

3rd LaFontaine-Baldwin Lecture: Beverley McLachlin

December 20, 2003 | 5:15 am

The Civilization of Difference



Mesdames et Messieurs, distingués invités, j'ai l'immense honneur de prononcer devant vous ce soir le discours d'ouverture du quatrième symposium annuel Lafontaine-Baldwin. Dans ses activités d'écriture, le juge est le plus souvent encadré par des faits et des règles qui délimitent son propos, mais Son Excellence John Ralston Saul ainsi que l'Institut du Dominion m'offrent ici un terrain d'expression beaucoup moins balisé. Ceux qui m'ont précédée à cette tribune – un journaliste, un homme politique et un philosophe – ont partagé avec vous, sans contraintes, leurs valeurs les plus profondes. Je voudrais faire de même ce soir.

One problem, more than any other, dominates human history – the problem of how we deal with those who are different than us. Human beings share a vast catalogue of commonalities. Our genetic differences are negligible; women and men are equally creative and capable; those we label as ill or old or disabled are no less virtuous, deserving, or capable of contribution than others; and people from all cultures and societies share similar aspirations to be safe, to be loved, and to feel fulfilled. In sum, the similarities that unite human beings by far overshadow their differences.

Why is it then that our differences dominate discourse on every level – political, legal, social and domestic? Our headlines tell the story. East against west in the cold war. Serb against Croat in the Balkans. Hutus against Tutsi's in Rwanda-Burundi. Barely do these crises subside that a new schism seizes the front pages – fundamentalist Islam versus the western world. On the legal, social and domestic front we debate our differences with passion — the right of women to equal pay, the legitimacy of same-sex families, the place of religion in public life.

Tonight I propose to explore with you this issue. Why does difference dominate? How can we better manage difference? Canada, like other countries, has struggled with these questions. Sometimes we have answered them with exclusion and violence. Yet even in our beginnings we find another response – the response of respect, inclusion, and accommodation. Accommodation, in this context, means more than grudging concessions. Accommodation, in the strong sense in which I wish to use it, means ending exclusion, encouraging and nourishing the identity of the other, and celebrating the gifts of difference. It is this response that has come to characterize the modern Canada, shaping our thinking and our policy on women, first nations people and the profusion of races and cultures that constitute Canada in the 21st century.

I will return to the Canadian experience. But first, let me take a few moments to explore the underlying dynamic of difference.

The Dynamic of Difference

Why, despite our manifest commonality, do our differences, real and perceived, tend to define our world and dominate our discourse and our conduct?

Philosophers have long debated the phenomenon. Jean-Paul Sartre wrote of the “other” as the concept by which we define ourselves. In his book on identity and

language, *Oneself as Another*, Paul Ricoeur wrote of the “work of otherness at the heart of selfhood.” Michael Ignatieff has written movingly of “The Stranger in our Midst” in his book *The Needs of Strangers*, tracing the dialectic of difference and need in history and literature. Despite their varying contexts and perspectives, all agree on the essential role of difference in human experience.

An answer to the question of why we place so much emphasis on our differences lies in the inescapable human need to construct one’s identity within a social context. For all the celebrated individualism of recent decades, human beings are social beings. “A person only becomes a person through other people,” proclaims the African aphorism. To be human is to communicate, speak, and relate to other human beings. As Charles Taylor reminds us, group living is a prerequisite to full human agency. Yet in this intercourse with others, we are confronted by difference; and in the face of this difference we are impelled to a sense of what distinguishes us as physically, historically, and culturally unique. Indeed, we need this sense of identity to make sense of our worlds. Yet identity does not remain purely personal; identity itself becomes social. As we discover our distinguishing attributes — those elements in ourselves, our history, and our culture that we value — we bind ourselves to others who share these attributes and values. In the process, each person becomes a constellation of group identities – race, ethnicity, language, gender, religion and a host of other affiliations.

Group identity is a good thing. It binds us to a horizon formed by a common history and shared memory in which we can orient ourselves and give meaning to our lives. It tells us who we are and reassures us that we are worthy. And it grounds our cultures — the aggregations of norms, achievements, and institutions that are peculiar to a people. So long as group identity focuses on shared values, it is enriching and constructive.

But group identity can also be a bad thing. The obverse of commonality is difference. To say I am part of a group is also to say that I am not part of a different group. From here it is but a short step to seeing the different group as less worthy than the group to which we belong. What we see in the other but not in ourselves may seem strange and abject. The celebration of the attributes of one group quickly slips into the denial of the attributes of others; the affirmation of one group’s identity into the undermining of another group’s identity. The positive “We are good”, becomes the superlative “We are best”, with its implication that

those different from us are less worthy and less entitled to the full measure of human dignity and respect. Differences are magnified, even imagined, to serve the end of vaunting the merits of the dominant group. In its ultimate manifestation, this distortion of the group ethic results in the dehumanization of those perceived as different. They are no longer perceived as human beings, but as some lesser species whose rights may be denied with impunity.

The negative aspects of group identity tend to be self-reinforcing. Treating others as less worthy or able makes us feel stronger, more righteous, more powerful. We are doubly affirmed, first by our kinship with other members of our “superior” group, second by the presumed deficiencies of those outside the group. Treating those whom we perceive as different or whom we do not understand with dignity and respect is much more difficult.

The force of this dynamic of difference should not be denied, but faced full on in its historical reality. As John Ralston Saul stated in his 2000 Lafontaine-Baldwin Lecture, “the past is not the past. It is the context. The past — memory — is one of the most powerful, practical tools available to a civilized democracy.” The history of human beings is the history of oppression based on real and imagined difference. The Athenians invented democracy, but women and slaves were not recognized as part of the polis. The Romans treated the peoples they conquered as slaves. Medieval Christians crusaded against the Infidel. Societies from Russia to India relegated ordinary folk to the sub-human rank of serf or ‘untouchable’, denying them the most basic rights and opportunities. And in an atrocious distortion of group identity, the twentieth century witnessed the calculated dehumanization and destruction of Jews, gypsies and the mentally and physically disabled. We ignore this history at our peril.

This past is not our past; it is ever-present. Modern society condemns slavery, yet still women and children suffer its ravages. The world community decries discrimination, yet people are still treated as less worthy because of their race, ethnicity, gender, religion or disability. In Canada, we vaunt our multi-cultural society, yet still racism, anti-Semitism and religious intolerance lurk in our dark corners. The modern world holds out the promise of inclusion, but delivers the reality of exclusion; the exclusion of refugees driven from their homes; the exclusion of women and minorities from mainstream institutions; even the more mundane exclusion of the schoolyard bully. We proclaim the right of every

human being to life, yet so long as the memory of the events of September 11, 2001 remains we cannot deny that the stark goal of eliminating those seen as different dominates the agendas of many.

The imperative seems clear. President Wilson's observation that "nothing . . . is more likely to disturb the peace of the world than the treatment which might . . . be meted out to minorities" is as true today as it was in 1920. If we are not to perpetuate the tragedies of the past we must tame the dark side of difference. But how? Two solutions emerge.

The first solution looks at world history, deduces that human beings cannot be relied upon to treat those different from them with decency and dignity, and concludes that the only solution is to separate groups within autonomous nation states. Michael Ignatieff, in *The Needs of Strangers*, argues that ethnic groups "cannot depend on the uncertain and fitful protection of a world conscience defending them as examples of the universal abstraction Man," and therefore must be secured "their own place to be". The reorganization of Europe along ethnic lines and the creation of Israel reflect this thinking. And it is not without its virtues. As Georges Erasmus explained in his 2002 Lafontaine-Baldwin Lecture, self-rule confers a measure of respect and cultivates self-reliance and dignity. The sense of security gained from community self-determination is particularly important in cases where the countries of the world have been historically unable or unwilling to tend to the needs of given minority groups.

Yet for all of its attractions, the solution of finding an ethnic home for each of the peoples of the world does not offer the complete answer. First, in a world where most nation-states contain ethnic minorities and global movement of peoples is the norm, the ethnically defined nation state is difficult to maintain. Second, even if one could achieve and maintain the ethnically defined nation state, this would not prevent the confrontations between groups of states and ethnic blocks that dominate recent history. Third, the ethnic nation state solution only addresses part of the problem – the political part. It leaves untouched and even threatens to conceal other forms of discrimination and exclusion within the nation-state because it says nothing about respect or the essential value of human beings. Finally, as Alain Dubuc warned in his 2001 Lafontaine-Baldwin Lecture, nationalism, "if it is exalted, can easily become a tool of exclusion rather than a window on the world". We should not abandon the idea of the nation state as one

means of attending to the struggles of a pluralistic democracy; to quote John Ralston Saul in his 2000 Lecture, “democracy was and is entirely constructed inside the structure of the Western nation state”. Yet if the goal is to address the negative potential of group identity, the nation-state solution simply cannot go the whole distance.

This brings us to the second way of addressing the negative aspects of difference – promoting mutual respect and accommodation within the nation state. This approach rests on a single proposition — the intrinsic worth of every human being. In historical perspective, the idea is revolutionary. Throughout human history, the powerful and privileged have always treated those they view as different as less worthy. When historians look back on the last half of the 20th century and the beginning of the 21st, they will describe the idea that all people are equally worthy as one of the seminal ideas of our time.

Yet the ethic of respect and accommodation possesses venerable roots. One hears its echo in the declarations of western religion that all humans are created “in the image and likeness of God”. The European Enlightenment contributed to the secular conception of fundamental human worth by celebrating the universality of reason, and Immanuel Kant urged that we treat humans as ends and never only as means. The Romantic movement furnished a robust notion of authenticity, premised on the idea that each person held a unique and intrinsically valuable potential that would be unlocked through genuine expression in life.

These and other streams of thought converged and were filtered through the horrors of the first half of the 20th century.

The result was a coalesced notion of the intrinsic worth of all humans and a palpable sense that social and political recognition of this idea was critical. John P. Humphrey, one of Canada’s great contributors to the project of recognizing human rights, reflected this historical truth when he stated that, although human rights did not figure on the international stage prior in time, “[b]y 1945... the historical context had changed, and references to human rights run through the United Nations Charter like a golden thread”. We can now look back to the ultimate product of the work of Humphrey and others, the *Universal Declaration of Human Rights*, and find the clarion assertion that “recognition of the inherent

dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

Cette conception nouvelle de l'égalité fondamentale des êtres humains trouve son expression dans la langue du droit, à travers la reconnaissance des droits de la personne. L'égalité emporte avec elle le droit de chacun à la liberté. L'égalité n'existe que dans le respect de chaque individu. The new idea of the equal worth of every person finds expression in the legal language of rights – human rights. If all people are equal, it follows that all people are equally entitled to freedom, fair treatment, and respect. The rights are easily stated. The more difficult problem is to move them off the sterile page and into the reality of people's lives.

Formal declarations of equality are not enough to remove discrimination and exclusion. Indeed, they may perpetuate them. Formal equality is the equality of “separate but equal”. The group is hived off, labeled “different”, and told that they are equal with one important qualification – equal within their designated sphere. Cloaked by the facade of formal equality, group difference perpetuates denial. Examples are not hard to find. Formal equality allowed African Americans to live in forced segregation for decades. In the eyes of many, it still justifies treating women as different. You are equally worthy, these groups are told. It is just that you are different. Understanding and accommodating difference is essential to true equality. But when differences are manufactured, exaggerated or irrelevant, the result is to perpetuate inequality. True equality requires an honest appraisal of actual similarities and differences – an understanding of the context in which human devaluation occurs. To make equal worth a reality we need more than what Michael Ignatieff calls “rights talk”. We need to look beyond the words to the reality, or context of the individual and group, to understand the other in his or her full humanity. This requires an open and honest mind, a willingness to bridge the gap between groups with empathy. Only when we look at the member of a different group in this way are we able to give effect to the promise of equal worth and dignity.

Understood in this way, rights, like the nation state, create a protected space for difference within society; a space within which communities of cultural belonging can form and flourish under the broad canopy of civil society. This applies to the traditional “individual” rights which enable individuals to form and maintain the groups that constitute civil society, to adapt these groups to changing

circumstances, and to promote their views and interests to the wider population. Will Kymlicka states, “It is impossible to overstate the importance of freedom of association, religion, speech, mobility, and political organization for protecting group difference.” But a second kind of rights – group rights – are also important. These are rights that inhere in an individual not qua individual, but by reason of the groups to which he belongs, like protections for minority language and religion. “Were it not for these group-differentiated rights, the members of minority cultures would not have the same ability to live and work in their own language and culture that the members of majority cultures take for granted”. Together, individual and group rights contribute to an ethic of respect for difference and meaningful inclusion of multiple “others” in a diverse society.

Rights that acknowledge people as members of groups do not lead to a fragmented state. True, they are important to the communities they protect. But they also help us reach across the borders between groups and to establish a civic community embracing sometimes profoundly different groups. The language of rights can serve as a common language of understanding. As Harvard Law Professor Martha Minow puts it, “rights provide a language that depends upon and expresses human interconnection at the very moment when individuals ask others to recognize their separate interests”.

We must confront the dark side of human difference. We must recognize the price the marginalization of the other in our midst exacts – a price we pay in the coin of war, suffering and unrealized human potential. We must provide refuges for our minorities — the physical refuge of the protective nation state and the conceptual refuge of respect and accommodation embodied in the principle that all people, regardless of the group to which they are born or assigned, are equally worthy and equally deserving of respect. Only thus can we combat the discrimination and exclusion that have marred so much of human history.

The Canadian Experience

With this backdrop in mind, I now wish to turn to Canada’s experience with the dynamic of difference and what it means for us as Canadians as we enter the 21st century. Formed as it was from powerful groups with different linguistic, religious and cultural attributes, Canada, from its earliest days, recognized the need to practice the habits of respect and tolerance and to enshrine them in the law through the language of rights. In order to form a nation, Canadians had to

come to terms with difference by learning to respect other cultural and linguistic groups and by expressing a commitment to this respect through the provision of rights. Yet Canada was born in an era of ethno-nationalism, religious and linguistic intolerance, racism and gender inequality. These aspects of our past manifested as exclusionary, assimilationist, and discriminatory practices at various periods of our country's life. We must also look at these dark points in our past and be humbled by their existence. So a close examination of Canada's past can disclose both a strong foundation in the ethic of tolerance and inclusion, as well as the dark side of group belonging in the form of intolerant treatment. I want to explore both of these aspects of our heritage, in the hopes of ultimately demonstrating that, as Canada has matured and grown as a nation, we have embraced and cultivated the first of these traditions in order to do a better job of confronting the second – we have learned to value and institutionalize the ethic of respect for difference as a means of combating exclusionary thinking.

Canada is one of the few countries in the world which has from its beginning dealt with the issue of minorities and sub-groups by the two-pronged mechanism of the nation state and respect and tolerance of minorities within the nation state. Most of the world's countries grew up around and continue to adhere to the model of the ethnic nation state, often in the face of diverse ethnic groups within their borders. European nations like Germany and France still cling – with increasing difficulty to be sure – to the ideal of ethnic nationalism.

Canada's history is quite different. Other countries are only now awaking to the critical issue of dealing with the other in their midst. Canada, by contrast, was forced to come to terms with this reality from its very inception. The peace accords that ended the century-long wars between England and France in the late 18th century, left England in possession of France's former colonies in America. Two of the most important – Quebec and the Maritimes – lay within the territory of the future Canada. People in these lands spoke a different language and adhered to a different religion than their new rulers. England dealt with these two distinctive colonies in different ways.

The first epitomized the ethnic- exclusionary approach to dealing with minorities. England required the Maritime Francophones, the Acadians, to conform, at least to the extent of swearing oaths of allegiance to the British Crown. The failure to conform, perceived or real, led to the deportation of the Acadians to what is now

the United States and to far-flung points of Europe. Many eventually found their way back, but only after the separations and sufferings that inevitably follow such dispersion. The treatment of the Acadians remains a paradigmatic illustration of an exclusionary nation-state policy.

The Lower Canadian French population, on the other hand, was too large and too firmly implanted to be uprooted and disposed of in this way. England had little appetite for a conflict with its colonists in Quebec. And so, in the end, to truncate a long and complex story full of historical intricacies, it acceded to the demands of Governor Carleton (who camped three years in London insisting on his position) that the French-speaking people of Quebec be allowed to retain their language, religion and civil law tradition. Although motivated largely by pragmatic considerations, the product was a commitment to accommodation, embodied in the Quebec Act of 1774 – respect and tolerance, implemented through the mechanism of rights. Half a century later, discontent with colonial strictures led to democratic movements and rebellion in both Upper and Lower Canada. Lord Durham was sent out from England to find solutions. Lord Durham's Report of 1840 turned its back on Canada's history of accommodation and tolerance and recommended return to an assimilationist policy that gave prime place to England and English traditions. But, under the leadership of Lafontaine and Baldwin, the colonials rejected Lord Durham's vision of the assimilated unitary nation state. The former colonies of Upper and Lower Canada, Nova Scotia and New Brunswick that met in 1866 and 1867 to create the country of Canada had learned a critical lesson: the only way the new country could succeed was on the basis of a constitution that guaranteed mutual respect and tolerance. And so Canada was born, not of nationalism, but of the pragmatic necessity to accept difference.

This beginning created the space in which the colonies, soon to be joined by the colonies of British Columbia and Vancouver Island, Prince Edward Island, the prairie territories, and later Newfoundland and Labrador, could come together and grow. Confederation and the constitutional guarantee of rights provided a mechanism through which the dialogue of accommodation could be pursued – a dialogue that is still being pursued today on all manner of subjects, from government provision of medical care and federal-provincial views on the environment to the rights of sexual minorities and Aboriginal land claims.

One of the most discussed issues regarding group difference in Canada has been the provision of guarantees for minority language rights. Language, as much as any other feature, marks the minority as different than the majority since language forms the basis of communication. Human beings seem instinctively to view those who do not speak their own language as outside their cultural group. It is thus no surprise that despite the reality that many countries are multi-lingual, a single common language continues to be seen by many as the essential glue without which a nation will fall apart. Thus the distinguished American historian Arthur Schlesinger Jr. in *The Disuniting of America* argues that it would be folly for the United States to permit Spanish to achieve any sort of official status. Schlesinger argues that “institutionalized bilingualism shuts doors. It nourishes self-ghettoization, and ghettoization nourishes racial antagonism... Using some language other than English dooms people to second-class citizenship in American society”.

In fact, however, the Canadian experience with bilingualism can be argued to support the opposite conclusion – that in states facing the reality of widely entrenched linguistic difference, recognition of the right to use minority languages furthers national unity. Canada’s minority language and religion guarantees continue to serve their intended purpose – the purpose of providing security to minority citizens that the majority will respect their identities. Minority linguistic rights serve as a bulwark against fear of marginalization, allowing them to participate as equal citizens secure in the knowledge that they will not be excluded because of their linguistic identity. The economic cost of bilingual services is far outweighed by the benefits of inclusion. As Chief Justice Dickson stated for the Supreme Court of Canada in 1990, “any broad guarantee of language rights ... cannot be separated from a concern for the culture associated with the language. Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them”. To draw linguistic interests into the protective embrace of the state is, therefore, a means of expressing society’s commitment to the integrity of cultures and respect for the dignity of individuals.

En somme, la protection constitutionnelle des deux langues officielles au Canada souligne le rôle essentiel de la langue dans la conception que chacun se fait de son identité. Elle souligne en même temps le caractère primordial, pour notre

société, de l'intégrité des cultures et du respect de la dignité de chaque personne qui s'exprime à travers des caractéristiques culturelles aussi riches que diversifiées.

Canada's foundation in the ethic of respect and tolerance provided space for citizens of two diverse cultures to work out their political, linguistic and religious differences in a climate of mutual accommodation. It did not, however, mean that the old exclusionary way of thinking did not persist. Sadly, against the backdrop of our remarkable history of accommodation and respect, Canada's first century was marred by the ethic of the assimilation and exclusion of peoples it slotted into special groups — its first inhabitants, the Aboriginal Peoples; immigrants of so-called "different" races — that is, neither French nor English; and the 52% or so of the population who were women.

Our country's policy toward the ancestral inhabitants of Canada's lands, the Aboriginal Peoples, has throughout its history veered between exclusion and assimilation on the one hand and respectful acceptance on the other. Prior to Confederation, Aboriginal groups were more often than not treated as autonomous nations. Indeed, the Hurons and Mohawk nations played important opposing roles in the Franco-British wars on what was to become Canadian Territory. But in the 19th Century, as settlement progressed, exclusion, confinement and assimilation came to dominate Canadian policy. The results, most now agree, were at best a failure, at worst tragic. Only in recent decades have First Nations people begun to reclaim their group identity and their rightful place in our country.

The 1996 report of the Royal Commission on Aboriginal Peoples laid bare for Canadians a history which can without exaggeration be characterized as institutionalized discrimination. The Royal Proclamation of 1763 recognized the entitlement of Aboriginal Peoples to their lands and stipulated that these must not be taken from them unless they consented by agreement with the Crown. Translated into the Realpolitik of the 19th Century, this meant the Treaty system, whereby the Indians, as they were called, gave up right to their larger territories in return for a small parcel of reserved land — the reservation — and minor gifts. In British Columbia, treaties were not entered into; First Nations people were simply allotted parcels upon which to live.

The second-class status of Aboriginal Peoples was clear. In 1857 Upper Canada passed the *Act to Encourage the Gradual Civilization of the Indian Tribes in this Province*, which provided for the enfranchisement of Indians of “good character” who would, thereafter, be declared to be “non-Indian.” The theory was clear. Aboriginal Peoples were regarded as “uncivilized savages”. The only solution was to change them to “non-Indians”, or in words of Prime Minister John A. Macdonald to “do away with the tribal system, and assimilate the Indian people in all respects with the inhabitants of the Dominion.” Following passage of the first Indian Act in 1876, native cultural institutions and spiritual practices came under attack. On the west coast, the potlatch ceremony was prohibited. On the plains, the police were called in to break up the sun dance, a ceremony thick with cultural significance for the Aboriginal Peoples of the prairies.

In illogical locked step, assimilationist policies were paired with exclusionary practices in the pervasive reserve system. The very peoples the leaders were proclaiming should be assimilated found themselves virtual prisoners on their reservations with the Department of Indian Affairs adoption of the pass system in 1885. The residential school system, established first in 1849 in Alderville, Ontario, and subsequently expanded, likewise combined exclusionary and assimilationist impulses, with the often tragic consequences that are only now coming fully to light. Policies were no better in the early part of the 20th century. The assimilation-exclusion model persisted. On the exclusionary side, Canadian Aboriginals were not permitted to vote until the 1950's and 60's, unless they renounced their aboriginal status. On the assimilation side, Duncan Campbell Scott, Deputy Superintendent of Indian Affairs, stated in 1920 that government policy was “to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question and no Indian department.”

The simultaneous pursuit of exclusion and assimilation produced cultural displacement, marginalization, and tragic loss of identity and self-esteem. The policy of exclusion cut Aboriginal Peoples off from opportunities available to the rest of the country. At the same time, the policy of assimilation undermined their identity as members of a group — their shared history, language and culture. The good aspects of the group dynamic — a solid identity rooted in one's history and culture — were weakened; the negative aspects — isolation, alienation and lack of opportunity — enhanced. Despite the often good intentions of well-meaning

men, it is difficult to conceive in retrospect of a more problematic approach to the other.

One can only grieve the loss to our country through the exclusion and undermining of Aboriginal cultures. I grew up in a small community in southwestern Alberta. A few miles from the school I attended lay the Reserve of the Peigan Peoples, a tribe of the Blackfoot Confederation, which had for centuries dominated the western plains area of what is now Canada and the northern United States. Apart from the people who came to work on the ranch from time to time I knew little of life on the Reserve. My friends were my school friends. The Peigan children attended a reserve school. Equal maybe. But definitely separate.

In my final year of high school, two students from the Reserve joined our class. They earned good grades, starred on the basketball team, and excelled at art. Both wanted to go to University. One, in particular, wanted to become a lawyer. I remember George telling me of his dream; in those days such an elevated vocation for myself had not crossed my mind.

George, however, faced one formidable hurdle. In those days, admission to University in Alberta required a second language credit. The only languages accepted were French, Latin or German. George spoke two languages fluently – Blackfoot and English. However, despite excellent marks in all other subjects, he could not pass the Departmental exam for French. So George did not head off to University with me in the fall. He went instead to Calgary to take special courses in French. I do not know much of George's end. But I do know that he never realized his dream of becoming a lawyer. Why? Because, returning to the theme I took up earlier, the ethic of formal equality was unable to comprehend his reality and accord him his full worth and dignity. The loss was not only his; it was ours.

Aboriginal Peoples responded to the policy of assimilation-exclusion with "consistent resistance", as Georges Erasmus explained in his 2002 Lecture. Recent years have witnessed community renaissance. Aboriginal Peoples have begun a process of rediscovering their traditions and values, rebuilding communities, and exploring and sharing their cultures. Constitutional protections have been extended to the Aboriginal community, providing a legal safe-haven in which Aboriginal group interests can flourish. On the non-Aboriginal side, paternalism and exclusion are increasingly being replaced by

respect and accommodation. To quote Georges Erasmus once more: “[g]aining recognition of Aboriginal rights in the courts and entrenchment in the Constitution have been critical to restoring Aboriginal peoples as active agents in directing our collective lives”.

Canada’s history of minority exclusion and marginalization of those belonging to groups labeled “different” is not confined to the Aboriginal community. Chinese-Canadians came to Canada to help build our railroads. Their task completed, they found themselves burdened with oppressive and discriminatory laws. Head taxes were imposed on entry. Impediments to the immigration of women were adopted. The lack of Chinese women in turn gave rise to irrational fears that Chinese men would prey on white women, and led to prohibitions on the employment of white women by Chinese men.

Black Canadians too felt the cold touch of exclusion and racism. Between 1782 and 1785 about 3,500 blacks, most former slaves who had fought for Britain in return for freedom, fled to what is now Nova Scotia and New Brunswick at the close of the American Revolution. Once in the Maritimes, they were cheated of land, forced to work on public projects like road building and denied equal status with whites. Disappointed, 1,190 men, women and children left Halifax on 15 ships for Sierra Leone. Sixty-five died on route. In 1796 six hundred Maroons – people with a long tradition of resistance to European rule – arrived in the Maritimes to face the same miserable conditions as the freed Black Loyalists. They too left for Sierra Leone. In 1814-15, 3,000 or so American black refugees from the war of 1812 settled in the Maritimes, and in the 1920’s hundreds of Caribbean immigrants, called “later arrivals”, came to Cape Breton to work in the mines and steel mills. Quebec and Ontario saw similar migrations, and black colonies were established in the west of Canada. Black people came to Canada expecting respect and accommodation. They found little of either. Despite the abolition of slavery in 1833, black Canadians found themselves excluded from schools, churches, restaurants, hospitals and public transportation, and denied equal housing and employment opportunities.

The list of racial groups that have suffered exclusion and discrimination goes on and on. Ukranian Canadians were interned in World War I. Japanese Canadians, as well as men of German and Italian origin, were sent to camps during World War II. Well into the 20th century Anti-Semitism forbade Jewish Canadians from

holding property in designated areas. And in a dramatic expression of intolerance and lack of respect for the “other” who is labeled as different, legislation in the mid-twentieth century permitted the eugenic policy of sterilizing people deemed mentally deficient.

Perhaps the most far-reaching example of exclusionary-thinking is the history of our treatment of women. Women make up 52% of the Canadian population. Yet for much of Canadian history, women have been relegated to an inferior status in society. Why? Again the familiar premise – women are different. The obvious biological difference between men and women was extrapolated to apply to all forms of feminine functioning. Women had smaller and less clever brains. Women were congenitally weaker. Women functioned emotionally; only men could think. From here it was but a short logical leap to conclude that women should not be permitted to vote or practice medicine or law and should be barred from public office. The effect of these illogical leaps into stereotype was to deny women first-class status. Their identity as thinking, responsible human beings was challenged, their humanity denied. People perhaps, full persons, certainly not.

Women in Canada, as elsewhere in the western world, began to challenge these assumptions at the end of the 19th century. They fought for legal rights and they won them. It took a long time. Canadian women did not win the right to vote in federal elections until 1920. And it was only in 1929, with the now-famous “Persons Case”, that the law recognized that women were “persons” entitled to hold public office.

However, as with the struggle of Aboriginal Peoples, legal equality for women did not translate into actual equality. Old ideas die hard. In the minds of many, women remained a fundamentally different kind of human being, with corresponding fundamental limitations. Women were fit for domestic roles, fit to serve as secretaries and nurses and other kinds of assistants. They clearly were not, however, up to the big jobs. This exclusionist thinking was buttressed by ingrained attitudes that the primary place of women was in the home with the children. Women who wanted to serve in law, medicine or politics could attempt to do so, but they faced an up-hill struggle against the prevailing attitudes of the day and seldom got to the top. The difficulties they faced led to statements like

that of French journalist Françoise Giroud, “Women’s problems will be solved when a mediocre woman holds a major job”.

It is now widely accepted that there is no justification for sweeping negative generalizations about the ability and temperament of women. It is accepted that women can and do play with equal effectiveness in all walks of life. And it is accepted – by many if not all – that cooking and childcare is not an exclusively feminine gift; men too can enjoy and excel in these activities. Why then did we persist so long in our belief that women were fundamentally unsuited for anything but working in the home and assisting men in grander pursuits? The answer brings us back to the dynamic of difference. Instead of evaluating the differences between men and women honestly and with an open mind, people magnified those differences and extrapolated them into conclusions which bore no relation to the actual abilities of women and paid no respect to their right to choose their path in life. In a word, stereotype transmuted into popular, hence unassailable, wisdom. Myth supplanting reality shut women out.

Why did the myth of female inadequacy persist so long? Why indeed does it still exert a tenacious power over our deepest attitudes and actions? Why can we not simply acknowledge, as we increasingly do with ethnic minorities, that the biological differences between men and women should not limit their place in society? Why, in short, can we not, where women are concerned, move from an exclusionary mentality to an inclusionary mentality? The answers are complex. Social and religious institutions may buttress an exclusionary mentality, as may the very structures of our institutions.

For example, many Canadian offices and workplaces continue to be organized on the Edwardian model of a century past. The family breadwinner (presumptively Papa) is expected to be available for work and travel at any time. This is made possible because the family homemaker (presumptively Mama) devotes her exclusive efforts to the home and family. This model no longer fits the reality of Canadian families, where increasingly both parents must work outside the home to earn the necessary income and both parents are involved with domestic and child-rearing tasks. We are beginning to explore ways to bring our workplace organization into sync with the reality of our lives – day care centres on the jobsite, childcare programs, flex time and working from home are among the options being explored. So long as we organize our workplaces on

Edwardian lines, women will find themselves at best stressed and at worst falling back into the default role of sole domestic care-giver, reinforcing the old attitudes.

Workplace organization is important. But so is workplace culture. “Why”, I recently heard the senior partner a national firm lament, “do so many women leave the firm after only a few years? They are among the brightest of our young recruits. We invest in them. We give them flex-time. Yet they leave in greater numbers than their male counterparts, usually for another job that entails just as much work. We know where they go but we don’t know why.”

It would be presumptuous of me to venture an answer to this honest and important query. Yet I am struck by an observation I recently heard – to be happy in a workplace one needs friends and at least one mentor. Here we encounter another aspect of finding a place for minorities in majoritarian institutions, be the minority a racial minority, a religious minority or a gender minority. The minority person may find the workplace culture hostile or at very least, less than comfortable. Sexual harassment was once common and tolerated in the workplace culture; it is now legally and socially taboo. Yet in more subtle ways, the minority employee may come to feel devalued. People need support. People need mentors. Members of workplace minorities may find less support and fewer mentors than members of the workplace majority. We should not be surprised if they then seek more supportive environments. The lesson is simple. Prohibition is not the only way to exclude. The other in our midst may be excluded or marginalized in much more subtle ways.

If Canada has not won the war against the exclusion of women, we have fought the first important battles. We have rejected the exclusionary politics that once denied women access to the levers of influence, power and full societal participation. We lead other nations in the opportunities we open to women. We have more senior female judges, more female university professors, more practicing physicians than many western countries. Personally, I believe that in my own profession, the law, it is easier for a woman to succeed in Canada than almost anywhere else. Yet despite these achievements — and they are not inconsiderable — we still have terrain to take. Women’s equality issues remain very much alive. Few women occupy the highest seats of political office and commerce. Statistics Canada tells us we have not achieved pay equity. And violence against women is a persistent problem.

Canada's record on the treatment of Aboriginal Peoples, racial minorities and women — not to mention gays and lesbians — teaches us that notwithstanding our nation's foundation in the ethic of tolerance and accommodation, we are not immune from the evils of exclusionary thinking. The natural inclination of the majority and the powerful to see the minority and less powerful as less worthy and less entitled to share in all aspects of the country's life, has repeatedly surfaced on Canadian territory. We devalued Aboriginal Peoples, ethnic minorities, disabled people, and women, much as others elsewhere devalued the same groups. This must not be minimized. Yet from this complex and troubling history, we are slowly progressing towards a society where all people are fully valued, whatever their race, religion or gender. Since the Second World War and the international acknowledgment of the equal worth of all and the concomitant right to equal treatment, Canada has moved more quickly than many other countries to a more inclusionary, respectful model of society.

The law, while not the entire answer, has played a pivotal role in this progression. Canadian legislators reacted swiftly in the wake of World War II and the horrors of the Holocaust to protect minority rights. In 1944 Ontario passed the *Racial Discrimination Act* which prohibited the publication or dissemination of materials that expressed racial or religious discrimination. In 1947, the *Saskatchewan Bill of Rights Act* began a revolution in legislation that sought to be broadly protective of rights and civil liberties. These legislative innovations dove-tailed with the momentum building at the international level around the adoption of the *Universal Declaration of Human Rights*. In 1962, the first *Ontario Human Rights Code* proclaimed "the inherent dignity and the equal and inalienable rights of all members of the human family" . . . "in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations." Nova Scotia's *Human Rights Act* came in the next year, followed by Alberta, New Brunswick, and P.E.I. By 1973, all provinces had enacted human rights laws and in 1976, the federal government followed suit.

The adoption of the *Charter of Rights and Freedoms* in 1982 elevated the basic human rights, aboriginal rights and equality to the status of supreme law, against which all government actions and legislation must be assessed.

The *Charter* stands as Canada's ultimate expression of our commitment to freedom and human dignity. *La Charte est l'expression ultime et profondément canadienne de la primauté accordée à la liberté et à la dignité humaine.*

The Charter has had a monumental impact on Canadian law and, indeed, in what Kent Roach has called a “heavy export trade in the *Charter*”, the law of other countries. Yet the *Charter* is more than a litigation tool or a lawyer’s text. A glance at our newspapers shows the extent to which the *Charter*, and the values and principles it embodies, have been internalized by Canadians. Alain Dubuchas argued that the speed and readiness with which the rights enshrined in the *Charter of Rights and Freedoms* were taken up by Canadians was the product of an abiding national insecurity about our identity. I prefer to think that the *Charter* manifests an ethic of respect and inclusion that has been part of Canada’s fabric from its beginnings, and the way in which Canadians have embraced the *Charter* demonstrates its tremendous resonance with our country’s identity. As I have tried to show, in Canada a unique political and cultural history is intertwined with a universalized ethic of respect and accommodation. The former constitutes our roots and shows us the path we have traveled as a nation. The second expands our sense of ourselves by including a commitment to respect for all kinds of difference in an unknowable future. Both are now immutable aspects of our Country’s identity, and both are reflected in the *Charter*.

In this way, the *Charter*, more than any other document, expresses the Canadian ethic, the country’s sense of itself. The *Charter* also provides all of us, regardless of race, religion, or gender, with a secure space in which to realize our aspirations. Finally, the language of the *Charter* provides a common vocabulary in which we can cast our various perspectives, giving all Canadians access to the public space in which some of our country’s most difficult and contentious issues are debated. The *Charter* has not created consensus. But by expressing our most fundamental values — above all the respect we hold for others, regardless of their differences — it has strengthened us and given each of us a place to stand. And by giving us the common vocabulary of rights it has provided a forum for understanding one another’s circumstances and working out the accommodations so essential in a diverse, multi-cultural society.

The *Charter* protects difference. But, independent of any particularized rights, respect for minorities has become an inseverable component of our constitutional fabric. On August 20, 1998, the Supreme Court of Canada rendered its judgment in the *Reference re: the Secession of Quebec*. Noting our long tradition of protecting minority rights, the Court recognized the protection of minorities, along

with federalism, democracy, constitutionalism and the rule of law, as one of the foundational principles subtending our constitutional architecture.

Canada, as a nation grounded in difference and respect, has erected an impressive legal structure to protect difference. But this structure is not merely law. This is no alien, imposed legal order. It is a structure that expresses our history of respecting minorities and our ever-strengthening commitment to the policies of inclusion and accommodation and to the belief in the fundamental dignity and worth of each human being. Inclusion and equality cannot be achieved by mere rights. But when the rights reflect a nation's values and are accepted as a means of brokering our differences and finding accommodation, they take on profound importance. And when we add to the mix attitudes of tolerance, respect and generosity – attitudes which Canadians possess in good measure – the prospects become bright for the inclusive society of which we dream. Michael Ignatieff writes in *The Needs of Strangers* that “Love ... is perhaps the most desperate and insistent of all human needs. Yet we cannot force someone to love us. We cannot claim love as a human right.”

My hope is this. If we cannot claim love, we must strive for respect and accommodation. And as national ambitions go, that's not bad.