

A Submission to the
SPECIAL JOINT COMMITTEE ON A RENEWED CANADA
regarding the Government of Canada's proposals in
Shaping Canada's Future Together

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INTRODUCTION

Canada's constitutional crisis is first and foremost a crisis of faith and ideas. Many Canadians have believed, as an article of faith, that political liberalism provided the only acceptable architectonic framework for building a just and free country. This faith has been shaken by liberalism's failure to accept fully French communities in Quebec and other provinces, to accommodate the aboriginal communities' ways of life, and to structurally accept the choices of many Canadian communities to participate and fulfil themselves through institutions based on their religious, ethnic, or linguistic community's values.

This submission examines conflicting ideas of plurality, institutions, and of the public order found in the constitutional debates. It outlines several alternative ideas and applies them to the constitutional issues faced by Canada.

This submission draws on a tradition of Christian cultural and political thought, that at one point led to the creation of The King's College, where I teach and do research.¹ However, this submission is not motivated out of self-interest in the survival of my Christian community or its institutions. Rather, it is founded on a concern that all communities and their institutions--whether Roman Catholic, Muslim, Protestant, aboriginal, secular humanist, or other--receive just and equitable treatment under the Canadian constitution.

DIVERSITY IS A CANADIAN REALITY

It is a truism that Canada is a plural nation. We have a wide variety of religious, ethnic, lingual, and cultural communities. What is less well known, however, is the extent to which these communities have sought to build distinctive institutions as a way of passing on, developing, and sharing their religious, ethnic, lingual, and cultural traditions with each other and diverse Canadians.

In Alberta, for example, there is a wide variety of elementary and secondary schools representing Jewish, native, Hutterite, French, Roman Catholic, a range of Protestant, and other religious, philosophic, and linguistic communities. There are hospitals run by Catholics and the Salvation Army, and social service agencies run by natives, Catholics, several Protestant groups, and other religious groups. There are numerous religious and ethnic retirement homes run for elderly Canadians. There are Christian farmer and labour groups. The list could continue and be multiplied for other provinces.

At the university level in Alberta we have degree granting institutions that reflect the religious values of communities as different as Augustana [Camrose Lutheran] University College, Concordia [Lutheran] College, Canadian Union [Seventh Day Adventist] College, The King's [Interdenominational] College, St. Stephen's [United Church] and St. Joseph's [Roman Catholic] Colleges at the University of Alberta, and a proposed St. Mary's [Roman Catholic] College in Calgary.²

To make the issue more concrete, take a look at The King's College. King's was founded in 1979 by several Christian communities in Western Canada that wanted distinctive Christian liberal arts education. The mission of The King's College is

to provide students with a university education in the arts, sciences, and selected professional areas from a Biblical perspective, as summarized in the College's statement of faith. The College strives to be an academic community which integrates the Christian faith with teaching, learning, research, and college life, in an environment characterized by academic excellence and a personal approach to students.³

This institution is supported by a community of 6800 individual supporters and over 75 local churches in Western Canada. It offers B.A. and B.Sc. degrees accredited by the Province of Alberta. King's enrolment now exceeds 400 students.

A DISTINCTIVE IDEA OF PLURALITY

The King's College is an expression of a broader phenomenon of communities practising and developing their vision of life through institutions and so contributing to society's wellbeing. It is important to recognize that this type of institution is based on a distinctive idea of plurality. The fundamental unifying thought behind this idea of plurality is that some communities are more than the sum of their individual members. It assumes that human beings have visions of life that are developed, practised, and communicated not by atomistic individuals but as persons-in-community. Many cultural, religious, linguistic, and other values are transmitted, lived, and shared with others in small, large, or even national communities. It is only because individual persons often hold to communal visions and wish to live accordingly, that freedom of association and the right to value-based institutions are essential to a free and democratic society.

This type of plurality has always existed in Canada and is expressed in the well-known phrase: "Canada is a community of communities." It received substantial recognition in the constitutional compromise of 1867, where the Founders came to acknowledge that the plurality of religious, ethnic, linguistic, and cultural communities and institutions within Canada could not be eliminated or assimilated without grave injustice. The Constitution brought these diverse communities together into a single "political nationality" through federalism and, more importantly, through a variety of special provisions for linguistic and religious minority rights. Recent constitutional amendments have also given a measure of recognition to these communal institutions.

DOMINATION OF THE LIBERAL IDEA OF PLURALITY

In the past century the liberal idea of plurality has come to dominate public discourse in Canada. While it stresses the positive good of individual freedom, it has done so by reducing all plurality to a question of individual preferences. This idea of plurality has identified meaningful groups simply as aggregations of individual interests and has neglected communities and institutions through which persons experience, develop, and reproduce their beliefs, culture, or language. This idea of plurality runs stuck on the question of how unity can be achieved out of the endless variety of individual preferences. If individuals are free to choose any values, can public institutions be based on values without coercing individual freedom?

LIBERAL PLURALITY REQUIRES NEUTRAL INSTITUTIONS

This individualistic idea of plurality is complemented by a discrete idea of institutions and the public order. Early liberals turned to "reason" as the only reliable and neutral guide to truth that transcended divisive religions. Reason was secular, neutral, and universal while religious values were sectarian, biased, and particular. Thus the potentially endless plurality in the private realm could be united by neutral rationality in the public realm.

This idea of neutral rational public order and institutions forced religious and other communities, either to assimilate in the rational public order or isolate in the private realm, whether or not they believed their religious values were inferior to reason. This became the prevailing pattern for public institutions in Canada, e.g. C.B.C., hospitals, social services, schools, and universities. For example, Protestant evangelicals were forced to assimilate into neutral public schools or else isolate in private schools, and aboriginal peoples were forced to isolate on reserves or assimilate into dominant society.

It is this idea of plurality, institutions, and the public order that institutions such as The King's College reject because of its false view of neutrality. Self-proclaimed neutral institutions are operated on the assumption that no one can tell an individual how he or she ought to act. In this sense, it is believed that the structure of the institution is value-neutral and so encourages individual freedom--whether for C.B.C. producers, medical doctors, university professors, or public school teachers.

These value-free institutions are contrasted with institutions based on a community's religious, cultural, or linguistic values. Such institutions are rejected because they have a moral code of some sort and do not allow full individual freedom, e.g. The King's College requires its faculty and staff to adhere to its statement of faith. Thus public institutions are presumed to be neutral and to advance individual freedom, while community-based institutions that admit a moral code are isolated in the private realm (often with little or no public funding).⁴

This distinction between institutions with a moral code and those desiring only individual freedom is false. First, institutions that are designed to allow full individual freedom have an implied moral code, namely a code that obligates the institution to act in protection of individual freedom, since that is the moral thing to do. Second, full freedom for individuals is also restricted by other written and unwritten institutional moral requirements, or the institution would de facto promote anarchy, i.e. the freedom to do as one wills. This, however, is never the case for institutions or they would self-destruct. Almost all institutions aim to enhance and improve human freedom in society, and in order to do so, the institution makes choices that will limit certain individual freedoms. The proper distinction, therefore, is not between neutral institutions and institutions with a moral code, but between the different kinds of moral codes adopted by different institutions.⁵

The question a government must face is: what is the range of acceptable bases, or standards, on which an institution may limit individual freedom by requiring certain types of moral behaviour in the interests of their institutional purposes and general social wellbeing? This will be addressed below.

CONFLICT BETWEEN THE LIBERAL AND COMMUNAL IDEA OF INSTITUTIONS

The problem facing religious communities that choose to give institutional expression to their values and worldview, and who reject the relativizing and privatizing of their faith, is that they are coerced into operating within a model of plurality and neutrality that clashes with some of their most fundamental convictions. This is intolerance at the highest level.⁶ If neutrality and relativism are requirements for participating in public institutions or receiving public funding, then a genuinely Protestant, Catholic, Muslim, or other religious institution is impossible. Only institutions that accept individualistic pluralism and relativism are acceptable within this type of institutional framework.

For example, both the supporting community and the staff and faculty at King's believe that Christian values are true and should guide and inform their academic research. King's is non-liberal in the specific sense that it rejects autonomous individual freedom and the liberal assumptions of neutrality, rationality, and relativity. It is clear that King's accepts and appreciates liberal contributions to our culture, such as the importance of freedom, the rule of law, and individual rights. The argument is that a community and its institutions should be able to reject an idea of plurality and institutions that forces persons and communities to give up their belief in the non-relativistic truth of Christianity, and still fully participate in public life. King's would not be intolerant in rejecting this type of plurality and institution because it would not demand that all public institutions reflect its Christian values.

Principle: The Constitution should treat equitably institutions based on the moral

code of individual freedom and institutions based on other non-relativistic moral codes.

THE IDEOLOGICAL IMPASSE IN CANADA

In Canada, the individualistic assumptions of liberalism have been challenged by nationalism in Quebec. Nationalists believe in an over-arching "national" community that relativizes all other communities and transcends individual freedom. They reject the idea of neutral public institutions and argue for national identity in institutions. The majority captures the public institutions for the benefit of the "nation," sometimes violating minority institutional rights if they conflict with nationalist goals.

Thus the institutional rights of minority communities in Quebec are no safer under nationalist institutions than under "neutral" liberal institutions. One imposes a moral code aimed to increase individual freedom while the other aims to maximize national identity. Both down play the institutional rights of smaller communities within the political community. The intolerance of "neutral" liberal institutions is not essentially different from the intolerance of majoritarian nationalism. Neither has found a way of justly and equitably accommodating all sorts of communities and institutions. Both ignore the "real nation" that is composed of all the citizens within Canada.

A PARTICULAR CONSTITUTION FOR A PARTICULAR NATION

Canadians are being seriously misled to believe this ideological impasse between liberalism and nationalism can be solved simply through constitutional amendments. Canadians need to be motivated by love for our neighbours that releases us from the privatizing, relativizing, or collectivizing logic of our ideologies and opens us to do justice to all. "Do to others as you would have them do to you" means in politics that the justice we desire for ourselves be done to everyone that lives within our nation. The state is the God-given servant of all Canadians that must ensure that there are just relations within our country.

In this light, Canada's "fundamental characteristics" must shape our constitution. It must be designed to reflect what really lives within our nation, not to reflect a mythical homogeneous nation or a fictitious collection of atomistic individuals. The universal principles Canadians want in their constitution--liberty, equity, peace, justice, and stewardship--are meaningful only when applied to the particular circumstances of the nation.

Principle: The Canada Clause should reflect the real nation that lives within Canada and be placed as an effective interpretative clause in the Constitution.

The legitimate aspirations of all Canadians must be met in the constitution or it will lead to injustice and oppression. Adherents of traditional religions--Roman Catholics, Protestants, Jews, Hindus, Muslims, etc.--and also modern secular religions--secular humanism, socialism, liberalism, etc.--must have a place in our public life.

CONSTITUTIONAL PROPOSALS FOR CANADA

While the ideas of plurality and ideas of institutions found in liberalism, nationalism, and in some minority communities are not fully compatible, there are constitutional measures that will afford a measure of just treatment for all three. These will be developed in the following proposals:

(A) NATIONHOOD

It is a fact of contemporary life that a variety of communities live either

contemporaneous with, as minorities within, or as peoples that bridge state boundaries. Modern states ought to recognize all citizens within their boundaries as their nation. While this alters the popular use of the term nation, it would remind and encourage us to do justice to the true reality that lives within Canada.

(B) CITIZENSHIP

Shaping Canada's Future Together proposes the Canada Clause reflect "a commitment to fairness, openness and full participation in Canada's citizenship by all people without regard to race, colour, creed, physical or mental disability, or cultural background." This makes an important point similar to Cartier's idea of a "political nationality"--that the nation could be united on political values without necessarily agreeing on the linguistic, cultural, and religious values that separated the French and English partners in Confederation.

Citizenship in the political community of Canada should be without regard to non-political values. Citizenship and participation should be based only on one political value, that is, the agreement that public disputes be resolved, not through anarchy or tyranny but, through politics. We ought to agree together that we will make public rules and policies on the basis of public participation, debate, and accommodation. Any other values we may share are desirable and important but not required for citizenship.

Proposal: Citizenship in the nation of Canada should not be based on any non- or pre-political values, but should be defined as people who are committed to resolving public conflicts through politics.

(C) FEDERALISM

Federalism has been an effective tool for addressing certain types of plurality in Canada. Federalism enables provincial governments to address diversity that is geographically generated e.g. Western identity, or geographically concentrated e.g. French Canadians in Quebec or Acadians in New Brunswick.

But federalism is unsuited for addressing other types of plurality. Instead it only serves to clone these problems. For example, federalism alleviates some concerns of certain French Canadians by giving them control of the Quebec provincial government. But Canada's plurality--e.g. English majority, French minority, aboriginal communities, and other religious and multicultural communities--is re-created within the province of Quebec--e.g. now a French Canadian majority but with an English minority and the same minority aboriginal and other religious and multicultural communities. Federalism is an inappropriate tool for most non-geographic plurality.

(D) THE DISTINCT SOCIETY CLAUSE

The distinct society clause is crucial for protecting the geographically-concentrated French majority within the federal sub-unit of Quebec. The distinctive part of our political nationality living within Quebec must be recognized and protected in the constitution. Although other communities and individual persons living within Quebec also need recognition, it must first be recognized that they live within a distinct society which is characterized by a French language, culture, and legal setting. Quebec came into confederation as a distinct society and with a unique bargain. This constitutional bargain needs to be updated to empower the Government of Quebec to protect and develop those which live within its boundaries. The majority has that right.

Proposal: The distinct society clause should be adopted to protect and develop the French community living within Quebec's provincial jurisdiction.

But minority communities--both minorities within the French speaking majority and

other minorities--also must be recognized as having rights in the context of this distinct society.

Proposal: The distinct society clause must include the recognition that minority communities--whether French-speaking or not--have the right and freedom, without financial penalty, to choose distinctive service, educational and other institutions in proportion to their numbers in the province.⁸

Most other provinces are different from Quebec in that their diverse communities live within an English lingual, cultural, and legal context. The Northwest Territories and the Yukon, however, may need constitutional recognition for the non-Western "distinct societies" that form the context for their communities.

(E) STRUCTURAL PLURALISM

Communities that are not primarily defined in geographic terms constitute a unique challenge to Canada's tolerance and goodwill. The majority in Quebec believe their French cultural and linguistic characteristics are crucial to their character and choose to have them reflected in institutions. But communities that are not as geographically concentrated as the English and French communities, will never be able to dominate a provincial or local government and so be able to give institutional expression to their values.

Thus it is not sufficient for the Canadian constitution to recognize "communities" if it denies them the right to form non-neutral institutions, when they choose to act with regard to their deeply held values. The emphasis here is on choice. Institutions should be a right for communities if they choose to exercise this right. For example, many aboriginal Canadians choose to work through aboriginal social service agencies when they are available. Many Roman Catholics choose Catholic schools for their children. This right is continuous with the Constitution Act, 1867, which recognized not only Protestant majority schools in Ontario and Catholic majority schools in Quebec, but also the right to dissentient schools in both jurisdictions.

The possibility for communities to choose distinctive institutions must be recognized in the constitution precisely because these communities are part of what lives within our nation. The government must act with regard to values that Canadians choose to express in institutions when it creates or funds public institutions. Neutral institutions are not an acceptable alternative for these communities. In many cases educational, health, social service, economic, and cultural institutions should be operated by agents other than the government to begin with.

(1) Which types of groups or communities should be categorically excluded from exercising this right?

Principle: Any community that uses the right to develop institutions in order to advocate the violent overthrow of the social and political order, to propagate hatred against a racial group, or to attack religious freedom should be constitutionally excluded from exercising this right.

(2) On the positive side, what community characteristics provide a sufficient basis for demanding an alternative religious, social, political, cultural or linguistic institution?

Principle: In order to qualify for an institution, a community must demonstrate it: (i) has the numerical strength to support the institution, e.g. listeners for broadcasting, students for a school, clients for social services, etc., and (ii) has values that lead to a demonstrably different "product" from other existing institutions, e.g. Catholic schools and native social services offer distinctive "products."

The necessity for these principles is demonstrated by Alberta school history. The Alberta Act allowed a majoritarian public school system to develop where most schools became Protestant and minority schools became Catholic. When the majority lost interest in distinctive Protestant schooling, the Protestant schools were transformed into "neutral" public institutions. In the process, Protestants who still desired distinctive Protestant schooling became educationally disenfranchised, just as native Canadians, Muslims, and other new Canadians had been unjustly disenfranchised by the earlier Protestant school system. All of these minority communities deserve the institutional right to schooling, if they so choose, precisely because they constitute distinctive elements within our nation.⁹

(3) According to what principles should public resources be divided among the various neutral or communal institutions that are developed to reflect "that which lives within the nation?"

Principle: Public finances and other resources should be divided in proportion to the relative strength of an institution's supporting community in the entire public community.

For example, if Catholic schools constitute 20% of Alberta schools, they should roughly receive 20% of the provincial funding for schooling. It is unjust that the constitution has not been revised to recognize this right for more than the Catholic community and its schools.

(F) ABORIGINAL SELF-GOVERNMENT

In principle, the question of aboriginal self-government presents Canada with the same challenge as the distinct society clause. However in many cases the aboriginal communities lack an adequate territorial basis to allow self-government in a federal form. Wherever possible, a new and distinctive federal division of powers should be created to give aboriginal communities the necessary range of political powers to self-govern the affairs within their territory.

But it will be impossible to implement the necessary range of aboriginal self-government using only the tool of federalism. In the cities, for example, aboriginal communities should be enabled to autonomously govern their own community institutions (as discussed in D above) as a means to self-government.

Principle: Self-government must be implemented so aboriginal Canadians have the means to develop and control institutions and structures that correspond with their vision(s) of life and so become full participants in Canadian society.

(G) REFORM OF POLITICAL AND ELECTORAL INSTITUTIONS

Representation of the real elements within the nation of Canada is absolutely critical for just and effective representation in politics. Our electoral system has failed us in this regard. It does not equitably and fairly represent the different ideas and desires of Canadians in our political institutions. Political accommodation does not occur between the various elements "that really live within the nation." Witness, for example, the results of the October 13, 1987 election in New Brunswick where the Liberals won all the seats in the legislature, leaving those who voted for other parties entirely out of the discussion. The recent British Columbia election saw the NDP drop in popular vote from 42.6% in 1986 to 41% in 1991 but they went up from 31.9% of the seats in 1986 to 68% of the seats in 1991. In the 1984 national election, the Conservatives won 211 of 282 seats but had less than 50% of the popular vote. Examples are many, but the point is the same. The real diversity in Canada is not being fairly or equitably represented through our current electoral system.

Such distortions are all the more serious in light of current public distrust of politicians and political institutions. People do not experience a moral relationship exists between them and their representatives. And representatives feel little moral obligation to voters. Recent calls for more participation through recall, referendum, initiative, and free votes in legislatures would only undermine the principle of representation and thus also fail to guarantee that the real nation of Canada will be present in the central policy making chambers. Even the recent post-Meech Lake Accord attempt to enable participation in constitution-building only serves to further frustrate ordinary Canadians. It is time to admit our representation system is in crisis and our electoral system is not serving us well.

Principle: Proportionality should be the guiding principle of our electoral system so representatives reflect the various elements within the nation in an equitable and just manner.

An electoral system based on proportional representation would encourage political parties to deliberate on policy in the legislatures according to principles they share with voters, or else risk suffering losses in the next election. This would encourage a moral relationship between the deliberating representative and the voter.

PROPOSAL: The Senate should be reformed along the "almost triple E" proposals of the Government. The Senate has traditionally reflected regional or geographical types of diversity, and should continue to do so. Each Senator should be elected from a single member electoral district and represent regions within the provinces. The Senate should be the lesser of the two Parliamentary Chambers and thus have lesser powers than the House of Commons. It is consistent with these lesser powers that the Senate be elected according to the less important regional type of plurality.

PROPOSAL: The House of Commons, as the more important representative Chamber, should be reformed to accurately reflect all of the politically salient non-geographic diversity within the nation of Canada. An electoral system based on proportional representation is the best way to achieve this. The threshold for electing MPs should be kept as low as possible, to allow the full plurality of factors Canadians believe to be important in politics to be present in legislative and executive discussions. A list system of proportional representation based on multi-member province-wide districts would be most effective means to achieve this. An interim step to full proportional representation would be the addition of 100 seats to the present House of Commons, allocated in proportion to the party vote in each province.

(H) SEPARATISM

I would like to close with a comment on nationalism and separatism. When separatists in Quebec, alienated Westerners, or disillusioned aboriginal communities claim the right to secede from Canada, they do so based on the modern idea of an autonomous or inherent right to self-determination. This argument is self-defeating since appeals to self-determination can theoretically continue until the absurd situation arises where every last group, or even individual, has been recognized as an independent entity. For example, if Quebec separates from Canada, aboriginal northerners in Quebec claim they will separate from Quebec. The logic of self-determination supports both actions.

This is not to suggest individual and community freedoms to make choices are unimportant. The submission up to this point has argued they are very critical and should in be expanded. But I am arguing self-determination is flawed in that it offers no normative principles that can guide a decision on when membership in Canada is no longer a desirable or meaningful option.

Principle: Decisions on whether or not separation is justifiable in a particular political community must be guided not by self-determination but by public justice.

The principle of public justice requires:

government to use power in an equitable way. Governments must be aware of the different needs of diverse people, communities and organizations, and balance and promote their public claims so that each may have the freedom to fulfil their God-given calling and responsibility without oppression from the authorities or from one another.¹⁰

A nation ought to be united by its citizens' commitment to do justice to all. Political separation can be justified only when a pattern of governmental laws and actions persistent in treating a community unjustly and exclude it from participation in Canadian life. If French or aboriginal communities in Canada demonstrate this is the case, then Canada has the choice either to implement just policies or acquiesce to the dismemberment of our country.

CONCLUSION

Christian communities have made a significant contribution to the structure, traditions, and wellbeing of Canada. I hope the constitution will be amended to enable, rather than hinder, Christian and other religious communities and institutions to serve our neighbours and contribute to the wellbeing of Canada. Thank you for this opportunity to share these ideas and proposals. I hope and pray they may contribute to a more just and equitable constitutional framework for all Canadians.

ENDNOTES

1. I benefited greatly from the critique of Keith Ward, Bob Bruinsma, Vaden House, Alyce Oosterhuis, Henry Schuurman, and Harry Groenewold. Any remaining problems or errors are my responsibility.
2. Alberta gives some public funding to independent colleges that meet basic requirements.
3. "Mission Statement," The King's College, Edmonton, Alberta.
4. For example, independent elementary and secondary schools receive no public funding in Ontario, and in Alberta they receive 28-31% of average schooling costs per child.
5. See James Skillen, Public Justice Report, Vol. 15, No 2, Nov. 1991, p. 2.
6. Toleration is putting up with views you do not believe true. If you are indifferent to another's views, you are not tolerating because you simply don't care. If you believe all truth is relative, you do not have to tolerate because then all views are true, or at least there is no standard to judge which view is true.
7. p. 12, my emphasis.
8. See section E below from more details.
9. The Alberta government offers 28-31% of the average schooling costs per child to category one independent schools.
10. From "Guidelines for Christian Political Service," Citizens for Public Justice, 229 College Street, Toronto, Ontario.