

# The multicultural diversity gene: Reality or myth?

## LEGIONS OF SORROWS

“When sorrows come, they come not single spies, but in battalions.” This wisdom of Shakespeare’s, in *Hamlet*, may easily be said today of the concepts of peaceful multiculturalism and diversity around the world. Examples abound: the July 7, 2005 bombings in my childhood home town of London, England; the fires and destruction in the banlieus of Paris; the murder of Dutch filmmaker, Theo Van Gogh, which has turned a tolerant Netherlands into a society in turmoil; the Madrid train bombings; and cartoons in Denmark that have turned that country into a meeting ground for the clash of civilizations within its boundaries and with the Muslim world at large.

But has Canada escaped from these battalions of sorrows that are afflicting peaceful multiculturalism and diversity elsewhere? Some have argued that we have escaped most of the sorrows because we are the only real global template for peaceful multiculturalism and diversity. We need to examine whether this is myth or reality.

Before September 11, 2001, the largest terrorist attack in North America had been against Canadians, in the Air India tragedy. More recently, Canadian complacency has been somewhat shaken by the arrest in Toronto of the alleged 18 jihadist terrorists who were plotting to bomb targets in Toronto and commit acts of violence elsewhere. In addition, we have seen Amed Ressayon use Canada as a base for his attempted millennium bombing of the Los Angeles airport; and a Canadian, Momin Khawaja, was convicted under the *Anti-terrorism Act* of conspiring with a British jihadist to commit very serious terrorist offences in Britain.

## A HISTORY LESSON

When Canada’s multiculturalism policy was first developed and promoted some

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When Canada’s multiculturalism policy was first developed and promoted some 33 years ago . . . it was a product more of political necessity and expediency than of global leadership.

33 years ago as a world-class model for the integration of ethnocultural communities into the mainstream of Canadian society, it was a product more of political necessity and expediency than of global leadership.

The origins of our multiculturalism policy were the backlash by these ethnocultural communities against the mandate and the findings of the Royal Commission on Bilingualism and Biculturalism (the title gave it away) in 1963, the goal of which was to provide a response to the demands of French-Canadian nationalism. The opposition to second-class citizenship and demands for equal treatment by the “third force” led to the Trudeau government’s proclaiming, on October 8, 1971, the official policy of multiculturalism within a bilingual frame-

work. There is no doubt that the growing electoral strength of the third force was a major motivator for the Trudeau government.

## ENTER THE CANADIAN STATE

However, the official goal of the new policy was to promote unity among different cultural groups while combatting discrimination against these groups and discouraging ethnocultural rivalries. The underlying philosophy of some of the promoters of the new policy was that state promotion of inclusion and recognition of the equal worth and value of each culture would lead to greater tolerance of and respect for other cultures in the growing cultural mosaic that Canada was evolving into.

What happened in 1971 was primarily the establishment of multiculturalism as an essential *ideological component* of the state. The “diversity gene” that allowed the notion of multiculturalism to be entrenched in Canadian society had a different origin. That came about by trial and much error through the relatively short history of the country. These earlier developments are what I suggest have shielded Canada, at least until now, from the worst of the sorrows of multiculturalism and diversity. But the shields are very fragile and need careful and continual reinforcing. Without the basis of the Canadian “diversity gene,” we would be more vulnerable to the battalions of sorrows that plague multiculturalism and diversity today around the world.

## CULTURAL DIFFERENCES AND THE BNA ACT

We may locate the origins of our diversity gene in 1763, with the Royal Proclamation granting the First Nations of British North America the status of protected nations, with the right to their own form of government. This treatment was very

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different from that meted out to First Nations in the Americas by the Portuguese, the Spanish, and, later, the Americans. In Canada, the Proclamation became the basis of the legal nature of Indian title and an historical root of the treaty process.

The Proclamation described the Aboriginal nations as autonomous political units living under the Crown's protection against the "great frauds and abuses" that had been meted out to them in other parts of British North America. The Proclamation portrayed the links between Aboriginal peoples and the Crown as broadly "confederal" ones through which their diversity would be respected. Its provisions underlie the surrenders and designations of reserves for the First Nations of Canada.

This early manifestation of the constitutive fact of diversity continued with the *Quebec Act* of 1774 which, unlike the results of military conquests anywhere else in the world at that time, bestowed the most fundamental of diversity rights on the French colonists by protecting their religion and their legal systems. In part this was an acknowledgment of the inevitable failure of the British assimilationist policies directed at the French population, as set out in the Royal Proclamation. The impending American Revolution and the fear that the "Canadiens" might join the Americans in the revolt led the British government to entrench the French fact in British North America by means of the *Quebec Act*.

The *Quebec Act* was a unique recognition of diversity in the British Empire. Roman Catholics were emancipated in Quebec a full half century before Catholics in Britain. The concessions made in the *Quebec Act* persuaded the Canadiens not to join the American Revolution; had Britain not passed the *Quebec Act* it is imaginable that Canada would not exist today.

Some historiographers would argue that giving diversity rights to the First Nations and the conquered French populations was motivated by fear of

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new conflicts with First Nations and of conquest from the South rather than by a profound valuing of diversity. But this action nevertheless represents the origin of what I term the Canadian diversity gene.

### THE DIVERSITY GENE: CURSE OR BLESSING?

The Canadian diversity gene was further strengthened by the underlying rationale and structure of Canadian confederation as established by the Quebec resolutions in 1864 and at Charlottetown in 1867. The guiding principles behind the *British North America Act* were to protect and promote regional and cultural differences while ensuring a central government strong enough to be the glue of that diversity. The goal was to give the central government sufficient resources and powers for expanding the new state westwards and dealing with regional disparities. As a constitutional lawyer, I have long argued that diversity and indeed the protection of the distinct society in francophone Canada is written into the fundamental constitutive document of this country.

The BNA Act was based on the 72 1864 Quebec resolutions strongly influ-

enced by the francophone founding architects of Confederation. The goal of these architects of Canada, such as George-Étienne Cartier, was to ensure "la survivance" of the French population living in Quebec by maintaining their control over their language, schools, and laws. The Act enabled each province to have its own specified powers to control its own distinct societies. The provincial legislatures were given, under the BNA Act, the power to make their own laws in 15 specific subject categories, and this allowed provincial diversity to flourish, especially through the provinces' being granted, by section 92(13) of the Act, jurisdiction over all matters dealing with property and civil rights.

These provisions were designed to entrench the pre-existing diversity gene in the fundamental constitutional document of the new country. The genius of the founding architects of Canadian nationhood was to entrench asymmetry up to the limits of the politically possible, but then to permit differences to flourish under other symmetrical provisions. I suggest that this constitutional diversity gene is also the historical source of the desire for what is termed *asymmetrical federalism* by Quebec federalists today.

### INTOLERANCE AND RACISM

However, the foundational constitutive facts of diversity in Canada have been greatly undermined since 1867 by vicious and overt governmental and societal acts of racism and discrimination against Aboriginal peoples, racial minorities, and indeed women from the dominant culture. The litany of such acts fills the pages of Canadian history texts, from the abuses at Indian residential schools, to racist immigration laws, such as the Chinese head tax, to the denial of equal occupational rights and the franchise to Asian immigrants, First Nations, and women. Among other instances, in our country's history, of the diversity ideal's being shamefully neglected are the expropriations and internments of Japanese Canadians and other immigrant

communities during the Second World War, when their only sin was to have origins in an enemy country. Another instance is the denial of sanctuary to European Jewish refugees, before and during the Second World War, due to rampant anti-Semitism.

Has this tragic record of racism and xenophobia, compiled from the earliest beginnings of the Canadian state, undermined its diversity gene and thereby opened it up to the battalions of sorrows today? There is no definitive answer, but it is safe to say that the non-discriminatory immigration policy of our more recent history has reinforced the diversity gene in Canada.

### THE ETHNIC PENALTY OF NON-EUROPEAN IMMIGRATION

The ethnic composition of the Canadian populace has also changed rapidly, reinforcing the diversity gene of the country. In 1957, European countries accounted for the top ten sources of immigrants, with the United Kingdom providing one-third of all immigrants. Forty years later, in 1997, non-European countries accounted for the top ten sources of immigration.

With such a dramatic increase in the diversity of immigration, the issue of the labour market's discrimination against the new immigrants would inevitably arise. To avoid the worst of these problems, immigration policy favoured the skilled workers among prospective immigrants. This class was sought after to provide the technical and other skills needed in the professions and to fill labour gaps.

The early warning sign of the deconstruction of the diversity gene in Canada is the emergence of the ethnic penalty in the labour force in Canada. Several studies of ethnic and racial discrimination in labour markets have been conducted in Canada. These studies seem to indicate that existing wage gaps between white and non-white workers cannot be accounted for by differences in education, occupation, or other demographic factors. Some ethnic communities have fared better than others. The


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evidence, not necessarily foolproof, may suggest that these wage gaps are the result of racial discrimination in all aspects of the labour market. These ethnic and racial penalties may be producing isolated communities that turn out to be the wellspring of the battalions of sorrows that will assail Canadian diversity in the near and distant future.

### EYES WIDE OPEN

We cannot afford to be blind to the possibility and even the probability that our immigration and settlement policies, our citizenship and cultural policies, our discriminatory labour markets, our Aboriginal policies, and our criminal justice laws and policies could well turn our diverse society into a multicultural

and racial rooming house. In this house, each stays within his or her own room, some faring better than others. Some are descending into a spiraling crisis of gangs, guns, youth murders, and vicious criminal activity. There is always the possibility that some of these will morph into highly dangerous organized criminals with the capacity to disrupt vital public transportation and other systems and ultimately even participate in terrorist activities. We need to pay much more attention to the common living spaces of shared and engaged citizenship.


The promise of substantial multiculturalism and the protection and promotion of our diversity gene should become the core of a radical national project for the 21st century. 

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these commissioners, Justice Dennis O'Connor and retired Justice Frank Iacobucci, are having an impact in the security certificate cases. There is a new process in place, with security-cleared lawyers appearing in the secret hearings to protect the interests of the Arab men. It is clear from the conduct of these cases, presently underway, that greater scrutiny is being given to the kinds of information the government relies on.

### SEPTEMBER 11 CANADA'S LITMUS TEST

September 11, 2001 was a litmus test for Canada. While the excesses of the Second World War, which saw the mass internment of the Japanese and the confiscation of their homes and properties, did not occur, what has been hap-

pening is just as egregious, although on a smaller scale. This has happened in spite of an official policy of multiculturalism and in spite of the entrenchment of equality principles and respect for other cultures into Canada's constitution. One can only hope that the work now being done, to call officials to account for stereotyping, results in mechanisms being put into place to ensure that it does not happen again. 

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