

These distinctive narratives from North America are hopeful signs that highlight the possibility of a variety of relationships between heterogeneity, multiculturalism, and the welfare state. In addition, they point to a compelling research agenda that seeks to understand the factors that mediate between diversity and redistribution, tipping the balance one way or the other in different countries. Finally, they demonstrate that policy choices count. This alone is an optimistic note in an increasingly turbulent debate about the future of the multicultural welfare state.

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Canada's Contribution to the Comparative Study of Rights and Judicial Review

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The changing Canadian constitutional landscape of the past forty years is a Galapagos-like paradise for scholars of comparative constitutionalism. Canada features a unique combination of British constitutional legacy, proximity to the United States (with its two centuries plus of constitutional supremacy and active judicial review), effervescent federalism, the presence of distinct francophone and Aboriginal minorities, and above all a chain of dramatic constitutional events that have taken place over the past few decades, arguably the pinnacle of which was the constitutional revolution of 1982. Add to that a few uniquely Canadian constitutional idiosyncrasies and the result is an ideal setting – a "living laboratory," as it were – for developing and testing hypotheses about some of the core issues in comparative constitutional law and politics. However, with a few notable exceptions – primarily in the context of constitutional theory and group rights – this great potential remains for the most part unexploited. This chapter examines Canada's contribution to the comparative study of rights and judicial review. My focus here is on three broad categories: (1) structural characteristics of judicial review, (2) constitutional jurisprudence, and (3) constitutional politics.

Structural Characteristics of Judicial Review

Few would disagree that adoption of the Constitution Act, 1982 – the first thirty-four sections of which are entitled "The Canadian Charter of Rights and Freedoms" – ushered in a new era in Canadian constitutional law and politics. It marked the official patriation of the Constitution from the authority of the British crown after a 115-year process that began with enactment of the British North America Act of 1867 (renamed the Constitution Act, 1867). It introduced a new, three-tier, constitutional amendment formula and, perhaps most importantly, granted entrenched constitutional status for basic rights and liberties, thereby marking a dramatic change in

the *de jure* status of rights and liberties in Canada. Adoption of the Constitution Act, 1982, also revolutionized the status of judicial review in Canada. By declaring a set of thirty acts and statutes as the supreme law of Canada (including the Constitution Act, 1867, and the Constitution Act, 1982, itself), the act marked a departure from a generally deferential, British style of judicial review by Canadian courts in the pre-1982 era. Prior to 1982, judicial review was based primarily on the principle of *ultra vires* on federalism grounds. The Constitution Act, 1982, introduced a new regime of entrenched constitutional provisions, rights, and limitations as the primary basis for the exercise of judicial review in Canada. Five of the act's provisions (sections 1, 24, 32, 33, and 52) establish a formal framework for active judicial review.

Canada in the post-1982 era is a living laboratory for scholars interested in the impact of the structural aspects of judicial review on judicial outcomes. To begin with, the combination of a largely common-law jurisdiction with a recently adopted constitutional catalogue of rights accompanied by provincial human rights codes and a combination of *decentralized* (all-court), *a priori* and *a posteriori*, *abstract* and *concrete* models of judicial review – such as the one employed in Canada – is particularly hospitable to the wholesale judicialization of politics and policy making. Not surprisingly, that is precisely what Canada has been witnessing over the past two decades.

The *a priori/a posteriori* distinction refers to whether the constitutionality of a law or administrative action is determined before or after it takes effect. The *abstract/concrete* distinction refers to whether a declaration of unconstitutionality can be made in the absence of an actual case or controversy; in other words, such a declaration could be made either in hypothetical “what if” scenarios (“abstract” review) or only in the context of a specific legal dispute (“concrete” review). In the United States, only a *posteriori* judicial review is allowed. By contrast, in France judicial review is limited to *a priori* and/or *abstract* forms. Canada features a unique *a priori/a posteriori*, *abstract* and *concrete* review system that effectively blurs the distinct public policy effects of each of these models. In addition to the routine *a posteriori* and *concrete* judicial review procedures, the reference procedure allows both the federal and the provincial governments in Canada to refer proposed statutes or even questions concerning hypothetical legal scenarios to the Supreme Court of Canada (SCC) or the provincial courts of appeal for an advisory opinion on their constitutionality. Since its establishment in 1875, the Supreme Court has dealt with approximately ninety reference cases, including some of the most significant rulings in Canadian constitutional history.

Another important structural aspect of judicial review is the question of standing (*locus standi*) and access rights. These rights determine who may initiate a legal challenge to the constitutionality of legislation or official

action and at what stage of the process a given polity's supreme court may become involved.¹ Canada provides an interesting illustration of how the liberalization of standing and access rights facilitates the rise of judicial activism. In 1975, a statutory change shifted much of the Supreme Court's docket from the “appeals by right” category to the “discretionary leave” category, thereby increasing the court's discretion over which cases it would hear. Currently, the SCC justices, like their US counterparts, have leverage in determining the scope and nature of their agenda. Since the late 1970s, the Supreme Court has continuously liberalized the rules of standing (*locus standi*) and has expanded intervenor (e.g., *amicus curiae*) status. In 1981, the court declared that individuals could be granted standing to challenge legislation simply by showing that they had “a genuine interest in the validity of the legislation and that there [was] no other reasonable and effective manner in which the issue m[ight] be brought before the Court” (*Minister of Justice (Canada) v. Borowski*, 1981).¹ In 1983, the court formulated new rules that gave attorneys general an automatic right to intervene in constitutional cases. These changes helped legislatures, judges, and rights advocacy groups alike to pursue the charter's judicialization capacity to its fullest. In fact, by 1992, interveners were appearing in over half of all charter cases (Brodie 2002).

Finally, while section 32 of the charter (“the application clause”) was initially interpreted by the Supreme Court as restricting government actions and as protecting the private sphere from the long arm of the encroaching state (*Dolphin Delivery Ltd.*, 1986), recent SCC rulings suggest that the charter may regulate private activity, including interactions within the private sphere, primarily in the context of family law, employment standards, and collective bargaining (*KMart Canada Ltd.*, 1999; *Pepsi-Cola Canada*, 2002), thereby overturning *Dolphin Delivery* and endorsing a more generous interpretation of the charter's applicability.²

Canadian constitutional theorists have long been entangled with the well-rehearsed debate over the questionable democratic credentials of judicial review. Like its US counterpart, the Supreme Court of Canada has been the target of numerous, mainly ideologically driven, attacks by opponents of judicial activism from both ends of the political spectrum. As in the United States, the more vocal criticism of judicial activism in Canada over the past few years has come from right-wing social conservatives (e.g., Manfredi 2001; Martin 2003; Morton and Knopff 2000). While the specific content and style of these critiques are distinctly “Canadian,” they ultimately echo similar arguments raised by critics of judicial activism in other polities.

More interesting for the scholar of comparative constitutionalism are a few innovative mechanisms, adopted in 1982, designed to mitigate the tension between rigid constitutionalism and judicial activism on the one hand and fundamental democratic governing principles on the other. Chief among

these mechanisms are two important limitations on the rights protected by the Canadian Charter of Rights and Freedoms. First, the charter contains an explicit limitation clause (section 1) stating that the rights protected by the charter are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." In other words, if any limits are to be put on such rights, then the government must establish to the satisfaction of the courts that these limits can be justified in a free and democratic society. In its landmark judgment in *R. v. Oakes* (1986), the Supreme Court introduced a two-pronged approach to interpreting the charter's "limitation clause." First, the *Oakes* test asks whether the challenged law or conduct violates, denies, or infringes any right. This requires an analysis of the scope and definition of the right as well as the purpose and effect of the legislation and conduct. Second, the test investigates whether there has been a "justifiable limitation" on the right concerned. Some of the criteria that a justifiable limitation on a charter right would have to meet to be held valid are (1) the limitation must protect a sufficiently important objective; (2) there must be a rational connection between the limiting law and that objective; (3) the least drastic means should be used – in other words, the law must impair the right no more than is necessary to accomplish the objective; and (4) proportional effect must be observed – that is, the law must not have a disproportionately severe effect on the persons to whom it applies.

Another significant limitation to rights and freedoms lies in section 33 – the famous "notwithstanding clause." This clause enables elected politicians, in either the federal Parliament or the provincial legislatures, to legally limit the rights and freedoms protected by section 2 (fundamental freedoms) and sections 7 to 15 (due process and equality rights) of the charter by passing a renewable overriding legislation valid for a period of up to five years. This means that any invocation of section 33 essentially grants parliamentary fiat over these rights and freedoms. This in turn means that both the federal Parliament (with regard to related federal matters) and the provincial legislatures (with regard to related matters within provincial jurisdictions) are ultimately sovereign over these affairs. In practice, however, section 33 lacks wide public legitimacy. To describe it as a political "dead letter" would be an exaggeration. However, since 1982 there have been only a handful of significant instances in which governments have either invoked or seriously attempted to invoke this clause (Kahana 2001). Even the change of guards in Ottawa following the 2006 federal election has not changed that trend. No serious attempt has thus far been made by Stephen Harper's Conservative government to draw on section 33 to override a few controversial SCC rulings of the past decade.

Canada is not alone in this respect. Persisting political traditions of parliamentary sovereignty had to be taken into account by the framers of the

new constitutional arrangements in other former Westminster-style polities such as Israel, South Africa, Britain, and New Zealand (to mention only a few examples). It is here where the exportability of Canada's "new constitutionalism" model has been evident; Canada's model of formal limitations on rights has served as a point of reference to constitutional framers in these and other countries (see, e.g., Ghai 1997; Weinrib 1993) and is frequently cited in leading textbooks and journals in comparative constitutional law (see, e.g., Jackson and Tushnet 2005).

Finally, Canada features a highly centralized and politicized model of selecting and appointing judges. The federal government, and by extension the party that heads it, control the process in a way that is unmatched by any of the world's leading democracies, with the possible exception of Japan. But it is surprising that so little attention has been paid to the effects of this model on the political inclinations of appointees in "section 96" provincial courts and in "section 101" federal courts. The Canadian system of selecting SCC judges has received more attention. Mandatory retirement from the bench is set at seventy-five (more often than not, justices retire voluntarily before they reach that age). Based on a customary constitutional convention, the judges of the Supreme Court are nominated to the bench according to a "provincially representative" formula: three justices represent Ontario, three come from Quebec, two are from the western provinces (one is usually from British Columbia), and one is from the Atlantic provinces. A candidate for the Supreme Court must be either a judge of a superior court of a province or a widely respected legal person who has been a member of a provincial bar association for at least ten years. No practical judicial experience is required. The selection and nomination process itself, however, is controlled exclusively by the federal government. Judges selected through this explicitly political nomination process are not likely to hold policy preferences substantially at odds with those held by the rest of Canada's "federalist" political elite.

Whenever a vacancy occurs, the justice minister consults with jurists across the country and makes recommendations to the prime minister. Appointees to the bench and to the chief justice position are virtually handpicked by the prime minister and his or her advisers. A procedure adopted in 2004 in response to public calls for a more transparent appointment process required the justice minister to respond to questions concerning new nominees raised by a committee of MPs and jurists. The new procedure was used as part of the appointment to the Supreme Court of Madam Justice Rosalie Silverman Abella and Madam Justice Louise Charron. In February 2006, another procedure was introduced by the new Tory government whereby a nominee to the Supreme Court must appear before an ad hoc, twelve-member, House of Commons committee and address questions in a publicly televised session. That new procedure was used for the first time as part

of the appointment to the Supreme Court of Justice Marshall Rothstein in March 2006. In a distinctly Canadian act, the televised panel was chaired by constitutional law professor Peter Hogg. Also noteworthy to aficionados of comparative constitutional trivia is the fact that, of the nine SCC justices currently serving, four are women – including Madam Justice Marie Deschamps (appointed in 2002, the youngest member of the court) and Chief Justice Beverley McLachlin, the first female chief justice of a national apex court in the Western world. It remains to be seen what impact, if any, this unprecedented number of SCC female judges will have on the court's jurisprudence in coming years.

Constitutional Jurisprudence

Over the past twenty-five years, the Supreme Court of Canada, like its counterparts throughout the world of new constitutionalism, has become one of the country's most important decision-making bodies. Beyond its traditionally significant role in adjudicating disputes involving federalism and the separation of powers, it has been called upon to decide on many fundamental rights and liberties: freedom of expression; religion and assembly; voting and citizenship rights; due process rights; the right to privacy and the right to have an abortion; equality rights in the context of gender, age, and sexual preference; the rights of indigenous people; language rights; even the political and cultural status of Quebec. In some of these areas, the Supreme Court has developed innovative modes of reasoning and interpretation that are of significance to scholars and jurists worldwide (see, e.g., Weinrib 2001). American jurists, parochial as they are, seldom pay attention to foreign, never mind Canadian, jurisprudence. However, scholars, policy makers, and jurists throughout the rest of the common-law world are increasingly inspired by – and some have even begun to emulate – Canadian constitutional jurisprudence.

In this respect, it is important to acknowledge the ever-accelerating trend toward intercourt borrowing and the establishment of a globalized, non-US-centred judicial discourse. Constitutional courts worldwide increasingly rely on comparative constitutional jurisprudence to both frame and articulate their own position on a given constitutional question. This phenomenon is particularly evident with respect to constitutional rights jurisprudence. As observers have noted, "constitution interpretation across the globe is taking on an increasingly cosmopolitan character, as comparative jurisprudence comes to assume a central place in constitutional adjudication" (Choudhry 1999, 820); "courts are talking to one another all over the world" (Slaughter 1999). Canadian constitutional rights jurisprudence is among the more popular topics that they talk about – reference to this jurisprudence is common in judgments involving comparable matters in Israel, New Zealand, Australia, Ireland, India, Britain, South Africa, and other jurisdictions.

In short, constitutional rights jurisprudence has become an effective way for marketing Canadian values abroad.

Rights Jurisprudence

In 1992, ten years after the charter had come into effect, SCC Chief Justice Antonio Lamer declared that "the introduction of the Charter has been nothing less than a revolution on the scale of the introduction of the metric system, the great medical discoveries of Louis Pasteur, and the invention of penicillin and the laser" (cited by Sallot 1992). The charter has indeed revolutionized the scope and nature of Canadian rights jurisprudence. During the first two decades of the charter's existence (1982-2002), 20 percent of the Supreme Court's decisions (440 of 2,195) involved the charter; since 1987, the proportion of charter cases has never fallen below 21 percent and represents an average of 26 percent of all decisions. Roughly two-thirds of the entire corpus of SCC charter rulings over the past two decades have dealt with criminal due process rights (Hirschl 2004, 103-18; Kelly 2005, 145-48). These figures are rapidly converging with those of the US Supreme Court caseload, one-third of which has been made up by Bill of Rights cases in the post-*Brown* era (1954 to present).

Of the many developments in Canadian rights jurisprudence in the charter era, at least three stand out as distinct contributions to comparative constitutional rights jurisprudence. The first is section 1 (see above) and its embedded emphasis on judicial balancing between rights provisions and other equally important imperatives. Very few constitutional catalogues of rights reflect, in such a clear fashion, the notion that no constitutional right is "absolute." Rights litigation and jurisprudence in the shadow of section 1 are inherently attentive to such macro public policy considerations that are "demonstrably justified in a free and democratic society" and that in most other constitutional democracies would fall beyond the purview of rights jurisprudence *per se*. Rights litigation and jurisprudence in the shadow of section 1 is also hospitable to the importation of administrative law concepts such as rule of law, fairness, reasonableness, measurability, and the need to provide reasons typically deployed in administrative review. The embedded subjection of Canadian rights jurisprudence to broad public policy considerations has led to sound, middle-of-the-road SCC judgments on potentially divisive issues such as the dissemination of pornography and hate speech, limits on commercial speech and campaign financing, Sunday closing, accommodation of religious difference, reproductive freedoms, criminal due process rights, and formal equality.³

Section 1 (and to a lesser degree the aforementioned section 33) have also given rise to the idea of judicial review as dialogue developed over the past decade by a number of leading scholars of Canadian constitutional law (Hiebert 2002; Hogg and Thornton 2001; Hogg, Thornton, and Wright 2007;

Roach 2001). According to the "dialogue thesis," an apex court decision on a contested issue is seen not as a final judgment on the matter but as a judicial invitation for further conversation – a kind of democratic dialogue – with legislatures and society. After all, in most rule-of-law polities, under the charter and other modern bills of rights, legislatures can still respond to court decisions by limiting or overriding the rights that the courts have proclaimed (Roach 2001). According to the dialogue metaphor, judicial review is an integral part of a healthy democratic conversation, not a practice that is fundamentally democratic or a-democratic (as proponents or critics of judicial activism on democratic grounds often proclaim). The dialogue thesis therefore releases the debate concerning the democratic credentials of judicial review from its preoccupation with the well-rehearsed normative debate over the "countermajoritarian" nature of judicial review and the "democratic deficit" inherent in transferring important policy-making prerogatives from elected and accountable politicians, parliaments, and other majoritarian decision-making bodies to the judiciary (Hiebert 2005). It also questions the blurred distinction between "law" and "politics" by shedding light on the ways in which courts, governments, and parliaments overlap and even tacitly collaborate in certain areas of public policy making.

A second aspect of Canadian rights jurisprudence of interest to theory building in comparative constitutional jurisprudence is the gap between Canada's long-standing commitment to a relatively generous version of the Keynesian welfare state model and the outright exclusion of subsistence social rights from the purview of charter provisions. During national and provincial election campaigns, Canadians consistently refer to health care and education as the two public policy issues about which they care the most. Moreover, a viable, publicly funded health care system is repeatedly cited by Canadians as one of the most important and distinctive markers of Canadian collective identity, compared with the lack of such a system in Canada's neighbour to the south. The Canada Health Act enjoys near-sacred status in public discourse. This status was reiterated by the overwhelming public reaction to the landmark SCC ruling concerning the provision of private health care services in Quebec (*Chaoulli v. Quebec*, 2005).⁴ Not too far behind health care and education are issues such as child care, welfare benefits, affordable housing, and so on.

Yet, despite the centrality of these issues on Canada's public agenda, as well as Canada's long-term commitment to a relatively generous version of a Keynesian welfare state, subsistence social rights are not protected by the charter and have altogether been excluded from its purview by pertinent SCC jurisprudence. The Supreme Court has repeatedly rejected claims that would have required the state to provide benefits to rights holders, either directly through a social program (e.g., health care, unemployment benefits) or indirectly through social legislation that imposes obligations on

private actors (e.g., minimum wage, pay equity, rent control). According to Chief Justice Lamer in *R. v. Prosper* (1994), "it would be a very big step for this court to interpret the Charter in a manner which imposes a positive constitutional obligation on governments."⁵ In its landmark ruling in *Gosselin v. Quebec* (2002), the Supreme Court rejected the argument of an unemployed Montreal resident that section 7's "right to security of the person" prohibits cuts to welfare that deny recipients basic necessities and that the charter's equality right provision entails substantive obligations to provide adequately for disadvantaged groups relying on social assistance. By a five-to-four decision, the court held that the "right to security of the person" does not guarantee an adequate level of social assistance by the state. In her majority opinion, Chief Justice McLachlin stated that section 7 restricts the state's ability to deprive people of their right to life, liberty, and security of the person but does not place any positive obligations on the state.⁶ Two years later, in *Auton v. British Columbia* (2004), the Supreme Court unanimously held that provincial health care plans are not required to fund special treatment regimes for autistic children.⁷ In *British Columbia v. Christie* (2007), the court went on to rule that a provincial tax on legal services did not infringe the right of low-income persons to access justice.⁸ In other words, the extent of constitutional protection of subsistence rights in a given polity does not necessarily reflect the prevalence of such rights in that polity's public discourse.⁹

Perhaps the most distinct contribution of Canada to comparative rights jurisprudence is the evolution of rich case law concerning "third generation" group rights such as language rights, minority language educational rights, and indigenous people's rights. Canadian language rights jurisprudence is frequently cited by courts in other linguistically divided polities. Canadian jurisprudence dealing with Aboriginal people's claims to self-determination, land, economic rights, and political voice has become a major point of reference for courts, legislators, and scholars in many Latin American, African, and European countries dealing with claims for restorative justice by their respective indigenous populations. Over the past two decades, the New Zealand Court of Appeal and, since 2004, the Supreme Court of New Zealand have established themselves as world leaders in dealing with the recognition and application of indigenous people's rights in "settler societies." The Supreme Court of Canada and Australia's High Court are not far behind (Havemann 1999).

The appropriate recognition of Canada's two major linguistic communities has long been a matter of the greatest importance at every stage of Canadian constitutional development and rights discourse. This recognition stands in stark contrast to the United States, where no language rights are directly protected by the Constitution or have been unequivocally protected by the US Supreme Court. Language rights in Canada are protected

by section 133 of the Constitution Act, 1867, and by sections 16 to 23 of the Charter of Rights and Freedoms. Introduction of the latter provisions marked a fairly expansive conceptualization of Canadian citizenship entitlements for members of French and English minority language communities on the part of the charter framers. This pattern is reflected in the amendment provisions of the Constitution Act, 1982, which require unanimous provincial support for changes to the Constitution in respect to language.

The Supreme Court has become one of the crucial loci for translating these constitutional provisions into a set of practical guidelines for protecting minority language and education rights in Canada (see, e.g., *Quebec v. Blaikie*, 1979; *Quebec v. Quebec Protestant School Board*, 1984; *Ford v. Quebec*, 1988; *Casimir v. Quebec*, 2005; *Gosselin v. Quebec*, 2005). But the court's interpretation of minority language and education rights has not been confined to the struggles generated by Quebec's separatist aspirations. In the *Manitoba Language Rights Reference* (1985), for example, the Supreme Court declared unconstitutional an 1890 Manitoba Act that set down that only English could be the language of the legislature and the courts in that province, further stipulating that Manitoba be granted five years "to translate, re-enact, and publish" all its legislation in French as well as English.¹⁰ In a similar vein, in its landmark decision in *Mahe v. Alberta* (1990), the court held that in accordance with section 23 of the charter the Alberta government was responsible for actively providing and funding educational facilities and intensive instruction in French for the francophone minority in that province as well as for ensuring proportional representation of French-speaking parents in the management of their children's French-language education.¹¹ A decade later the court reaffirmed its decision in *Mahe*, holding that a requirement of section 23 is that provincial governments do whatever is practically possible to preserve and promote minority language education (*Arsenault-Cameron v. Prince Edward Island*, 2000). In this case, the imposition on francophone children in a PEI town of a daily two-hour ride to and from a French school in another town, instead of funding schooling in French on-site, constituted an unreasonable constraint on the parents' section 23 rights.¹²

Another type of group rights to which SCC jurisprudence has made a major contribution is Aboriginal peoples' rights. As in the context of language rights, the court draws on a nexus of constitutionally entrenched provisions delineating the rights of Aboriginal Canadians. Section 91(24) of the Constitution Act, 1867, assigns to the federal government exclusive legislative authority over "Indians and Lands reserved for the Indians." Section 35 of the Constitution Act, 1982, recognizes and affirms "existing" Aboriginal and treaty rights, defines the Aboriginal peoples as including Indians, Inuit, and Métis, and provides that modern land claim agreements

are "treaties" within the meaning of this section. Section 35 is therefore the main constitutional source for the protection of the rights of Canada's indigenous people. It is formally distinguished from the rights protected by the charter, which occupy the first thirty-four sections of that act. Section 35.1 provides a commitment by the government to convene a constitutional conference, which includes Aboriginal representatives, before any constitutional amendment is made to any part of the Constitution dealing directly with Aboriginal peoples. Section 25 of the charter shields "aboriginal, treaty or other rights" of Aboriginal peoples, including the "rights and freedoms that have been recognized by the Royal Proclamation of 1763," from alteration by the charter's guarantee of other rights.

The series of landmark SCC rulings concerning the status of Aboriginal Canadians may be traced back to *Calder* (1973) – a historic ruling that for the first time recognized Aboriginal title as deriving from Aboriginal peoples' prior occupancy of, and sovereignty over, their ancestral lands rather than deriving solely from the Royal Proclamation.¹³ *Calder* was the first recognition of Aboriginal precontact inherited and embedded rights that did not depend on any written document, decree, legislative enactment, et cetera. The court's ruling in *Calder* was reaffirmed and strengthened in *Guerin* (1984) and later expanded in *Van der Peet* (1996), where the Supreme Court laid out a general theory of the origins and nature of Aboriginal rights based on the notions of prior occupancy and sovereignty and the pre-existence of distinctive Aboriginal communities, cultures, and ways of life prior to the arrival of Europeans.¹⁴ Moreover, the court suggested that under certain circumstances oral traditions as well as evidence presented by historians and anthropologists are both pertinent and admissible.

In *Delgamuukw v. British Columbia* (1997) – another landmark ruling frequently cited in equivalent land claims cases in other jurisdictions – the Supreme Court ruled that, when Aboriginal rights to specific land are infringed (a situation that, by implementing the tough tests set by the court, should rarely come about), fair compensation by the government would be the appropriate remedy.¹⁵ Nonetheless, the practical implications of *Delgamuukw* remain unclear. While the court was fairly generous in its interpretation of Aboriginal people's title at the declarative level, it has not been determined how this abstract concept of Aboriginal title will translate into the redistribution of land in practice. Still, the court ruling in *Delgamuukw*, the creation of Nunavut in 1999, and the conclusion of the Nisga'a negotiations in the early 2000s have all been noteworthy events in the evolution of indigenous land and self-government claims worldwide.

In a series of rulings over the past fifteen years, the Supreme Court of Canada has been called on to interpret the scope of Aboriginal treaty rights and the scope of their protection under section 35. In *R. v. Sparrow* (1990) –

the leading ruling on this issue to date – the court determined the meaning of the word *existing* in section 35 and set concrete legal tests to establish when an infringement of an existing right had occurred and to establish when such an infringement might be justified.¹⁶ The court held that, in principle, the rights protected by section 35 – including all the treaties signed with Aboriginal communities – have never ceased to exist. The word *existing* in section 35 meant “unextinguished.” Only if a right had been explicitly and validly extinguished before 1982 would it not be protected by section 35. A federal regulatory statute would have the effect of extinguishing Aboriginal rights only if its intention to do so was “clear and plain.” In a series of rulings over the past decade (notably *R. v. Badger*, 1996; *R. v. Marshall (I)* and *R. v. Marshall (II)*, 1999; *Mitchell v. Minister of National Revenue*, 2001; *Haida Nation v. British Columbia*, 2004; *Taku River Tlingit First Nation v. British Columbia*, 2004; *Mikisew Cree First Nation v. Canada*, 2005; *R. v. Marshall and R. v. Bernard*, 2005; *R. v. Sappier*, 2006; and *R. v. Gray*, 2006), the Supreme Court further elaborated on the scope of Aboriginal treaty rights to fish and hunt vis-à-vis regulatory federal laws. In *R. v. Powley* (2003), the court finally determined the status of Canada’s Métis population – approximately 300,000 people who have mixed Aboriginal and non-Aboriginal, primarily French, ancestry and whose entitlement to Aboriginal rights has not been clearly defined under Canada’s Indian Act and other pertinent statutes and constitutional provisions.¹⁷ The court ruled that members of an Ontario Métis community have a full-status “Indian” right to hunt for food. (So-called status Indians are permitted to hunt for food without provincial licences and out of season.)

Scholars studying the tensions between individual and group rights often refer to Canadian constitutional jurisprudence pertaining to Aboriginal peoples’ rights; more broadly, it is often discussed in reference to the tension between enhanced group autonomy in realms such as family law, religious worship, and sentencing circles and the need to preserve the rights of vulnerable group members, such as women, who are often forced to choose between their culture and group membership and their rights (see, e.g., Shachar 2001). Related issues that reflect tensions between Canada’s commitment to “differentiated citizenship” on the one hand and individual rights and formal equality on the other have also attracted general scholarly attention. One notable example is the recent debate in Ontario concerning a proposal to establish sharia arbitration tribunals in that province (Shachar 2005). Another example is the debate over Ontario’s preferential school subsidies to Roman Catholic schools – an outcome of the historical compromise between Protestants and Roman Catholics at the time of Confederation and the subject of two landmark SCC rulings (*Reference re Bill 30*, 1987; *Adler v. Ontario*, 1996) as well as an advisory opinion of the UN Human Rights Committee (*Waldman v. Canada*, 1999).

In sum, the Supreme Court has produced a truly impressive corpus of landmark rights rulings over the past twenty-five years. The most distinct contribution of this body of judgments to comparative rights jurisprudence is threefold: (1) constitutional rights adjudication in the shadow of section 1; (2) exclusion of subsistence social rights from the purview of the charter despite the central place of such rights in Canadian collective identity; and (3) the fact that certain types of group rights – primarily minority language and education rights as well as Aboriginal peoples’ rights – have been awarded much wider constitutional recognition and relatively more generous judicial interpretation in Canada than in most other constitutional democracies worldwide. Canada is thus an ideal setting for studying the constitutionalization of group rights as well as the embedded tensions between group rights, individual rights, and formal equality.

Political Jurisprudence

Armed with newly acquired judicial review powers, constitutional courts in most leading democracies have been frequently called on to determine a range of matters, from the scope of expression and religious freedoms, privacy, and reproductive rights to public policies pertaining to education, immigration, criminal justice, property, commerce, consumer protection, and environmental regulation. Bold newspaper headlines reporting on landmark court rulings concerning hotly contested issues (e.g., same sex marriage, limits on campaign financing, affirmative action) have become a common phenomenon. This is true in the United States, where the legacy of active judicial review recently marked its bicentennial anniversary and where courts have long played a significant role in policy making; it is also true in younger constitutional democracies, including Canada, that have established active judicial review mechanisms only in the past few decades.

However, the expansion of the province of courts in determining political outcomes has not only become more globally widespread than ever before; it has also expanded in its local scope to become a manifold, multifaceted phenomenon, extending well beyond the now “standard” concept of judge-made policy making through constitutional rights jurisprudence or judicial redrawing of legislative boundaries between state organs (Hirschl 2006; Tate and Vallinder 1995). The wave of judicial activism that has swept the globe in the past few decades has not bypassed the most fundamental issues that a democratic polity ought to address – whether it is coming to terms with its own (often not so admirable) past or grappling with its embedded collective identity quandaries and nation-building processes. Aharon Barak, the former president of the Supreme Court of Israel, once said that “nothing falls beyond the purview of judicial review; the world is filled with law; anything and everything is justiciable”: this appears to have become a widely accepted motto by courts worldwide.

The recent history of constitutional jurisprudence in Canada has certainly not been an exception to this global trend. Over the past twenty-five years, the Supreme Court has been repeatedly called on to address some of the most fraught issues on Canada's public agenda, from the status of Aboriginal Canadians, language rights, post-9/11 security measures, or same sex marriage to the constellation of the Canadian polity and Quebec's place in it (arguably the most fundamental question pertaining to the very being of the Canadian confederation in its current form).¹⁸ The series of SCC rulings on the status of Quebec, notably the *Patriation Trilogy* of the early 1980s and the court's decision in the *Quebec Secession Reference* (1998), have become references for legislators and jurists in other fragmented polities facing credible secessionist threats and/or devolutionist initiatives.

What makes the *Quebec Secession Reference* unique is not only the fact that it was the first time a democratic country tested in advance the legal terms of its dissolution (this was done at the request of the federal government following the slim 50.6 percent to 49.4 percent loss by the Québécois secessionist movement in the 1995 referendum) but also the liberty that the court took in articulating with authority the fundamental pillars of the Canadian polity in a way that no other state organ had done before.¹⁹ In a widely publicized ruling in August 1998, the Supreme Court unanimously held that unilateral secession would be an unconstitutional act under both domestic and international law and that a majority vote in Quebec was not sufficient to allow Quebec to separate legally from the rest of Canada. However, the court also noted that, if and when secession was approved by a clear majority of people in Quebec voting in a referendum on a clear question, the parties should then negotiate the terms of the subsequent breakup in good faith. As for the question of unilateral secession under Canadian law, the court's answer provided both federalists and separatists with congenial answers.

In strictly legal terms, the court ruled that the secession of Quebec would involve a major change to the constitution of Canada that would require an amendment to the Constitution, which in turn would require negotiations among all involved parties. On the normative level, the court stated that the Constitution is based on four equally significant underlying principles: (1) federalism, (2) democracy, (3) constitutionalism and the rule of law, and (4) the protection of minorities. None of these principles trumps any of the others. Hence, even a majority vote (i.e., strict adherence to the fundamental democratic principle of majority rule) would not entitle Quebec to secede unilaterally. However, the court stated that, if a clear majority of Québécois voted "oui/yes" to an unambiguous question on Quebec separation, it would "confer legitimacy on the efforts of the government of Quebec to initiate the Constitution's amendment process in order to secede

by constitutional means." Such "a clear majority on a clear question" would require the federal government to negotiate in good faith with Quebec to reach an agreement on the terms of separation.

As for international law, the court's answer was much shorter and less ambiguous; the court found that, although the right of self-determination of peoples did exist in international law, it did not apply to Quebec. While avoiding the contentious question of whether the Quebec population or part of it constituted a "people" as understood in international law, the court held that the right to unilateral secession did not apply to Quebec; the Québécois are neither denied their rightful ability to pursue their "political, economic, social and cultural development within the framework of an existing state," nor do they constitute a colonial or oppressed people.

The government of Quebec responded to the judgment by enacting a bill stating that, if a majority of "50 percent plus one" of those Québécois who cast ballots in a provincial referendum on the future of Quebec supported the idea of secession, it would satisfy the requirement for "a clear majority" set by the court decision. The federal government, for its part, responded in late 1999 by proposing the Clarity Bill (formally confirmed by Parliament in summer 2000). In a nutshell, the bill states that only "a clear majority on a clear question" would require the federal government to negotiate the terms of separation with Quebec; that, given the nature of the question at stake, the term "clear majority" should mean more than "50 percent plus one"; and that, in any event, the federal government reserves the right to determine whether the question posed by the Quebec government in a future referendum meets the "clear question" criterion.

Without the political context to make sense of these events and rulings, the non-Canadian reader may find this chain of judicial events regarding the status of Quebec somewhat perplexing. However, one thing is indisputable: over the past twenty-five years, the Supreme Court has become one of the most important public forums for dealing with the highly contentious issue of Quebec's status and its future relationship with the rest of Canada. Drawing on the new constitutional framework established by the Constitution Act, 1982, and the court's willingness to play a central role in the Quebec saga, the involved parties (primarily the federalists) were able to gradually transfer the question of Quebec from the political sphere to the judicial sphere.

This highlights the fact that neither a constitutional framework conducive to judicial activism nor a non-deferential constitutional court is a sufficient condition for persistent judicial activism and the judicialization of megapolitics. Assertion of judicial supremacy cannot take place, let alone be sustained, without the support (tacit or explicit) of influential political stakeholders. It is unrealistic, and indeed utterly naive, to assume that a

core political question such as the struggle over the nature of Canada as a confederation of two founding peoples could have been transferred to courts without at least the tacit support of pertinent political stakeholders in these countries. A political sphere conducive to judicial activism is at least as significant to its emergence and sustainability as the contribution of courts and judges.

From the point of view of politicians, delegating contentious political questions to the courts may be an effective means of shifting responsibility and thereby reducing the risks to themselves and to the institutional apparatus within which they operate. The calculus of the "blame defection" strategy is simple. If delegation of powers can increase credit and/or reduce blame attributed to the politician as a result of the policy decision of the delegated body, then such delegation can benefit the politician (Voigt and Salzberger 2002, 294). At the least, the transfer to the courts of contested political "hot potatoes" such as abortion or affirmative action in the United States, same sex marriage or the Quebec question in Canada, offers a convenient retreat for politicians who have been unwilling or unable to settle these contentious issues in the political sphere. Deference to the judiciary, in other words, is derivative of political, not judicial, factors. This brings me to the subject of constitutional politics.

Constitutional Politics

Nowhere is the assertion that Canada provides an ideal setting for developing and testing hypotheses concerning core issues in comparative constitutionalism truer than in the area of constitutional politics. It is well known to students of Canadian constitutional politics that the "Quiet Revolution" and the emergence of cultural nationalism and secessionist sentiments in Quebec in the early 1960s triggered a series of attempts to amend the Constitution to address Quebec's claims. As a result, over a period of twenty-five years from the mid-1960s to the early 1990s, Canada was in a continuous state of constitutional flux. During that period alone, it witnessed five major attempts at a constitutional overhaul in which all but one – the "patriation round" of 1982 – failed. No other established democracy has been through so many grandiose attempts at constitutional reform during such a short period.

The four failed megareforms – the Fulton-Favreau amending formula (1964-67), the Victoria Charter of 1971, the Meech Lake Accord (1987-90), and the Charlottetown Accord (1992) – and of course the full-scale constitutional revolution of 1982 provide endless possibilities for studying the politics of constitutional transformation. The centrality of national referendums to constitutional transformation in Canada is of great interest to constitutional innovators in Europe, primarily in light of the subjection of

the proposed EU Constitutional Treaty to approval, *inter alia* through national referendums, by EU member states.²⁰ The rapid transition over the past decade to a less bombastic, piecemeal approach to constitutional change is also of significance to scholars of constitutional change (Russell 2004).²¹ The more recent "amendment by stealth" through adoption of the North American Free Trade Agreement (NAFTA) in 1994 is a classic case for studying the domestic origins and consequences of increasingly common supranational, quasi-constitutional investment and trade regimes.²²

From a methodological standpoint, this chain of dramatic constitutional events provides a classic "outlier case" for studying the political origins of constitutional reform (Hirschl 2005). Five scenarios of constitutionalization have been the most common over the past few decades. First, constitutionalization may stem from political reconstruction in the wake of an existential political crisis (e.g., the adoption of new, post-Second World War constitutions in Japan in 1946, in Italy in 1948, in Germany in 1949, and in France in 1958). Likewise, constitutionalization may stem from decolonization processes (e.g., India in 1948-50) or may be derivative of a transition from authoritarian to democratic regimes (e.g., the constitutional revolutions in newer democracies in southern Europe in the 1970s and in Latin America in the late 1980s and early 1990s). Additionally, constitutionalization may reflect a "dual transition" scenario in which constitutionalization is part of a transition to both a Western model of democracy and a market economy (as with the numerous constitutional revolutions of the post-Communist and post-Soviet countries). Finally, the incorporation of international and trans- or supranational legal standards into domestic law is another possible explanation for constitutionalization: this has been the case in a number of EU member states.

Each of these types of constitutional reform poses its own puzzles for scholars of constitutional transformation. It is the "no apparent transition" scenario of constitutional revolutions, however, that I find the most intriguing from a methodological standpoint. Several instances of constitutionalization and the corresponding establishment of active judicial review fall under this "outlier" category: Sweden (1979), Egypt (1980), Canada (1982), New Zealand (1990-93), Hong Kong (1991), Israel (1992-95), Mexico (1994), Thailand (1997), as well as the recent move toward the adoption of an EU constitution, to name a few examples. In this "none of the above" category, constitutional reforms have neither been accompanied by, nor resulted from, any apparent fundamental changes in political or economic regimes. Thus, by selecting any of these "no apparent transition" cases, it is possible to disentangle the political origins of constitutionalization from other possible explanations (reconstruction, independence, democratization, incorporation).

Moreover, the 1982 constitutionalization of rights and the fortification of judicial review in Canada provide an effective response to efficiency-driven explanations for constitutionalization as mitigating problems of information, credible commitment, and effective enforcement; it is unclear why any of the polities included in the "no apparent transition" category chose to adopt such efficient mechanisms precisely when they did and not earlier. Likewise, Canada offers a cogent response to the broad "democratic proliferation," "constitutionalization in the wake of the Second World War," and "constitutionalization as precommitment" theses. It is unclear why Canada converged with the post-Second World War model of constitutional supremacy in 1982 and not much earlier. Likewise, it is unclear why members of the Canadian public decided to precommit themselves against their own imperfections or harmful future desires precisely in 1982 and not a decade earlier or later. This calls for an alternative, or at least a complementary, explanation for the precise triggers, incentives and interests that led to the 1982 constitutional revolution (Hirschl 2004).

From a substantive standpoint, the major constitutional developments in Canada suggest that constitutional reform is at once an integral part and an important manifestation of the concrete social, cultural, political, and economic struggles that shape a given political system. First, it could not have developed and cannot be understood in isolation from them. Second, the four failed attempts to amend the Constitution prior to 1982 suggest that the political origins of constitutional reform cannot be studied in isolation from the political origins of constitutional failure, stalemate, and stagnation. When studying the political origins of constitutionalization, it is important to take into account the motivation of political power holders as well as powerful economic and judicial stakeholders for not behaving in certain ways (Hirschl 2004). And third, these major constitutional developments illustrate the significance of human agency and concrete political interests – not merely organic macro-explanations, abstract normative arguments, or politicians' genuine commitment to human rights – as major determinants of the timing, scope, and nature of constitutionalization.

Canada also offers an ideal setting for studying the effects, judicial and extrajudicial, of constitutional reforms. A significant methodological advantage of drawing on the Canadian experience in such "impact studies" is the fact that, unlike in most other constitutional settings, it is possible to engage in a preconstitutionalization/postconstitutionalization comparison of the effects that adoption of the charter has had on the Supreme Court of Canada's interpretive approaches; on increasing public awareness of rights issues; on social movements' political mobilization strategies; on the de facto socioeconomic status of historically disenfranchised groups; and so forth. In other words, adoption of the charter in 1982 may help researchers

to mitigate the problem of multiple causality in impact studies – disentangling the net effect of constitutionalization from that of other factors.

A textbook illustration of that kind of study is offered by Charles Epp's influential work (1998) on rights revolutions. Epp suggests that the impact of constitutional catalogues of rights may be limited by the inability of individuals to invoke them through strategic litigation. Hence, bills of rights matter to the extent that a support structure for legal mobilization – a nexus of rights-advocacy organizations, rights-supportive lawyers and law schools, governmental rights-enforcement agencies and legal aid schemes – is well developed. In other words, while the existence of written constitutional provisions is a necessary condition for effective protection of rights and liberties, it is certainly not a sufficient condition. The effectiveness of rights provisions in planting the seeds of social change in a given polity depends largely on the existence of a support structure for legal mobilization and, more generally, hospitable sociocultural conditions.

To establish this broad claim, Epp engages in a comparative study of rights revolutions in several countries, notably the United States, India, and Canada. The rights revolution in the United States occurred through a series of landmark Supreme Court rulings between 1961 and 1975 and was largely contingent on concerted pressure from well-organized rights advocates. In India, by contrast, "the interest group system is fragmented, the legal profession consists primarily of lawyers working individually, not collectively, and the availability of resources for non-economic appellate litigation is limited" (Epp 1998, 95). Canada presents a "most difficult case" for Epp's thesis since it offers, *prima facie*, a simple, straightforward explanation for the origin of the Canadian rights revolution – the 1982 adoption of the Charter of Rights and Freedoms. However, Epp's analysis suggests that Canada's rights advocacy and rights litigation rates, as well as its support structure for legal mobilization, started to gain momentum in the early 1970s – a decade prior to adoption of the charter. Here, too, a rights revolution was largely contingent on the growth of a support structure for legal mobilization, not merely on the formal protection of rights through constitutional provisions.

Studies of Canadian constitutionalism are often preoccupied with institutions (constitutional frameworks, federalism) and ideals (e.g., diversity, multiculturalism, equality). Accounts of Canadian constitutional history tend to emphasize continuous nation-building processes and a quest for sovereignty and collective identity as the major vectors shaping Canada's constitutional landscape. More strategic, "realpolitik" aspects – power struggles, political incentives, economic interests, and judicial choices – are often overlooked. Realistic views of politicians as shrewd, risk-averse, profit maximizers who (other variables being equal) are more likely to favour

policies and institutional structures that will benefit them the most do not normally feed studies of Canadian constitutionalism. This lacuna is especially noteworthy in the context of the study of judicial behaviour.

As the strategic revolution in the study of judicial decision making has established, judges are not only precedent followers, framers of legal policies, or ideology-driven decision makers but also sophisticated strategic decision makers who realize that their range of decision-making choices is constrained by the preferences and anticipated reactions of the surrounding political sphere. After all, national high courts do not operate in an unconstrained political environment. Because they lack the independent power to enforce their mandates, their authority depends mainly on their public reputation for political impartiality and rectitude as well as on the support and respect of other major national decision-making bodies. Accordingly, constitutional court rulings may be analyzed not only as mere acts of professional, apolitical jurisprudence (as doctrinal legalistic explanations of court rulings often suggest) or reflections of judicial ideology (as "attitudinal" models of judicial behaviour might suggest) but also as a reflection of judges' own strategic choices.²³

Judges may vote strategically to minimize the chances that their decisions will be overridden; if the interpretation that the justices most prefer is likely to elicit reversal by other branches, then they will compromise by adopting the interpretation closest to their preferences that could be predicted to withstand reversal (Helmke 2005; Vanberg 2005). Harsh political responses to unwelcome activism or interventions by the courts have a chilling effect on judicial decision-making patterns (Epstein, Shvetsova, and Knight 2001). As the recent history of comparative constitutional politics tells us, recurrent manifestations of unsolicited judicial intervention in the political sphere in general, and unwelcome judgments concerning contentious political issues in particular, have brought about popular political backlashes and, more importantly, have triggered sheer bureaucratic disregard, protracted or reluctant implementation, or legislative override of controversial rulings by political power holders. In some instances, they have resulted in "court-packing" attempts, impeachment of overactive judges, curtailment of judicial review powers, and even constitutional crises leading to the outright dissolution of high courts (Hirschl 2006, 2008).

Likewise, judges in centralized and politicized court systems controlled for long periods of time by a single dominant political party (did I hear you say "Canada"?) may vote strategically – especially in politically charged cases – to avoid diminishing their chances for promotion (Ramseyer and Rasmusen 2001). Supreme court judges may also be viewed as strategic actors to the extent that they seek to maintain or enhance the court's independence and institutional position vis-à-vis other major national decision-making bodies

(Alter 2001). Judges seem to care about their reputations within their close social milieu, court colleagues, and the legal profession more generally (Baum 2006). They may also wish to increase the court's symbolic power and international prestige by fostering its alignment with a growing community of liberal democratic nations engaged in judicial review and rights-based discourses. Strategic judges may recognize the changing fates or preferences of influential political actors or gaps in the institutional context within which they operate; such events might allow them to strengthen their own position by extending the ambit of their jurisprudence and fortifying their status as crucial national policy makers.

The study of Canadian constitutional jurisprudence would benefit considerably from taking on the strategic approach to judicial behaviour; this approach would provide rich new insights into the Supreme Court of Canada's traditional "yes and no," middle-of-the-road approach in almost all of its politically charged reference cases, from the *Patriation Reference* (1981) and the *Quebec Secession Reference* (1998) to the more recent *Same Sex Marriage Reference* (2004). It would also shed new light on some of the court's federalism and section 1 jurisprudence. We have not even here addressed yet the possibility of strategic behaviour by other federal and "section 96" provincial court judges. Despite the great scholarly potential here, this topic remains, for the most part, underexplored and undertheorized. This is an area where Canadian scholars would gain from paying closer attention to recent developments in the field.

Canada's unique constitutional scenery provides an ideal setting for theory building in the field of comparative constitutional law and politics. Canada is a feature case in a number of comparative studies of constitutional law and politics published by top American publishers (Epp 1998; Hirschl 2004). Two recently published collections of essays are devoted to comparative studies of constitutionalism in Canada and the United States (Eisgruber and Hirschl 2006; Newman 2004), but they are exceptions. In spite of Canada's great scholarly promise (so much like many aspects of Canada's own potential), an adequate scholarly treatment of these topics has only partially materialized. Whereas Canada has made a significant contribution in the realm of constitutional theory and rights jurisprudence, its contribution has been markedly lower in other areas, such as constitutional and judicial politics. This division reflects the preoccupation of prominent scholars who shape the contours of contemporary debate with both "grand" constitutional theory and topical rights issues. It also reflects a tendency toward parochialism among scholars of constitutional law and politics, in Canada and abroad, as far as other countries' constitutional arrangements and practices

are concerned. Constitutionalism and judicial review are two of the most powerful ideas of our times. Their study ought to be informed by political and judicial contexts other than those of one's own polity. Scholars of comparative constitutionalism would be well advised to take a closer look at Canada. Satisfaction is guaranteed!

6

Marketing Canadian Pluralism in the International Arena

Will Kymlicka

One of the goals of Canada's foreign policy is to promote a greater understanding and appreciation of "Canadian values." Many of these values are in fact widely shared across the Western democracies, if not around the world – for example, human rights, peace, development, the environment. But some are more distinctively Canadian. Foremost among them is the value of diversity or pluralism. When Canadian politicians and diplomats act on the international stage, they often emphasize that diversity is a defining characteristic of Canadian society and Canadian identity. Moreover, "the Canadian model" of diversity is said to offer valuable lessons for other countries. It is often suggested that Canadians have some unique understanding of the benefits that diversity can bring and of the tools needed to manage diversity in a non-violent and co-operative way. Sharing this understanding is one of Canada's major contributions to the international community.

In this chapter, I explore this discourse of a Canadian model of pluralism and its invocation in the international arena. I begin by noting some of the ways in which the Canadian government promotes this discourse internationally and its various motives for doing so. I then consider whether there really is anything distinctive about Canada's approach to diversity and, if so, whether it is suitable for emulation elsewhere. While I support many aspects of Canada's approach to pluralism, I argue that the government discourse on diversity obscures as much as it reveals about the Canadian experience and its international relevance.

Promoting the Canadian Model Abroad

In public speeches and documents, Canadian officials assert that Canada has been successful in accommodating diversity. By itself, this claim is not unusual. Every country wants the world to believe that it is a harmonious society where the various ethnic, national, and linguistic groups respect each other's differences and get along. Paeans to "unity in diversity" are