not be perceived as the negation of and potential substitute for

nationalism since its purpose is not to address the functions of the nation, but rather those of the state. As will be demonstrated, constitutional patriotism and nationalism operate on different levels, and follow different logics. At best, *Charter* patriotism can, if one adheres to the perspective defended in this article, be superimposed onto nationalism, thereby meeting the distinct need for unity in the Canadian multinational state.

I support this thesis mainly through theoretical demonstration, but this demonstration will be based on some empirical findings. To prepare for this demonstration, I will briefly explore the nature of the concept of constitutional patriotism as it originally appeared in the work of Dolf Sternberger and Habermas. And since constitutional patriotism Canadian-style first took shape in Pierre Elliott Trudeau’s writings, I will focus particular attention on these, approaching *Charter* patriotism as a specifically Canadian manifestation of constitutional patriotism. In spite of the failure of *Charter* patriotism as a symbol of Canadian unity, I will nonetheless outline a certain Québec paradox allowing for the coexistence of separatist thoughts with a strong attachment to the Canadian Constitution. I believe this paradox can be untangled with the help of my working thesis.

## Nature of constitutional patriotism in Habermas

The phrase “constitutional patriotism” was coined at the end of the 1970s by Dolf Sternberger (1907-1989), a central figure in German political science after the Second World War. For Sternberger, constitutional patriotism is above all an analytical *and* historical concept. Because the national sentiment of Germans had been wounded by their recent Nazi past and by the country’s East-West split, it no longer sufficed for the construction of political identity.<sup>3</sup> In response to this situation, Sternberger claimed that “we do not live in a full Germany, but we live in a full constitution, a fully constitutional state, and that too is a kind of fatherland.”<sup>4</sup> Constitutional patriotism thus fulfilled a particular need in postwar Germany.

Habermas readily admits to borrowing the concept of constitutional patriotism from Sternberger and thus acknowledges its originally descriptive character.<sup>5</sup> As did the latter, Habermas understands this new identity conferred by constitutional patriotism as a form of distancing from a “past centered on national history.”<sup>6</sup> But Habermas’s reading of this concept will be coloured in a fundamental way by a polemical and normative intention. Though constitutional patriotism is still perceived as an historically observable fact in Germany, it will moreover become a good to be protected, a rallying cry against German conservative and fascist forces conspiring to “rehabilitate national consciousness.”<sup>7</sup>

Constitutional patriotism takes shape, according to Habermas, in the historically observable disjunction between culture and state politics, *i.e.*, between nation and state. Habermas does not make a distinction between “ethnie” (or culture) and nation; rather, the ways of life defining cultures are distinguished from state activities. Furthermore, during this process of disjunction, “the identification with our own ways of life and our own traditions are covered with a more abstract patriotism, which is no longer articulated with the concrete whole of the nation, but with abstract procedures and principles.”<sup>8</sup> The role of these constitutional

procedures and principles, then, is to allow for coexistence and communication among nations and cultures within a state. But for those who would believe that concrete ways of life and nations thereby become obsolete, Habermas is quick to add: “The attachment to these principles supposed by constitutional patriotism must actually feed on the consonant legacy of cultural traditions.”<sup>9</sup> Hence, it seems that Habermas did not introduce constitutional patriotism as a *substitute for*, but rather as an *addition to* nationalism.

In fact, constitutional patriotism is *necessarily* coloured by the national and cultural context in which it takes root. In this sense, German constitutional patriotism is bound to be different from its American, French, or Canadian occurrences. In Habermas’s view, the distinctive feature of German constitutional patriotism is its particular and historical memory of Auschwitz and the vanquishing of Nazism.<sup>10</sup> To this extent, it is different from the occurrences of constitutional patriotism elsewhere in the world.

## Constitutional patriotism in Trudeau’s Work

Although inspired by other sources — by Julien Benda’s rationalist universalism and by American civic constitutionalism in particular — Trudeau’s postnationalist thought takes on a form similar to that of Habermas’s.<sup>11</sup> However, it must be pointed out from the outset that the young Trudeau could not consider such a thing as Constitutional patriotism. Before 1968, the constitution had, in Trudeau’s mind, an essentially pragmatic — indeed instrumental — function: it served to counter the centrifugal forces threatening the cohesion of the Canadian state. It allowed some protection for French Canadians, whom he considered socially and economically backward. The promotion of transcendent normative principles was far from his mind.<sup>12</sup> In the period before 1968, thus, Trudeau did not contemplate the idea of an American-style bill of rights, although, even then, he strongly defended individual rights against state prerogatives and against claims stemming from ethnic and national groups.

Trudeau had a change of heart during his early years of political life. In a document entitled *The Constitution and the People of Canada*, which served as a working document for the constitutional amendments proposed in the Canadian Constitutional Charter of 1971 (*Victoria Charter*), Trudeau recognizes from then on a transcendent and symbolic function to the Constitution. Indeed, it would no longer be considered a pragmatic product born of a particular historic situation, but as a founding document performatively establishing the Canadian nation (*i.e.*, through the very act of enunciation): “the Constitution must express the purpose of Canadians in having become and resolving to remain associated in a single country.”<sup>13</sup> In this sense, the Constitution is much more than the reflection of the population’s values; it is, in a symbolic mode, the founding act of the nation.

Of course, for Trudeau, his proposed Charter of Rights becomes the cornerstone of the Constitution since “the rights of people must precede the rights of governments.”<sup>14</sup> It is then incumbent on the resultant *Canadian Charter of Rights and Freedoms*<sup>15</sup> to contribute, as is the case with other federal institutions,<sup>16</sup> to the unity of the country. Through the statement of universal rights (*i.e.*, political, judicial, and antidiscriminatory rights) and particular rights (*i.e.*, linguistic rights), which all Canadians can agree upon, the *Charter* expresses the commonness of all Canadians, regardless of the diversity composing the country, including the nations and ethnic groups in its midst.

It is no doubt noteworthy that Trudeau, in constitutional position papers appearing under his name,<sup>17</sup> banks on passion just as much as reason (contrary to his credo of earlier years).<sup>18</sup> It is in this context that his preference for a Charter of Rights must be understood. The federal Constitution of 1867<sup>19</sup> seems to him too lifeless and uninspiring:

[Its constitutional enactments] contain little to inspire the pride, solidarity, magnanimity and serious commitment required for the pursuit of a national ideal. This has hampered the development of a Canadian identity and patriotism.<sup>20</sup>

Hence, the necessity of a revitalized effort at formal constitutional renewal as the only guarantor of the desired unity of a country marked with significant, concrete diversity.<sup>21</sup> The symbolic content of the Constitution, in this context, becomes crucially important for the new project of unification.

As with Habermas’s, Trudeau’s constitutional patriotism is not meant to be abstract or deny Canadian cultural particularities. Admittedly, this is a criticism often directed against Trudeau<sup>22</sup> but it deserves to be qualified, in my view. Actually, Trudeau’s work contains apparently contradictory passages, sometimes defending the right to existence of ethnic and national particularities, sometimes a crude antinationalism.

What Trudeau excoriates, in fact, is a particular meaning of the nation. Whereas the *sociological* nation — understood as a synonym for *ethnie* — is quite acceptable to him, the *political* nation, for its part, is altogether objectionable. In the words of Trudeau: “It is not the idea of *nation* that is retrograde; it is the idea that the nation must necessarily be sovereign.”<sup>23</sup> For Trudeau, the political nation is nothing other than an ethnic group claiming political power for itself. For this reason the modern nation, defined since the French Revolution in terms bound to the “principle of all sovereignty,”<sup>24</sup> becomes reprehensible. In his view, this principle of sovereignty should legitimately be attributed to the state not the nation. As a result, Trudeau’s aversion to nationalism becomes understandable insofar as it is construed as an ideology seeking to put popular sovereignty in the hands of a sociological nation (or an *ethnie*), to the detriment of citizens belonging to other ethnic groups. In this sense, the nation must renounce its nationalism.<sup>25</sup>

## **Charter Patriotism: Between the Union and the Division of the Country**

With good reasons, the *Canadian Charter of Rights and Freedoms* can be considered the political outcome of Trudeau’s thought. With

the adoption of the *Charter*, the foundations of a Canadian-style Constitutional patriotism was laid in concrete. Shortly after 1982, a true “*Charter* patriotism” — an expression popularized by Alan Cairns<sup>26</sup> and Peter Russell<sup>27</sup> — spread across the country.

Through the mechanism of *Charter* enthusiasm, Trudeau explicitly hoped to create a pan-Canadian nation and nationalism. Indeed, about a decade after the adoption of the *Charter*, Trudeau interpreted the event as “a new beginning for the Canadian nation.”<sup>28</sup> In taking this view of his project, Trudeau reiterated an objective he had stated as early as 1967.<sup>29</sup> The goal was, in spite of a rhetoric of rational universalism borrowed from Julien Benda, to substitute a pan-Canadian nationalism for substate nationalisms, Québec nationalism in particular. The defence of a more encompassing (if no less particularistic) nationalism, resting in part on the *Charter*, will clearly become his main concern after 1968.<sup>30</sup>

Ironically, however, it seems that this pan-Canadian nationalism, which relies on *Charter* patriotism, has had precisely the opposite effect than the one Trudeau intended. Instead of unifying Canada in a common political identity, the *Charter* is splitting up the country. Commentators agree in claiming that the *Charter*, as an instrument of pan-Canadian unity, ended in failure. In 1992, Cairns maintained that “the national unity purposes of the Charter have not only fallen short but, in a sense, have backfired with respect to relations between Quebec and the rest of Canada.”<sup>31</sup> In 1994, Peter Russell was even more caustic: “I believe the country might choke on Charter patriotism.”<sup>32</sup> In his view, *Charter* patriotism is a sort of “*Charter* idolatry,” which conveys a certain “political fundamentalism.”<sup>33</sup> In 2000, F. L. Morton and Rainer Knopff adopted a similar position: “With respect to most of francophone Quebec, Charter patriotism has been a dismal failure.”<sup>34</sup> Recently, in 2007, Guy Laforest claimed that “Ideally, we should be able to say ‘the Charter is us’, but Quebec can’t share this identity marker.”<sup>35</sup> Here, Laforest was here restating a position already explicated in 1992 in his *Trudeau et la fin d’un rêve canadien*.

Hence, although the *Charter* had the desired effect in English Canada,<sup>36</sup> it is still a hard sell in Quebec. This is not to say that Quebecers are not receptive to a culture and rhetoric of human rights, far from it.<sup>37</sup> After all, Québec instituted a *Charter of Human Rights and Freedoms*<sup>38</sup> some years before the adoption of its Canadian counterpart. In an analysis of the unifying mission of the *Charter*, Cairns identifies three reasons that explain Québec’s antipathy towards the *Charter*:<sup>39</sup> 1) The imposition of the *Charter* on Québec is perceived, particularly among sovereignists, as a betrayal on the part of the federal government; 2) the *Charter* had a restrictive impact on language laws in Québec, which are at the core of an essential dimension of Québec’s national identity; and 3) the *Charter* is part of a vision of Canada that clashes head-on with Québec nationalism. It is thus quite understandable that *Charter* patriotism could not take root in Québec as it has in Anglophone Canada. In all likelihood, this situation will carry on as long as the *Assemblée nationale* continues its political and symbolic refusal to duly ratify the *Constitution Act, 1982*. In the meantime, *Charter* patriotism, far from promoting a civic nationalism all across the country, might instead stir up a backlash of Québec nationalism.

However, despite the acknowledged failure of *Charter* patriotism in Québec, one can bring to the fore what could be described as the “Québec paradox.” In spite of strong nationalist sentiments in Québec and the ever-present possibility of secession, there is a strong sense of belonging to the Canadian state. In a CROP-Express survey conducted in 2005, 49 percent of Quebecers would have voted in favour of secession,<sup>40</sup> although 71 percent also claimed to be “very attached or quite attached to Canada.”<sup>41</sup> More interesting are the reasons for this attachment. In the same survey, questions were asked about the benefits of being part of Canada. The results are as follows: 67 percent of Quebecers believed they are benefiting from Canada’s international reputation; 65 percent from the *Canadian Charter of Rights and Freedoms*; and 64 percent from federal transfers for social programs. Without doing too much violence to the facts, one could argue that these perceived benefits derive mainly from the Canadian Constitu-

tion. Indeed, the *Charter* makes up Section I of the *Constitution Act, 1982*, and is undoubtedly the heart of 1982 Constitution. Social transfers, however, are the object of Section III of the 1982 Constitution and are, in Canada, an essential element of the citizenship regime which integrates social and economic rights with civic and political rights.<sup>42</sup> As for Canada's reputation as a tolerant and pluralistic country, it derives for the most part from the constituent laws of the country which elevate these values to binding norms.

Now, how should the Québec paradox of an attachment to Canada, coupled with a desire to be detached from it, be understood? How can one reconcile the postnational appeal of Canada and its institutions with a specific Québec nationalism? The *Charter* is not, for reasons already identified, a symbol of unity in Québec, but it is nonetheless, as the CROP-Express poll shows, an object of deference justifying a strong attachment to Canada. While leaving open the question of whether "strong attachment" and "patriotism" are equivalent in matters of the Constitution, it seems, in accord with CROP-Express, that a certain *Charter* patriotism is taking root in Québec, perhaps unknowingly or even unwillingly. However, one must add, this patriotism has the distinctive feature of rejecting the *Charter* as a symbol of national unity, acknowledging only its juridical content guaranteeing a set of rights, something akin to what Russell called "*Charter* realism."<sup>43</sup> If there is such a thing as *Charter* patriotism in Québec, it is thus of a different nature to the one existing in Anglophone Canada.

## Constitutional Patriotism and Nationalism: Incommensurable Notions?

To help us elucidate the apparently contradictory — or at least ambivalent — question of the coexistence of a "postnational" attachment to the Canadian Constitution with Québec nationalism, I believe that the distinction between liberalism and republicanism can be useful. The former offers a model of society in which individual rights are assigned the highest im-

portance, whereas the latter emphasizes above all the political participation of the people. According to Charles Taylor:

In one model, the dignity of the free individual resides in the fact that he has rights that he can make efficacious if necessary even against the process of collective decision making of the society, against the majority will, or the prevailing consensus. . . . In the other model, his freedom and efficacy reside in his ability to participate in the process of majority decision making, in having a recognized voice in establishing the "general will."<sup>44</sup>

Taylor recognizes that this distinction between liberalism and republicanism does not imply a disjunction of the two models, but rather a tension within democratic societies. Both liberalism and republicanism, after all, incorporate rights and participation into their models, albeit in varying proportions. Moreover, according to Taylor, the participation of the people in political decision making presupposes a strong sense of belonging to a collectivity, which then becomes the living source and end of participation.<sup>45</sup> And since Canada has more than one collectivity, Taylor goes on to argue, the application of a participatory model necessarily calls for regional decentralization.<sup>46</sup>

This distinction between liberalism and republicanism is illuminating when applied to the question of the relationship between Québec nationalism and Canadian *Charter* patriotism. The latter, in establishing the primacy of individual rights, obviously corresponds to the liberal juridical vector of society. *Charter* patriotism represents a power constitutive of the state that trumps even the will of the people. I contend furthermore that, for its part, the republican participatory vector is embodied by the nation. Indeed, the modern nation, as defined since the French Revolution,<sup>47</sup> is precisely the locus of popular sovereignty and thus of popular will and participation. Taylor also attributes such a participatory role to the nation. However, just as do Trudeau and Habermas, Taylor conflates "nation" and "ethnie" in this context. Granted, Anthony Smith is probably right in claiming an ethnic origin to nations.<sup>48</sup> And, following Will Kymlicka,<sup>49</sup> one must also recognize the post-

ethnic nature of many Western nations, and of Québec in particular. Through its policies of interculturalism, an avatar of multiculturalism, Québec adheres fully to ethnic pluralism so that minority ethnic voices can also participate in forming popular opinion and will.

The argument here rests on the thesis that the nation is different from both the *ethnie* and the state. To reinforce this distinction, it is helpful, perhaps, to return to Dominique Schnapper, for whom the modern nation is essentially defined by political sovereignty.<sup>50</sup> According to Schnapper, drawing mainly from the French republican tradition, a nation is political *by definition*. In this respect, the defining characteristic of the nation is its politically integrative function: “The specificity of the modern nation is to integrate all populations into a community of citizens.”<sup>51</sup> This is possible only if individuals transcend their ethnic particularities. By contrast, the *ethnie* is defined as a group of individuals united by cultural and historic links, but with no political organization or expression. On the other hand, the state, construed as a set of institutions exerting some sort of coercion on the collectivity,<sup>52</sup> ensures the political expression of the nation. Thus, the three collective entities — *ethnie*, nation, and state — each have their appropriate locus within the sociopolitical organization of modern collectivities.

To Schnapper’s theoretical definitions I would add that political integration, the key-stone of her conception of the nation, can be realized only through public discussion, which in turn presupposes a common *public* language.<sup>53</sup> Hence, civic though the nation is, on Schnapper’s account it must also be aware of its linguistic foundation since the language of discussion is an essential political instrument for the formation of popular will. If Canada is binational, it is not due to the presence of a Québécois or French-Canadian *ethnie* and an English-Canadian *ethnie* (their pre-eminence over other ethnic groups would be unjustifiable in a liberal context, even for historical reasons), but because *it is comprised of two official public languages providing for political*

*integration into two distinct public spaces*. In this sense, language is an instrument making it possible to transcend ethnic particularities. But to seek to transcend language itself is to undermine an actual condition of possibility of public political discussion central to modern nations, thus jeopardizing the establishment of a popular will that is truly common.

It is important, in the context of this study, to clarify the intimate relationship between state and law since it brings to light the anchoring point of the *Charter* and of constitutional patriotism more generally: insofar as the *Charter* is an expression of a legal order, it exemplifies a state function. Correlatively, *Charter* patriotism (or constitutional patriotism) thus corresponds to an attachment to the state, as Sternberger perceived it to in the 1950s, and not to the nation. In the case of nation-states, this distinction is perhaps moot, but in the context of multinational states, it is highly relevant. In multinational states, constitutional patriotism — along with other interests, of course — strengthens the attachment to a collective entity extending beyond the nation.

If *Charter* patriotism, construed as attachment to the juridical order and to principles of civic and universal law, cannot compete with nationalism and supplant it, it is because *Charter* patriotism is subject to a different logic and assumes different functions. Whereas *Charter* patriotism is addressed to the inalienable rights of individuals, nationalism is concerned with individuals’ participation in collective decision making. In other words, it sees to it that popular sovereignty is realized. Hence, nationalism and constitutional patriotism do not and cannot enter into a relationship of conflict because they cover different conceptual spaces of the political. Nor does constitutional patriotism depend on a “delegitimization of nationalism”<sup>54</sup> in order to supplant it. Constitutional patriotism, if it is not to alter its nature, should not seek to oppose nationalism (understood as the defence of the prerogatives of the *nation*), but should be firmly anchored to the state.

## Conclusion: Instead of Antagonism, Complementarity

One should, in my mind, avoid understanding Canada as a postnational state. Certainly, the Canadian state offers its citizens a political-legal framework which transcends particular ethnies and nations, but the negation of actual nations in its midst would be tantamount to destroying spaces of popular will formation, dealing a fatal blow to the idea of popular sovereignty. Canada's present and future must consequently be construed in a multinational framework respecting and nurturing nations in its midst.

Trudeau's error, so to speak, was to fail to understand the integral relationship between constitutional patriotism and nationalism. In this sense, the Québec nation and nationalism are not rivals of a Canada unified by *Charter* patriotism, as Trudeau has thought; rather, they form a concrete foundation feeding the more abstract idea of constitutional patriotism.

## Notes

- \* Donald Ipperciel, Institute for Canadian Studies, University of Alberta.
- 1 Not everyone would agree with this statement. See for example, Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press, 2004) at 183; and Margaret Canovan, "Patriotism is Not Enough" (2000) 30 *British Journal of Political Science* 413 at 425.
- 2 Alan C. Cairns, *Charter Versus Federalism* (Montreal: McGill-Queen's University Press, 1992); Peter H. Russell, "The Political Purposes of the Charter: Have They Been Fulfilled? An Agnostic's Report Card" in Philip Bryden, Steven Davis & John Russell, eds., *Protecting Rights and Freedoms* (Toronto: Toronto University Press, 1994); and Charles Taylor, *Reconciling the Solitudes: Essays on Canadian Federalism and Nationalism*, Guy Laforest, ed. (Montreal: McGill's-Queen's University Press, 1993).
- 3 Reinhard Blänkner, "Warum Verfassungspatriotismus? Historische Anmerkungen" in Gerhard Göhler, Mattias Iser & Ina Kerner, eds., *Verfassungspatriotismus und nationale Identität* (Berlin, 2003) 27 at 30.
- 4 Dolf Sternberger, *Ich wünschte ein Bürger zu sein. Neun Versuche über den Staat* (Frankfurt: Suhr-

- kamp, 1967) at 14.
- 5 Jürgen Habermas, "Geschichtsbewußtsein und posttraditionale Identität – Die Westorientierung der Bundesrepublik" in *Eine Art Schadensabwicklung* (Frankfurt: Suhrkamp, 1987) 161 at 168 ["Geschichtsbewußtsein"].
- 6 *Ibid.*
- 7 Jürgen Habermas, "Apologetische Tendenzen" in *Eine Art Schadensabwicklung* (Frankfurt: Suhrkamp, 1987) 120 at 131 and 133.
- 8 "Geschichtsbewußtsein," *supra* note 5 at 173 [emphasis added].
- 9 *Ibid.*
- 10 Jürgen Habermas, "Grenzen des Neohistorismus" in *Die nachholende Revolution* (Frankfurt: Suhrkamp, 1990) 149 at 152.
- 11 Michel Coutu speaks of an "elective affinity" between Habermas's constitutional patriotism and the federal initiative seeking to establish a Canadian civic nation with the help of the *Charter*. Michel Coutu, "Citoyenneté et légitimité. Le patriotisme constitutionnel comme fondement de la référence identitaire" (1998) 40 *Droit et Société* 631 at 636.
- 12 Pierre Elliott Trudeau, "Fédéralisme, nationalisme et raison" in *Le fédéralisme et la société canadienne-française* (Montréal: Éditions HMH, 1967) 191 at 209 [*Le fédéralisme*].
- 13 Pierre Elliott Trudeau, *Canada, the Constitution and the People of Canada/ La Constitution Canadienne et le Citoyen* (Ottawa: Gouvernement du Canada, 1969) at 4 and 6 [*Constitution and People*].
- 14 *Ibid.* at 4 and 16.
- 15 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].
- 16 *Constitution and People*, *supra* note 13 at 10.
- 17 See generally, *Constitution and People*, *ibid.*; and Pierre Elliott Trudeau, *A Time for Action: Toward the Renewal of the Canadian Federation* (Ottawa: Government of Canada, 1978) [*A Time for Action*].
- 18 *Le fédéralisme*, *supra* note 12.
- 19 *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5.
- 20 Similarly, Trudeau will say: "[The new Constitution] must command the respect of all Canadians and provide them with an enlightened basis for patriotism." Trudeau, *A Time for Action*, *supra* note 17 at 20 and 21.
- 21 Trudeau believes in a voluntarist nation as described by Renan, *ibid.* at 3: "For in the final analysis, it is the collective will of all Canadians which will ensure this country's survival." See

- also *ibid.* at 19.
- 22 On Trudeau's abstraction and antiparticularism, see for example, Claude Couture, *La loyauté d'un laïc. Pierre Elliott Trudeau et le libéralisme canadien* (Montréal: L'Harmattan, 1996) at 15; George Grant, "Nationalism and rationality," in William Christian & Sheila Grant, eds., *The George Grant Reader* (Toronto, University of Toronto Press, 1998) 102 at 104; Guy Laforest, *Trudeau et la fin d'un rêve canadien* (Sillery: Septentrion, 1992) at 131; Gordon Robertson, *Memoirs of a Very Civil Servant* (Toronto, University of Toronto Press, 2000) at 361-2. For the views on Trudeau of contemporary political actors, see Ian MacDonald, *From Bourassa to Bourassa* (Montréal, McGill-Queen's Press, 2002) at 147 (on Claude Ryan); and Ramsay Cook, *Watching Quebec* (Montreal, McGill-Queen's Press, 2005) at 130 (on André Laurendeau). For those who believe Trudeau does not deserve such a criticism, see for example, Samuel LaSelva, *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Nationhood* (Montreal, McGill-Queen's Press, 1996) at 114.
- 23 "toute pensée qui tend à réclamer pour la nation la plénitude des pouvoirs souverains est politiquement réactionnaire." Pierre Elliott Trudeau, "La nouvelle trahison des clercs," in *Le fédéralisme et la société canadienne-française* (Montréal: Éditions HMH, 1968) 159 at 179 [Trahison des clercs]. See also *ibid.* at 186-7; and *Le fédéralisme*, *supra* note 12 at 202.
- 24 See article 3 of the Declaration of the Rights of Man and of the Citizen, as well as the French Constitution of 1791: "Sovereignty is one, indivisible, inalienable and imprescriptible. It belongs to the nation" (Tit. III, Art. 1).
- 25 Trahison des clercs, *supra* note 23 at 189.
- 26 Cairns, *supra* note 2.
- 27 Russell, *supra* note 2.
- 28 Pierre Elliott Trudeau, "The Values of a Just Society" in Thomas Axworthy & Pierre Elliott Trudeau, eds., *Towards a Just Society: the Trudeau Years* (Markham, Viking, 1990) at 363. Cairns interprets Trudeau's intent in promoting a bill of rights as follows: "The Charter was conceived for nation-building purposes as well as an instrument of rights protection." *Charter Versus Federalism*, *supra* note 2 at 118.
- 29 In an address to the Canadian Bar Association held on 4 September 1967, Trudeau stated: "As lawyers, you will appreciate that the adoption of a constitutional Bill of Rights is intimately related to the whole question of constitutional reform. Essentially, we will be testing – and, hopefully, establishing – the unity of Canada." Pierre Elliott Trudeau, "A Constitutional Declaration of Rights" in *Federalism and the French Canadians* (Toronto: Macmillan of Canada, 1968) 52 at 54. See also, Wayne Norman, "Justice and stability in multinational societies," in Alain G. Gagnon & James Tully, eds., *Multinational Democracies* (Cambridge: Cambridge University Press, 2001) 90 at 101.
- 30 Laforest, *supra* note 22 at 177.
- 31 Cairns, *supra* note 2 at 121.
- 32 Russell, *supra* note 2 at 42 and 35.
- 33 *Ibid.* at 36.
- 34 F.L. Morton & Rainer Knopff, *The Charter Revolution & the Court Party* (Peterborough, ON: Broadview Press, 2000) at 61.
- 35 Quoted in Michael Healy, "Notwithstanding: A Playwright Takes on the Charter" (2007) 4 *The Walrus* 46 at 49. See also Guy Laforest, "L'exil intérieur des Québécois dans le Canada de la Charte" (2007) 16:2 *Constitutional Forum constitutionnel* 15.
- 36 Cairns, *supra* note 2 at 119: "The evidence from public hearings convincingly suggests that the Charter has 'taken' in English Canada."
- 37 Cairns, *ibid.* at 121 and Russell, *supra* note 2 at 35-36.
- 38 R.S.Q. c. C-12
- 39 Cairns, *supra* note 2 at 121.
- 40 During the same year, a CROP-Express survey revealed that 56 percent of Quebecers would have voted in favour of secession: *Document d'Information* (2006), online: Centre for Research and Information on Canada (CRIC) <[http://www.cric.ca/pdf/cric\\_poll/portraits/portraits\\_2005/fr\\_quebec\\_2005.pdf](http://www.cric.ca/pdf/cric_poll/portraits/portraits_2005/fr_quebec_2005.pdf)>; see also, *Portraits du Canada 2005* (2006), online: CRIC <[http://www.cric.ca/pdf/cahiers/cahierscric\\_jan2006.pdf](http://www.cric.ca/pdf/cahiers/cahierscric_jan2006.pdf)>.
- 41 *Document d'Information*, *ibid.*
- 42 Jane Jenson, "Reconnaître les différences: Sociétés distinctes, régimes de citoyenneté, partenariats" in Guy Laforest & Roger Gibbins, eds., *Sortir de l'impasse : les voies de la réconciliation* (Montréal: Institut de Recherche en Politiques Publiques, 1998) at 243: "[I]l convient de rappeler ici que les régimes de citoyenneté dépassent largement la reconnaissance de droits civils et politiques. Depuis 1945, ils embrassent aussi des droits sociaux et des droits économiques, habituellement institutionnalisés au sein de ce qu'on a appelé l'État-providence."
- 43 Russell, *supra* note 2 at 37.
- 44 Taylor, *supra* note 2 at 92.
- 45 *Ibid.* at 97.
- 46 *Ibid.* at 106-7.

- 47 *Supra* note 24 and accompanying text.
- 48 Anthony D. Smith, *The Ethnic Origins of Nations* (Oxford: Blackwell Publishing, 1988).
- 49 Will Kymlicka, "Immigrant Integration and Minority Nationalism" in Michael Keating & John McGarry, eds., *Minority Nationalism and the Changing International Order* (Oxford: Oxford University Press, 2001) 61 at 64.
- 50 Dominique Schnapper, *La Communauté des citoyens* (Paris: Gallimard, 1994) at 45.
- 51 *Ibid.* at 73.
- 52 *Ibid.* at 55-6.
- 53 I defend this paragraph's thesis in detail: Donald Ipperciel, "Constitutional Democracy and Civic Nationalism" (2007) 13 *Nations and Nationalisms*. In the present short article, this exposition will have to suffice.
- 54 Coutu, *supra* note 11 at 638.