

## **Democratic Deliberation in a Multinational Federation**

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## Democratic Deliberation in a Multinational Federation

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La discussion désintéressée est sans doute un concept pertinent et fécond d'un point de vue philosophique général, mais elle ne constitue en politique qu'un cas limite ou une situation extrême. Prétendre en faire une catégorie centrale dans l'analyse du gouvernement représentatif relèverait de l'angélisme.

Bernard Manin, *Principes du gouvernement représentatif* (1996 : 255)

In the last thirty years, the constitutional debate has contributed to deepen democracy in Canada. In this country, constitutional politics used to be primarily a bargaining game among elites. As Canada went through a number of difficult and fundamental debates, the constitutional process incorporated some elements of democratic deliberation. Principles were invoked and debated broadly, and citizens became engaged and they expected to be consulted.

Paradoxically, this deepening of democracy has led to a political impasse. Not only are the constitution and core political institutions now apparently impossible to change, but the very idea of discussing reforms seems unwise, if not foolish. Canadian politicians avoid even mentioning the word constitution. They speak of the C-word! Meanwhile, non-constitutional, "normal," politics has evolved along similar lines, with elite bargaining and power politics usually prevailing over democratic deliberation, or even over collaborative intergovernmental relations (Noël, 2001).

As the number of active participants increased and as the range of issues under consideration broadened, the capacity and willingness to address them in a meaningful way seemed to decrease. In the words of John Dryzek, democratic gains with respect to the "franchise" and the "scope" of political debates were apparently made at the expense

of “authenticity,” the capacity to engage substantively and genuinely in democratic deliberation (1996: 5). The opening of the constitutional process led to a closure of the political debate.

Canadian political scientists have, of course, noted and discussed this evolution. Some see a causal relationship between democratic openness and political closure, and argue that the understandings or compromises necessary to make a multinational federation work cannot be achieved if citizens are too directly involved. They deplore the democratic evolution of the last decades, and contend that the status quo is probably the country’s best option. These authors lament, more or less openly, a less deliberative and simpler past. Others see democratization as a positive and, in any case, unavoidable development, and display more confidence in the public’s capacity to deliberate and reach workable solutions. For them, Canada must move beyond the status quo and can only do so through further democratic deliberations. These authors express a guarded optimism, anchored in a relatively positive view of Canadian civic life. In between, are a number of observers of Canadian political life who find appealing the democratic evolution of recent years, but worry about the difficulties such an evolution entails in a multinational federation that has left unaddressed many fundamental issues.

This paper surveys the Canadian debate about democratization and constitutional politics to better understand the significance of democratic deliberation in a concrete case, when principles are evoked in a context where institutions, interests, identities and power also matter. The argument proposed here is fairly simple, but it has important implications. I suggest that Canadian scholars, like most scholars who have studied democratic deliberation, have not paid sufficient attention to the relationships between principles and motives, on one hand, and interests, identities and power, on the other hand. Those who trust the deliberative process tend to focus on the power of arguments, whereas the skeptics see only the arguments of power. The more ambivalent majority sees both dimensions, but tends to treat them separately, as if arguments and power each had their moments. In my own work, this is more or less

how I have approached the question, some articles being more sensitive to the principles at stake, while others are more focused on power politics.

This paper proposes to think of deliberation and power politics as closely intertwined and, in fact impossible to separate. Both processes, arguing and bargaining/dominating, take place in situations of conflict, when important ideas and interests are at stake. They evolve concurrently, and one cannot be understood fully without the other. The key analytical question, then, has to do with what could be called the weight of the arguments, the relative importance of ideas and power in a given case, at a specific moment.

The Canadian constitutional debate has been, to a large extent, a deliberative exercise but, in recent years, the conversation has been basically foreclosed. This is the case because the debate stems from a protracted conflict, which involves a confrontation of interests as well as shared and divergent principles. At the same time, this very confrontation also makes deliberation necessary. Political conflicts render deliberation difficult, and sometimes prevent it but, in the end, they also make it unavoidable.

The first two sections of the paper recapitulate the evolution of the country's political conversation and survey scholarly interpretations that have celebrated, deplored, or puzzled at the impact of a more open deliberative process on the Canadian constitutional debate. This survey shows how divided and ambivalent is the political science literature on the question. The third section broadens the argument to the general literature on democratic deliberation and, in light of the Canadian experience, proposes a modest but empirically grounded alternative to theories of deliberation that make abstraction of the real context of politics. The fourth part then returns to early Canadian history to suggest that contemporary difficulties may not be as new as is often assumed, and to draw some lessons from past constitutional processes, undoubtedly defined by power politics. The conclusion returns briefly to the contemporary Canadian situation, to explore the implications of this understanding of deliberation and revisit the

potential for change in Canada. It also discusses the broader theoretical and political significance of an approach of deliberation that is more attentive to the interplay of arguments, interests, and power.

## **1. The Canadian Conversation: For the Few, For the Many, For Nobody**

The Canadian conversation has long been a conversation for the few. After the adoption of the *British North America Act*, in 1867, the country's institutions were, for a long period, relatively stable and immune from popular pressures. There were, of course, significant tensions and crises, associated with the different national, regional and social cleavages (see Simeon and Robinson, 1990: 36-46, 64-73, 92-102, and 131-40). Canadian politics, however, remained driven largely by elite bargaining, and progress proved limited and gradual. "This was a period of micro-constitutional politics," writes Peter Russell. "The changes were made one at a time, with a minimum of public involvement" (1993: 64). In Canadian political science, this relative absence of the citizens was conceptualized with references to brokerage politics, cooperative or executive federalism, and consociationalism. Beyond their differences, these approaches all underlined, and sometimes celebrated, the centrality of elite bargaining in the country's political life (see Noël, 1994: 67-68).

Change first came from within Quebec. With the Quiet Revolution, in the early 1960s, Quebec politics changed dramatically. After a long period defined by a defensive and conservative search for autonomy within the Canadian federation — "*l'hiver de la survivance*" (Dumont, 1993: 324-26) — Quebec nationalism was reconstructed as a proactive and progressive quest for economic and social development, and for political recognition and autonomy. In Canada, reactions were mixed, some forces pushing for accommodation, others for a strong affirmation of a one-nation perspective. At the end of the 1960s, a new equilibrium had been found. Canada would not become, formally at least, a multinational federation; there would be only one nation, defined by two official languages and a multicultural heritage (McRoberts, 1997).

More changes, however, would come from Quebec. Indeed, the Quiet Revolution was primarily an internal transformation of Quebec politics and society. First, the old political culture of patronage and anti-statism, particularly prominent in Quebec, was ended through political reforms that reinforced controls over political expenditures and severely limited private contributions to political parties. The 1977 law on the financing of political parties, in particular, was a major democratic breakthrough — with no parallels in Canada or elsewhere in the world — which profoundly transformed Quebec politics (Heintzman, 1983). Second, an active and confident civil society emerged in the period, with the strongest trade unions in North America, a solid and influential women's movement, and a host of other social movements. In turn, this evolution led business interests to organize themselves, thus creating conditions favorable to new forms of tripartite or multipartite collaboration (Noël, 2003). Third, a new political culture and a strong civil society made it possible to end, through political reforms and collective actions, the linguistic division of labor, and of incomes, that had characterized Quebec society for almost a century (see Noël, 1993; Levine, 1997). This last achievement was truly remarkable, a rare instance of success in ending what Charles Tilly would describe as a “durable inequality” (1998).

The emergence of a more democratic, more organized, and more egalitarian society reinforced Quebec's traditional quest for recognition and autonomy within the Canadian federation, and paved the way for a more ambitious proposition: Quebec sovereignty in association with Canada. This evolution, however, also meant that the objective had to be achieved in a new, more open and democratic way. In 1973, the Parti québécois promised to hold a referendum on sovereignty if it was elected and in 1978, now in power, it adopted Quebec's law on popular consultation. For the first time in Canadian history, the people were considered sovereign in constitutional matters. René Lévesque, then Premier of Quebec, noted the unprecedented character of the approach when he launched the Quebec referendum debate in 1980:

Nous n'avons pas l'habitude de rendez-vous comme celui du référendum, c'est la première fois de toute notre histoire que se présente une telle occasion de décider par nous-même, collectivement, de ce que nous voulons être et de la

direction que nous voulons prendre dans l'avenir (Lévesque, quoted in Resnick, 1990 : 101)

As a deliberative exercise, a referendum has many drawbacks. It forces voters into an either/or choice, for a short but dramatic duration, and does not make a genuine conversation easy. A referendum can indeed be used to close rather than to open popular debates, as was the case with the 2002 British Columbia "referendum" on native rights. Even when such is not the intention, the end result may well be closure. This is what happened following the 1992 Charlottetown Accord referendum.

Still, in the context of a country where popular sovereignty had never been affirmed, the 1980 referendum marked a breakthrough and established new political rules, at least in Quebec (Atkinson, 1994: 735). The rest is well-known history. In 1982, Pierre Elliott Trudeau lured René Lévesque by alluding to a possible referendum on the constitution, a possibility that appealed to Lévesque but not to the Premiers who were his allies, and he then proceeded to transform the constitution without the approbation of the Quebec government (and without popular consultation). The 1987 Meech Lake and 1992 Charlottetown Accords failed to correct the situation created in 1982, but they opened a broad pan-Canadian debate over the constitution, a debate that engaged citizens in the process as never before, but eventually led to a political impasse.

In 1982, the constitution of the country had been changed with little citizen engagement, except for last-minute concessions in response to the demands of women groups and Aboriginal peoples. Five years later, in 1987, such an elitist approach no longer seemed possible. The idea that the constitution could be amended by the negotiations of "eleven men" gathered in a closed room had become unacceptable. One cannot avoid noting that this preoccupation for process only emerged when the English-speaking majority overwhelmingly felt dissatisfied with the outcome, and disappeared later on, when more palatable agreements were signed behind closed doors (the 1999 Social Union Framework Agreement is a case in point; see Noël, 2000: 32). Whatever the case, Canadian constitutional politics had now entered a new era, marked by citizen involvement and demands for more open deliberations. The 1992 referendum

confirmed the trend, and convinced many in Canada that an era when elites could strike compromises had ended and, with it, the possibility of changing the constitution.

First conducted among the few, the Canadian conversation finally had reached the many, but only to end up being for nobody, that is closed for all practical purposes. It is now taken as self-evident that the country's constitution and basic institutions cannot be amended, except at the margins. Merely evoking the possibility of such changes tends to be seen as futile, if not irresponsible.

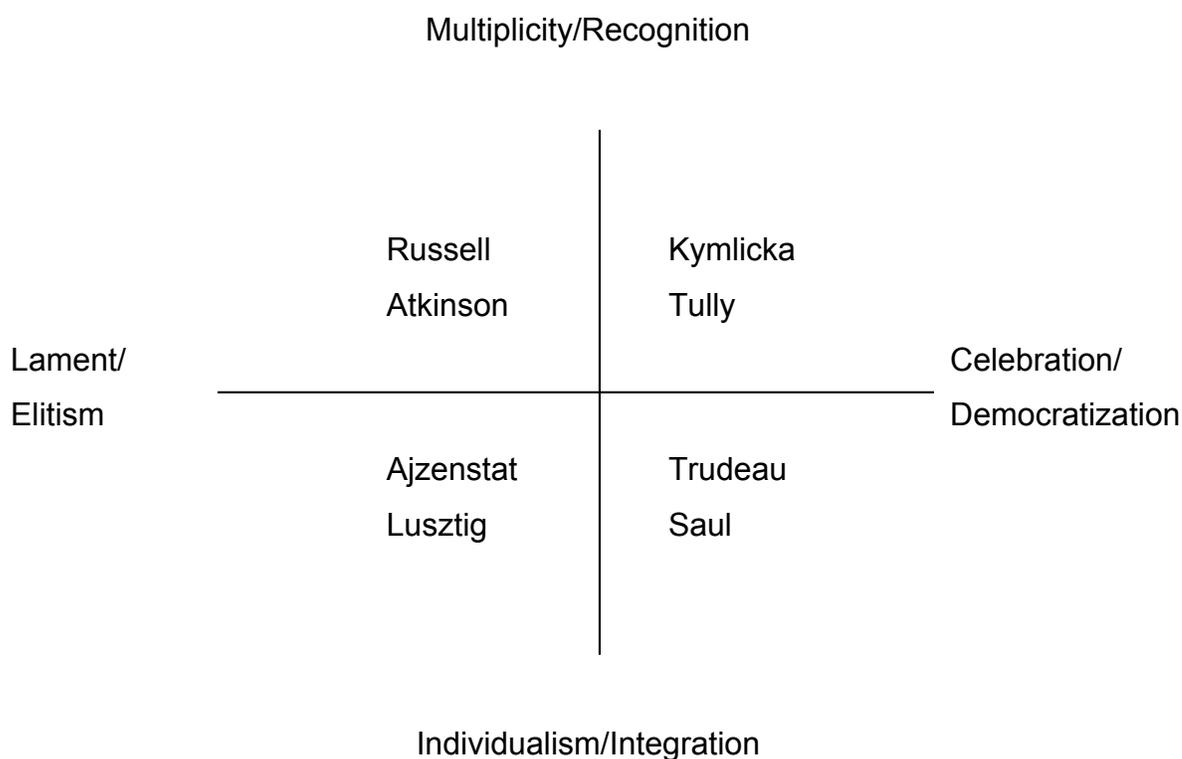
## **2. Assessing the Country's Constitutional Impasse**

Political scientists, philosophers and intellectuals have been preoccupied by this outcome, an unforeseen consequence of a long and broad debate to which, collectively, they have contributed with energy and conviction. If we make abstraction of the necessary nuances and of minor points, four general interpretations can be distinguished: a lament for a simpler, less diverse, and less participatory past; a lament for a more reasonable, just as diverse but less participatory past; a celebration of democracy, in a majoritarian perspective; and a celebration of both democracy and multiplicity. Figure 1 presents these four interpretations along the two axes that define the authors' respective positions. The horizontal axis refers to the authors' more or less positive evaluations of democratization; the vertical axis to their views about social diversity, an aspect of the question that is related to democratization but distinct.<sup>1</sup> Two authors are identified in each quadrant, as representative of the position thus defined.

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<sup>1</sup> The term democratization is used here as defined by John Dryzek. It refers not so much to the establishment of the basic institutional conditions for democracy, but rather to the process through which democracy progresses. "The democratic life," writes Dryzek, "consists in large part of searching for democracy." "(...) any worthwhile political future involves progressive democratization, not just in terms of the geographical spread of existing institutions widely thought to merit description as democratic, but also through a deepening of the democratic qualities of key arenas of life" (1996: 4-5).

**Figure 1: Four Assessments of Canada's Constitutional Impasse**



Consider, first, the lament for a simpler past. For political scientists like Janet Ajzenstat and Michael Lusztig, it was both the democratization of the constitutional process and the politics of recognition that led to an impasse. Ajzenstat links the two issues explicitly: “liberal democratic theory warns against popular participation in the process of drawing up a new constitution and, secondly, (...) the participation of political groups, interests, and individual Canadians in the negotiations is heightening contestation in the constitutional arena and hastening the country’s breakup.” (1994: 112). For her, the politics of recognition “has introduced a new and dangerously intolerant kind of divisiveness,” and increasing participation will only make matters worse. Participation, in fact, offers a “remedy” that can only kill the “patient” (118). Michael Lusztig presents the same views with a different language, closer to the

rational-choice-speak that sometimes stands as theory in contemporary political science. To make sure democratization appears unsavory, Lusztig calls it “mass input/legitimization.” This “mass” process, he argues, “undermines effective elite accommodation” and “is a catalyst for the creation of constitutional interest groups” that will just increase the problem (1994: 748). Lusztig and Ajzenstat stand in a specific quadrant because they deplore not only public participation but also the expression of multiple identities and the multi-faceted demands that characterize contemporary constitutional politics. To them, these demands cannot be differentiated on the basis of important principles; they merely reflect “the jockeying of organized groups and interests” (Ajzenstat, 1994: 120). Lusztig even refuses to see anything specific about the constitutional orientations of Quebec or of the Aboriginal peoples. The latter, in particular, are treated as one among many expressions of “minoritarianism,” driven by the force of the “Aboriginal lobby” (1994: 753-54). In the end, all of these “constitutional rent-seekers” — “each with an axe to grind” — have no strong claim, nothing more in any case than would have a hypothetical “collectivity of socially malcontent anarchist poets” (Lusztig, 1999: 469-70). Ajzenstat and Lusztig thus deplore the end of elite accommodation — although one wonders what there is to accommodate in a country with no genuine diversity — and regret the loss of the “neutral constitution.” Theirs is truly an elitist, majoritarian lament. Ajzenstat sees no solution now that that “Pandora’s constitutional box is open,” except a fragile status quo that can best be preserved by “apathy” (Ajzenstat, 1994: 122 and 126). Lusztig, on his part, simply concludes that “the Dream of One Canada is over” (James and Lusztig, 2002: 101).

A second position defines what could be called a lament for a more reasonable past. We find here the same worries about democratization but more openness, if not enthusiasm, about diversity and the need for recognition. Michael Atkinson, for instance, agrees with Ajzenstat and Lusztig to associate democratic participation with “constitutional deadlock,” but diverges markedly from them in his assessment of the politics of recognition (1994: 745). Whereas the latter flatten all constitutional demands into interest group rent-seeking, Atkinson deplores precisely that the new political context fails to make room for “the idea that some groups have a prior claim on

recognition because they derive their identity from a set of processes that have recognized them in the past” (743).<sup>2</sup> Likewise, Peter Russell, a distinguished representative of the “lament for a more reasonable past” view, considers that Canada can no longer deny “the new creed of popular sovereignty” and go back to elite accommodation, now that “the genie is clearly out of the bottle” (1993: 5-6). The problem, notes Russell, is that Canadians have not agreed, and probably cannot agree, to form a single people united by a social contract. The best hope for the country is to cling to what is left of its traditional understanding of diversity and consent. Canadians, concludes Russell, must realize that “they are after all the people of Edmund Burke, not John Locke, and that their social contract is essentially organic, not covenantal. Some of us might settle for that” (235).

A third standpoint can be defined as favorable to democratization but majoritarian in its understanding of diversity and recognition. Pierre Elliott Trudeau is the prominent representative here. Trudeau’s rejection of a national status for Quebec and, at least initially, for Aboriginal peoples, and his commitment to an uncompromising liberal individualism are well known.<sup>3</sup> Was he, however, favorable to democratization? In a sense, yes, but within the limits set by his opposition to existing national identities. First, one should recall that in his early writings Trudeau presented as a fundamental problem the lack of a strong democratic tradition in Canada:

Historically, French Canadians have not really believed in democracy for themselves; and English Canadians have not really wanted it for others. Such are the foundations upon which our two ethnic groups have absurdly pretended to be building democratic forms of government. No wonder the ensuing structure has turned out to be rather flimsy. (1968: 103)

Trudeau’s constitutional program was meant, in part, to build a less “flimsy” structure, and to better anchor individual and linguistic rights in the constitution. There

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<sup>2</sup> In his survey of the question, Matthew Mendelsohn (2000) places the three authors more or less in the same camp because he focuses on the horizontal dimension of Figure 1. These authors are, indeed, on the elitist side of the Figure, but their views of diversity and recognition (the vertical axis) are fundamentally at odds.

<sup>3</sup> A good synthesis is presented in Karmis and Gagnon (2001 : 150-61).

was a rhetorical and calculating dimension to the project of a “just society” centered on individual rights and defined by official bilingualism and multiculturalism, but the project was also a democratic one. At the same time, Trudeau was very much a political realist, always aware of the importance of power and manipulation. He made little efforts, for instance, to improve, or even to consider improving, existing practices regarding the financing of political parties, which he had denounced in his writings (Whitaker, 19 ; Simpson, 19 ). In power, he liked to refer to the people and sometimes evoked the possibility of a referendum, but in the end he always stuck to the traditional practices of executive federalism (Atkinson, 1994: 736; Buzzetti, 2003). Trudeau’s appeal to an abstract Canadian people composed of undifferentiated rights-bearing individuals was in fact at the core of his political action, and it helps account for the tension between democratization and majoritarianism in his thought and actions. To undermine the idea of an old compact between nations at the origins of the federation, Trudeau conceived the Charter as establishing “the sovereignty of the people,” a single people where “no one is special” (Trudeau, quoted in LaSelva, 1996: 90). Such a logic effectively pitted democratization against recognition and even, to a large extent, against federalism. At times, for instance, Trudeau simply overlooked the division of sovereignty inherent to federalism, to claim that the Members of Parliament were the only group in the country able to “express the national will and the national interest” (Trudeau, quoted in McRoberts, 2001: 702). In principle, this “national will” was taken as the will of a nation composed of minorities; effectively, it was the will of the majority (LaSelva, 1996: 89-98).

The same antinomies are found, in less sophisticated ways, in John Saul’s essay on Canada, where the author claims that this country is “a nation of minorities” poorly governed by elites that have “lost contact with our reality” (1997: 10 and 127). Like Trudeau, Saul invents an abstract people that is not defined significantly by any national or linguistic cleavage (“we”), that is rarely well represented by its elites (“them”), and that happens to think ... just like John Saul (“us;” 1997: 222-23)!

The democratization envisioned by Trudeau and Saul emphasizes what John Dryzek calls “franchise” and “scope,” at the expense of “authenticity.” It seeks to make

possible and easier the participation of the more vulnerable groups (through multiculturalism policies and the Charter), and to expand “the domains of life under democratic control” (linguistic rights, for instance), but it fails to consider authenticity, “the degree to which democratic control is substantive rather than symbolic” (Dryzek, 1996: 5). This is why Trudeau and Saul need to invent an abstract people and to refrain from actual public consultations. Indeed, when taken seriously, the ideal of authenticity — a key component of the search for democratization — leads unavoidably to the politics of recognition (Taylor, 1992: 28).

In the last quadrant are authors who value both multiplicity and democratization. There are many variants here, and they will be discussed further below. Some authors — like Charles Taylor (1991), Jeremy Webber (1994: 312-19) and Will Kymlicka (1998: 175-83) — pay more attention to the politics of recognition and favor, in a rather abstract way, the pursuit of the country’s “conversation.” Others place more emphasis on democratization, and explore possible democratic avenues toward recognition (see, for instance, Mendelsohn, 2000; Tully, 2001; Maclure, 2003). The latter confront directly the question raised here, which has to do with the possibilities and potential of democratic deliberation in a multinational federation. But, as we will see, they also leave important questions unaddressed.

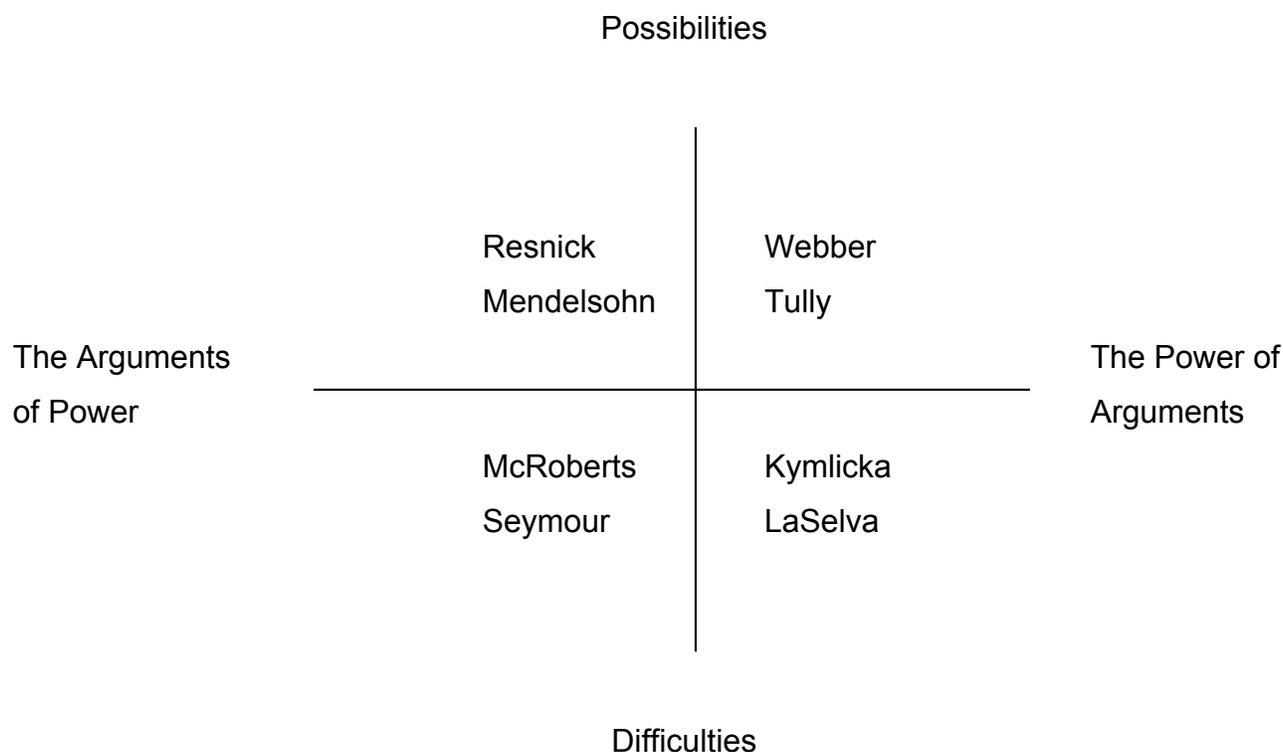
There is little reason to pursue, here, a discussion of the majoritarian perspectives, whether they are elitist or democratic. Politically, they are extremely important, indeed hegemonic. The position defined by Trudeau and Saul is the official policy of the Government of Canada and it is a defining ideology for the Liberal Party of Canada, whereas the majoritarian elitism of Ajzenstat and Lusztig is close to the standpoint of the official opposition in the House of Commons, the Canadian Alliance. These positions, however, deny the multinational character of the Canadian federation and, consequently, have little to say about the problem raised in this article. Likewise, if we assume that the movement toward democratization is inexorable, as do even Atkinson and Russell, the position defined by those who regret the traditional elitist

accommodation of diversity appears untenable.<sup>4</sup> This leaves the fourth quadrant, which in fact covers a broad range of positions. This standpoint regroups authors who value both democratization and the recognition of the country's diversity. Among these authors, however, one can find quite distinctive views about the possibility of achieving a workable democratic political order in a multinational federation. At the risk, once again, of oversimplifying, it is possible to distinguish four standpoints, according to the importance granted respectively to power and arguments, and to the relative optimism or pessimism of each author. Figure 2 presents, on the left side, authors who stress the arguments of power. Scholars in the lower quadrant see little possibilities for an opening, whereas those in the upper quadrant are just as sensitive to institutional and political constraints but see possibilities in institutional design. On the right side of the Figure are authors who place more emphasis on the power of arguments, and are either pessimistic or optimistic about the coming years in Canada.

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<sup>4</sup> Politically, this position is close to that of the Progressive Conservative party.

**Figure 2: Four Assessments of Democratic Deliberation in a Multinational Federation**



Among scholars who insist on institutions and political power, most are pessimistic about the possibilities of reaching a satisfying accommodation in Canada. Kenneth McRoberts, for instance, presents the recent history of the country as a missed opportunity to adjust our institutions and practices to the reality of a multinational federation. From his point of view, it was not for a lack of a good understanding of the challenges facing the federation that Canada was “misconceived,” but rather because those who believed in a less diverse or pluralistic federation successfully used the majority’s preferences as a lever to impose their favored solution (1997). The result, argues McRoberts, is an unstable construct that is at best an impasse and at worst doomed to fail (2001: 713). Michel Seymour pushes the argument further with a survey of recent federal policies aimed at undermining Quebec’s national identity in favor of the new Canadian nationalism, policies that also include more authoritarian measures such

as the *Clarity Act* (2001: 125-41). The federal government, argues Seymour, has negated both democratization and recognition, and there is no way out, unless Quebeckers opt for sovereignty.

Authors like Philip Resnick and Matthew Mendelsohn are sensitive to the role of institutions and power and they concur to a large extent with McRoberts' assessment. They place some hope, however, on political and institutional reforms that would make possible new, more democratic forms of accommodation. Resnick, for instance, considers other federations and proposes a new institutional arrangement that would distinguish provinces, region-provinces, and a nation-province, admitting in the same breadth that for now there is not much appetite for such reforms in Canada (2000 and 2001). From a more specific perspective, Mendelsohn considers different deliberative ideas and experiments and suggests that there "may be more useful frameworks for thinking about constitutional change in Canada than traditional models of executive federalism and consociationalism." For him, new deliberative approaches could make it possible to include the public in the process "in a nonmajoritarian manner," thus opening an avenue for change (2000: 270-71). Like Resnick, Mendelsohn is fully aware that the path toward change is narrow: "the discourse of undifferentiated equality is deeply anchored and parties challenge this philosophy at their peril" (2002: 76). Still, he thinks that a coalition defending a more flexible, more accommodating federalism remains possible. Such a coalition constitutes in fact the only "natural governing alternative" to "the present-day Liberals" (2002: 76-77).

The authors in the lower right quadrant are not far from Mendelsohn's position. Like him, and like all authors in Figure 2, they value deliberation and multiplicity. They would probably be more pessimistic, however, about the possibilities of institutional design, and be closer in this sense to McRoberts and Seymour, who stress difficulties more than possibilities. Contrary to the latter, however, they insist on pursuing the "Canadian conservation," even though they offer little reason to think that this conservation can be fruitful. Beyond their differences, Samuel LaSelva and Will Kymlicka both consider that the current impasse could be solved if only Canadians

better understood ... their point of view! LaSelva concludes his book with the assertion that “the existence of Canada requires Canadians (...) to come to terms with asymmetrical federalism” (1996: 195). Kymlicka proposes, more prudently but in a similar manner, to “adopt a more flexible and open-minded approach” toward multiculturalism and national minorities (1998: 182-83). Ideas, here, come first. But the prospects for change appear limited because the majority remains reluctant to accept the necessary approach.

Jeremy Webber offers a more compelling reason to pursue the “Canadian conversation” and, because of this, he leaves open more possibilities. The conversation must continue, he proposes, not because it leads to the one good solution, or even to some sort of working compromise, but simply because the conversation itself — “the way in which (the people of this country) have cooperated, disagreed, and in the end shaped each other” — is what constitutes Canada as a country (1994: 319). James Tully pushes this intuition further, and argues that a stable and theoretically determined outcome simply can never be reached:

The language of constitutionalism and struggles for recognition disposes us to presume that there is some definitive and permanent system of rules of mutual recognition, some definitive configuration (...) on which all agree. (...) But this is false. ‘[I]nvariably, there will be dissenting voices.’ What is definitive and permanent is the democratic discussion and alteration of the rules over time. The members accept and respect this or that system of rules of recognition not because they agree on the system in virtue of some shared conception of justice, but because the rules are open to dissent, fair consideration and amendment. (Tully, 2001: 14-15)<sup>5</sup>

In this perspective, the “continuous contests of mutual disclosure and acknowledgement” are “the activity of democratic freedom itself” (22), and citizens themselves must be the agents of change:

It is no longer assumed that the forms of recognition of members of a constitutional democracy can be determined outside the political process itself, by

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<sup>5</sup> Tully quotes a sentence from the 1998 Supreme Court of Canada’s *Secession of Quebec*.

theoretical reason discovering the a priori forms of universal memberships (individuals, nations, corporations, provinces and so on). Also, it is no longer assumed that a consociational elite is capable of making the determination by some form of accommodation behind the back of citizens. It is now widely argued in theory and practice that the identities worthy of recognition must be worked out and decided on by the members of the association themselves, through the exercise of practical reason in negotiations and agreements. (Tully, 2001: 24)

By paying attention to dissent, conflicts and instability, Tully distances himself from the idea that a good theory can offer a satisfying answer to the politics of deliberation and recognition in a multinational federation, and he gives content to Webber's intuition about the critical and constitutive importance of the country's historical conversation, with all its limitations and disagreements. His views, however, are bound to face a number of objections. Among these, two potential arguments are worth considering. The first would claim that such an open approach can only lead to instability and conflict, and will be rejected rapidly by a majority satisfied with the status quo.<sup>6</sup> A second objection would contend that an established state simply would not allow such an open process of deliberation to develop, especially if national unity is at stake.<sup>7</sup> Both objections raise the issue of power and send us back, in a sense, to the bottom left quadrant of Figure 2, where power is everything and deliberation almost nothing. In an opposite direction, one could claim that the process envisioned by Tully is simply too driven by conflicts and negotiations to stand as a genuine conversation (see Blattberg, 2003a and 2003b). This objection also sends us back to the first quadrant, unless we can identify conditions for a satisfyingly genuine conversation, a challenging demand in contemporary Canada.

These objections go well beyond Tully's approach, which is remarkably balanced in paying attention to both deliberations and conflicts. They relate to the more general difficulty, in both political science and political philosophy, in thinking concurrently about democratic deliberation and political power. Predominantly, the study of politics has

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<sup>6</sup> Kymlicka makes a similar point with reference to Webber and Taylor (1998: 176). Maclure also acknowledges the importance of this argument (2003: 16).

<sup>7</sup> This argument underlies Seymour's critique of Tully's positive views on the Supreme Court of Canada's *Reference re Secession of Quebec* (Seymour, 2001: 147-60).

been a study of interests, institutions and force, focused on bargaining and power, with sometimes some attention paid to ideas, considered as intervening variables. In recent years, the study of democratic deliberation has brought back a more traditional understanding of politics as a forum, where ideas and arguments are exchanged, evolve over time, and matter in their own right. It remains unclear, however, how exactly deliberation proceeds and matters in a context defined by interests, conflicts, and power.

This question is, of course, a theoretical one. But it also has important practical implications. The lack of a working conciliation of these two dimensions of politics may help to understand, for instance, the remarkable gap that exists between Canadian scholarship on federalism and the country's political life. There is a "total disjunction," observes McRoberts, between the leadership Canadian scholars have taken in theorizing multinational federalism and the evolution of the political realm in this country, which has denied this possibility, and effectively moved in the opposite direction (2001: 694 and 710). Can we rebuild the connection, and think of democratic deliberation as a real, through and through, political activity?

### **3. Democratic Deliberation as a Political Activity**

In political theory, democratic deliberation is usually contrasted with the interplay of interests and power, the two dynamics being seen as mutually exclusive (Dryzek, 2000: 2). In this perspective, arguing is successful precisely when it is sheltered from bargaining and domination. This separation can be achieved theoretically by assuming an ideal speech situation, which can then be used as a benchmark to assess concrete situations (see Chambers, 1996: 155-62), or else it can be sought through institutional design, with the introduction of procedures and approaches more conducive to deliberation (see Dryzek, 1990: 40-48). Most authors recognize that, in fact, arguing never takes place in a vacuum, away from interests, bargaining and power. They nevertheless tend to think about deliberation as happening in a distinct realm, or at a different moment, as far as possible from day-to-day politics. On the other side, of

course, are authors who see only bargaining and power, and operate implicitly the same dichotomy.

The question is posed very differently if, on the contrary, we start from the premise that deliberation and politics are always closely intertwined and, in fact, impossible to separate. In this perspective, both processes, arguing and bargaining/dominating, take place in situations of conflict, when important ideas and interests are at stake. They evolve concurrently, and one cannot be understood fully without the other. Discourse itself is penetrated, and to some extent constituted, by power and resistance (see Flyvbjerg, 2001: 93 and 116-28; Risse, 2000: 17-18). This does not mean that deliberations can be reduced to power relations, but it does imply that they cannot be understood out of their context, as somehow outside of power relations. Likewise, all power relations are legitimated by norms and arguments about justice, and it is a mistake to underestimate the political importance of such discourses (Risse, 2000: 17).

Put differently, if principles were not at stake, bargaining and domination would hardly be political, and they would become more akin to trade or organized crime. If, on the other hand, interests, identities and power were set aside or ignored, deliberating would appear facile, and would be more a pure exercise in rhetoric than a genuinely political undertaking. The key analytical question, then, has to do with what could be called — in Keynesian terms — the weight of the arguments, the relative importance of ideas and power in a given case, at a specific moment (Risse, 2000: 18; on this Keynesian notion, see Noël, 1995).

In this perspective, democratic deliberation can be seen as a normal “joint social activity, embedded in the social action of dialogue — the give and take of reasons” (Bohman, 1996: 32). Success does not require unanimity or even agreement, but simply that agents be “sufficiently convinced to continue their ongoing co-operation”. Normally, this happens when the different sides can “recognize that they have contributed to and influenced the outcome, even when they disagree with it” (33).

Disagreements remain — without them there would be no need for deliberation — but ideas and representations have evolved. To quote again from Bohman: “Each speaker incorporates and reinterprets the other’s contributions in his or her own. After a sufficient length of time, speakers begin to use expressions that they did not employ before; the process of trying to convince others may alter not only one’s own mode of expression but also the reasons one finds convincing” (58). Each participant’s understanding of the common situation is reshaped as it incorporates other points of view and reasons. Deliberation generates “uptake.” It remolds the different arguments through reciprocal influences.

Deliberation may concern broad issues of rights, more specific policy issues, or even “unpretentious claims for decency” anchored in local notions of “honor and justice” (on the latter, see Sabel, 1982: xiii, 132, and 189). The general idea is the same: in a democracy, policies and practices cannot simply derive from earlier forms or emanate from unmediated power struggles. Changes must be justified with public reasons, which will always be contested but usually will be accepted as worth discussing, or at least acknowledged as legitimate (Bohman, 1996: 91 and 100; Risse, 2000). This dialogic process shapes politics in many ways, just as the demands of politics shape public deliberations.

This understanding of public deliberation gives power to principles, because it grants contending conceptions of justice a genuine weight in the public arena, and it also anchors power relations into principles. From this perspective, the language of politics is at the same time a moral and democratic language and an institutional and technocratic discourse. This implies, among other things, that societies hardly ever go back. The notion of moral progress is rarely discussed by political scientists or by political theorists, but the fact that there has been historical progress in public ideas about justice is hard to dispute. Slavery or official racism, to take extreme but not so distant cases, are not likely to return as legitimate practices. Closer to the current context, recent workfare initiatives simply could not be justified with the same moral arguments put forward in the nineteenth century to support similar policies (King, 1999:

256). Like science, moral language can be seen as a genuine cognitive discourse, which advances over time (Sayre-McCord, 1986; Gilbert, 1990: 7-11 and 111-16).

Finally, democratic deliberation and power relations do not only forge public choices. They also create and transform social actors and their relationships, as well as public practices and institutions. In the give and take of arguments and of politics, new actors emerge, old ones are displaced or rejuvenated, and social arrangements are remade. The logic at play is not causal, but constitutive (Wendt, 1999: 77-88 and 135). The public “changes the conditions of political deliberation by changing itself” (Bohman, 1996: 201).

In the context of a multinational federation, the latter point is particularly important. It means that peoples and social actors change themselves as well as others through their interactions. If we also accept that arguments have weight, that there is “uptake” in the exchanges, and that there is moral progress over time, fears of an unruly and never-ending debate appear exaggerated.<sup>8</sup> The recognition of Aboriginal peoples, for instance, represents an historical step forward, which does call for further steps but cannot be questioned forever.

Like Tully’s proposition, the approach outlined here suggests that there is no end to the conversation, no stable outcome that can be reached. An emphasis on power relations, however, also indicates that Tully may see more institutional and political flexibility than there is in reality in the Canadian context. In the end, philosophical arguments cannot settle this question. Only a close analysis of the political context can inform us about the remaining possibilities of deliberation in this period, in our specific multinational federation (Risse, 2000: 18; Flyvbjerg, 2001: 135; Maclure, 2003). Aboriginal peoples, for instance, are likely to make progress in the coming years,

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<sup>8</sup> This preoccupation about unbounded debates is not unique to Canadian scholarship and concerns the politics of deliberation in general (see Dryzek, 2000: 31-56). Many students of multinational federalism have argued on empirical ground that the conversation should remain within reasonable boundaries (see Maclure, 2003: 16; Kymlicka, 1998: 182-83).

because they have solid, principled arguments, better legal standing than ever before and, in some cases, a capacity to wield significant power (see Coates, 2000).

#### **4. Popular Consent in an Old Multinational Federation**

If democratic deliberation makes sense in a less than perfect context, and if the Canadian conversation is an instance of such deliberative practices, we should also be able to make sense of past developments from this perspective. It is not possible, within the constraints of a short article, to go very far in this direction. But consider, as an interesting illustration, the origins of the federation.

The men who designed the Canadian federation in 1867 were not exactly friends of democracy. “The weak point in democratic institutions” said George-Étienne Cartier, “is the leaving of all power in the hands of the popular element. The history of the past proves this is an evil.” In the same vein, Thomas D’Arcy McGee saw the new Confederation as a protection against “the risk of being swallowed up by the spirit of universal democracy that prevails in the United States” (Cartier and McGee, as quoted in Resnick, 1990: 76-77; see also Mendelsohn, 2000: 248-49). The Founding Fathers preferred a mixed constitution, with monarchical and aristocratic elements, and a limited franchise. At the same time, however, they displayed a keen sense of the requirements of popular consent in a multinational federation. Here is how John A. Macdonald, the country’s first Prime Minister, explained the need for a federal arrangement in Canada:

I have always contented that if we could agree to have one government and one parliament, legislating for the whole of these peoples, it would be the best, the cheapest, the most vigorous, and the strongest system of government we could adopt. But, on looking at the subject in the [Quebec] Conference, and discussing the matter as we did, most unreservedly, we found that such a system was impracticable. In the first place, it would not meet the assent of the people of Lower Canada, because they felt that in their peculiar position — being a minority, with a different language, nationality and religion from the majority — in case of a junction with the other provinces, their institutions and their laws might be assailed, and their ancestral associations, on which they prided themselves, attacked and prejudiced; it was found that any proposition which involved the

absorption of the individuality of Lower Canada — if I may use the expression — would not be received with favour by her people. (Macdonald, in Waite, 1963: 40-41).

This discourse is well known and often quoted in Canada, but its implications for a discussion of democratic deliberation in a “really existing” multinational federation have not been considered with sufficient attention. Here is a key political leader who distrusts democracy and popular participation but seeks institutions that will meet the expectations and the favor of “the people of Lower Canada.” One could argue that Macdonald was simply drawing conclusions from a bargaining process that had taken place among political elites, and making these conclusions legitimate by appealing to broader but relatively shallow principles. Such a narrow interpretation would not explain, however, the importance, for Macdonald, of referring to the “assent of the people of Lower Canada,” and the weight he gave to political discussions carried “most unreservedly.” Why was someone who did not support democracy paying so much attention to the views of others and to popular consent? Why did he see these arguments about discussion and consent as important and politically effective? How could he simultaneously oppose democracy and seek popular consent?

The key to understand Macdonald’s views is contextual. Like most men of his time, Macdonald associated democracy with direct democracy, and contrasted it with a mixed constitution and representative government, which he saw as a more feasible and preferable mode of government (Resnick, 1990: 71-87). Representative government did not require universal suffrage — in time, the logic of a vote for all would impose itself — or an equality of status between persons of different social classes, but it was strongly anchored in the principle of popular consent, according to which the governed could only have obligations toward a government that they had first accepted as legitimate (Manin, 1996: 11-13, 113-15, 126). In this perspective, discussion also played a key role, not as a decision-making procedure but as a process that facilitated agreements and, in the end, made consent possible (Manin, 1996: 241-45). This is why Macdonald stressed that he and his peers had discussed the matter “most unreservedly” before coming to

the conclusion that only a federal arrangement would obtain the “assent of the people of Lower Canada.”

Whatever its reservations regarding popular participation, the theory of representative government was thus open to forms of deliberation, among the elites first but also with the people, at least indirectly. The theory, however, was not as sensitive to the implications of diversity. The republican tradition tended to see deliberation as a means to overcome differences, to find the general will or at least some joint understanding of the common good (Przeworski, 1991: 15). More fundamentally, the dominant political theories of the time assumed that a modern constitution should be constructed *de novo*, by founding fathers willing and able to break radically with the traditions and irregularities of ancient constitutions, to create new nations of equals (Tully, 1995: 58-70). This understanding of modern constitutions was influential in Canada, and the country’s “fathers” were certainly tempted by the idea of creating a new nation (LaSelva, 1996: 25, 38 and 99). But they could not do so. Even the 1840 Union Act, which imposed a unitary government for Lower and Upper Canada, had failed to prevent the emergence of a strong and very elaborate scheme of political dualism. Unable to deny this tenacious social reality — which concerned a third of the population and was anchored in the country’s ancient constitution (Tully, 1995: 145-46 and 154-62) — Macdonald and his peers began to build what was perhaps the first modern federation designed to accommodate existing national differences (Burgess, 2001: 257).

A similar but more oppressive evolution took place with respect to Aboriginal peoples. Well before the creation of the modern Canadian federation, Aboriginal peoples had established a constitutional relationship with the state. They were indeed “alone among Canadian citizens in having entered treaties with the Crown” (Macklem, 2001: 136, 183 and 267). As Patrick Macklem underlines, this relationship was long denied and negated:

Throughout Canada’s history, governments and courts systematically ignored the spirit and intent of treaties between Aboriginal peoples and the Crown, devalued ancient forms of Aboriginal sovereignty, dispossessed

Aboriginal peoples of their ancestral territories, and regarded as inferior the diverse cultures to which Aboriginal peoples claim allegiance. (2001: 286-87)

The creation of Canada in 1867, for instance, was for the Aboriginal peoples “entirely an imperial imposition” (Russell, 1993: 32). Aboriginal peoples nevertheless maintained a minimal constitutional standing, which they claimed, and which was indirectly acknowledged by governments and courts when they argued that these claims had been extinguished or that consent was no longer necessary in this case (Tully, 1995: 138). In the 1970s and 1980s, the claims of Aboriginal peoples would reemerge and become, once again, central to Canada’s constitutional debate.

For all its democratic limitations, the Canadian conversation of the late nineteenth century nevertheless displayed a tension between the search for uniformity typical of a modern constitution and the demands for recognition and for the preservation of diversity that were anchored in the country’s ancient constitution. This tension pitted the idea of a new nation against the protection of established ways of life, and confronted the elites of the new state to the complex requirements of popular consent in a multinational federation. The interplay of arguments, interests, and power relations was not as it is today, but it defined a new democracy and a new federation, which was built on a certain idea of continuity and consent and was conceived, at least indirectly, as multinational.<sup>9</sup>

## **Conclusion**

Like all deliberative process of significance, the Canadian conversation never was a nice and polite conversation, carried by well-meaning participants who had previously checked their interests and their advantages at the door. It often involved tough bargaining or verged on plain domination, was always less than perfectly democratic, and incorporated many restrictions and constraints that disadvantaged some or many constituents. This conversation, however, was also anchored in principles about

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<sup>9</sup> Michael Asch aptly described Canada as an “indirect” — or implicit — association of peoples (1984: 79).

democracy, continuity, and consent, and it contributed to the establishment of important rights and relatively satisfying institutions and practices. This conversation was, in other words, a real political conversation. And it mattered very much.

The aim of this article was to consider the current Canadian constitutional impasse in light of the requirements and possibilities of democratic deliberation. The paper first surveyed Canadian scholarship on the question, and found tensions, among those who favor democratization and pluralism, between an emphasis on the possibilities inherent to the Canadian conservation and an acknowledgement of the difficulties of power relations in this country. It then proposed an understanding of deliberation that is not incompatible with the recognition of the role of interests and power in politics, and used the origins of the federation as an illustration.

Sensitive to the context and to both arguments and power relations, the approach outlined in this paper is not very complex or sophisticated, and it does not offer a theoretical or practical avenue out of the current constitutional impasse. Still, it could help us see beyond the dichotomies that tend to define the study of Canadian politics and, more broadly, of democratic deliberation. At certain junctures and in certain circumstances, principles and arguments have weight in politics. For the moment, in Canada, there appear to be little possibilities for meaningful progress, except for Aboriginal peoples, at a slow and difficult pace. Debates, however, always go on. Within Quebec, for instance, a broad discussion is under way on the meaning of citizenship and national identity (see Maclure and Gagnon, 2001). In time, in one way or another, our debates and arguments tend to catch up with our political and social practices.

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