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THE TIES THAT BIND: A REVIEW OF MICHAEL IGNATIEFF'S THE RIGHTS REVOLUTION

Cristie L. Ford

Michael Ignatieff says that his latest book, *THE RIGHTS REVOLUTION*, is a “modest exercise in democratic education.”¹ Its text was delivered originally in five parts for the famed Massey Lectures Series, and broadcast on CBC Radio in November 2000. In fact, this small book – it is only 141 pages long – grapples with some very big questions: how can a modern society reconcile political equality and social diversity? do group rights jeopardize individual rights? do individual rights weaken the idea of community? *what* is going on in Canada, and why have we seen so many constitutional and social crises in recent years? Just as ambitiously, the book tries to address two audiences simultaneously: political and legal academics that have made careers writing about such things, and an informed lay audience that wants to locate Canadian public life within a larger discussion of rights, democracy, and equality.

None of this makes this dense and idiosyncratic book easy to read, or easy to review. Yet Ignatieff’s snapshot of the state of modern Canada is too insightful to be ignored. Ignatieff’s book asks what, for Canadians, is the hardest question of all: whether or not the “rights culture” we have developed over the last generation will be enough to hold our society together, in face of the many and profound cross-cutting forces that threaten to pull it apart. His conclusion – almost a year ago now – was hopeful, but open ended. As the anniversary of the lectures rolls around, it is time to consider whether we know anything more about the answer to his question.²

Ignatieff sets the stage for his discussion by way of a sweeping, high-speed tour through Canada’s political and social landscape, highlighting such features as Quebec’s secession debate, aboriginal self-government, the evolving

¹ MICHAEL IGNATIEFF, *THE RIGHTS REVOLUTION* (Toronto: Anansi Press, 2000) [hereinafter “IGNATIEFF”] at x.

² I have chosen to emphasize what I see as the book’s primary themes, which are national and political in orientation. At least one commentator has discussed the book’s international human rights themes in some depth: see Andres Kahar, “Michael Ignatieff’s Surprising Habits,” *Peace Magazine* (Apr-June 2001), online: <<http://www.peacemagazine.org/0104/kahar.htm>> (date accessed: June 13, 2001). Ignatieff also devotes the whole fourth of his five chapters to considering the effect of the rights revolution on the “private” sphere of the family, where Canadians continue to struggle with the balance between the personal drive toward “authenticity,” respect for others, and respect for the family as a unit. While it is gratifying to see the sphere of the family incorporated into this argument, the chapter is primarily an illustration, in a parallel factual context, of themes developed earlier in the book.

nature of the family, and the impact of immigration. The image of the Canadian cultural environment that emerges looks like this (and both he and I are being impressionistic here): first, the country bears the inheritance of three “*nations*” – the English, the French, and the aboriginal – that, unlike other “minority groups,” assert collective political rights based on the fact that they were present when Canada was created such that its original legitimacy rested (or ought to have rested) on their consent. Second, those nations disagree profoundly with each other when it comes to central truths about Canadian history and identity. According to Ignatieff, this cuts deeper than just contested interpretations of a common experience in whose truth everyone ultimately believes. He argues that Canada’s constituent nations literally do not inhabit the same historical reality, even though they share a coincidence of time and place; they are three solitudes. Third, this historical Canada is being transformed by fundamental demographic shifts, particularly the presence of more recent immigrant populations that are not prepared simply to accept the “founding nations” mythology on which the federation’s original parties struck their bargain. For these new Canadians, the notion of Canada as a pact between founding nations undermines not only the rhetoric of multiculturalism, but also all Canadians’ legitimate claims to inclusion as equal, rights-bearing citizens.

Ignatieff’s keen eye picks up how Canadians have longed at times to be a straightforward nation of individuals, freed from the encrustations of history and group allegiance. He argues, for example, that Trudeau’s bilingualism policy was really aimed at eliminating the political significance of one’s francophone or anglophone status, rather than at celebrating the country’s dual linguistic heritage. On the other hand, Ignatieff points to the persistent role that linguistic, religious and educational *group* allegiances have played in Canada, and to the group-conscious political theory that Canadians like Charles Taylor and Will Kymlicka have produced.³ He argues that multinational, multi-ethnic states like Canada cannot be described accurately either as a nation of identical rights-bearing individuals operating within an undifferentiated political space, or as a patchwork quilt of distinct national collectives contained in one state; they are both. The consequence is a continual tension between individual identity and group affiliation that has resurfaced in various guises throughout the country’s history. Ignatieff observes correctly that in this environment, the delicate Canadian federation traditionally has been kept up – for at least a

³ Even if some of these thinkers might not do so themselves, Ignatieff offers that one could speak of a “Canadian school of rights thought” that includes Will Kymlicka, Charles Taylor, James Tully, Peter Russell, Stéphane Dion, and Guy Laforest. Ignatieff correctly identifies his heavy debt to Kymlicka, in particular WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS* (1995), and also to Charles Taylor, *The Politics of Recognition*, *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* (Amy Gutmann, ed., 1994).

century almost everyone seemed to believe, in good faith, that it could only be kept up – as a conscious, tightly choreographed political dance directed by a select few powerbrokers and constitutional specialists, with minimal input from or accountability to the citizenry.

Enter, unexpectedly, a Rights Revolution. Beginning in the 1960s but reaching a zenith over the last decade, the struggles of women and minorities for full civil rights, and the struggle of aboriginal peoples for self-government, have widened and deepened the scope of political debate. Rights talk has seeped into every conversation and even become something of a trump card, not only in the public, but also the social and private spheres. The arguments mustered in favour of expanded rights recognition have been compelling. As a result, Ignatieff argues (a bit prematurely, I think) that for the first time in their history Western liberal societies are trying to make democracy work on conditions of total inclusion – not only of propertied men, or whites, or traditional dual-gender married couples, but of everyone. Greater inclusion is, of course, more just; yet the rights revolution has also been divisive and destabilizing. Certainly in Canada, the increasingly democratic and disputatious nature of political debate has made the country harder to govern by usual means. To switch to the author's metaphor, the "high priests of federalism," who for 125 years "interpret[ed] the sacred texts and wave[d] the incense of rhetoric in the direction of the congregation," had lost control utterly of the "rituals of unity" by the time of the 1995 Quebec Referendum.⁴

The book's most important question is how the explosion of rights talk is shaping a particularly Canadian neurosis: the view of our history as an unresolved struggle to fashion a common sense of identity and place in the world. Ignatieff poses it squarely: the central question for Canada at this point in its rights revolution is whether a culture based on rights "is enough to hold the country together, whether it creates a sufficiently robust sense of belonging, and a sufficiently warm-hearted kind of mutual recognition, to enable us to solve our differences peacefully."⁵ He does not try to finesse the answer; there are no satisfied nods to geography, "Good Government," non-Americanness, or even beer commercials.⁶ Ignatieff recognizes that the country faced alarming doubts in the 1990s, not only about what held it together as a state but also about what, other than necessity and historical accident, held Canadians together as a society. But Ignatieff's most arresting observation is that in

⁴ IGNATIEFF, *supra* note 1 at 116.

⁵ IGNATIEFF, *supra* note 1 at 126.

⁶ See Jeff Jacoby, "The Unbearable Lightness of Being Canadian," [Boston Globe Frontpage Magazine](http://216.247.220.66/jacoby/2000/jj04-21-00.htm) (April 20, 2000), online <<http://216.247.220.66/jacoby/2000/jj04-21-00.htm>> (date accessed: 4 September 2001).

contemporary Canada, it's a rights culture or *nothing*, no Canada; this state cannot fall back on blood or culture or even common history.

In an attempt to understand where events have taken us, the author looks at what recognizing rights actually means for a society. He distills his own concept of "rights" down to four key elements at the end of the book's second chapter.⁷ First and most basically, rights mandate limits on the use of force against human beings. Second, rights create reciprocities, which are the bedrock of communities; they express not only individual but also collective values. Third, the supreme value that rights protect is human agency (which he defines as "the capacity of individuals to set themselves goals and to accomplish them as they see fit"⁸). Because individual agency manifests in uniqueness, not sameness, Ignatieff advocates the "recognition" of difference (as Charles Taylor uses the term), and a focus on reciprocity – that is, on a demonstrated give-and-take between parts of society – rather than on mirror-image identity of treatment. Fourth, rights are not abstractions. They represent the core of a society's values, as forged by its own unique history and through the efforts of its own ancestors.

Each of these observations receives sophisticated treatment in Ignatieff's hands, but the second one is the most relevant here. In claiming that reciprocal rights are community-creating, Ignatieff disagrees with Mary Ann Glendon, who coined the term "rights talk" and who would set rights and community in opposition to each other.⁹ Ignatieff argues that rights are not only dynamic themselves, but also have the potential to transform the landscape around them. Rights themselves can be a source of legitimacy and cohesion. By recognizing reciprocal rights, groups can create a particular kind of community, based on a "rights culture," even where other cultural or

⁷ The fact that the author chose not to be more precise, earlier, about the term "rights" also makes the book slower going than it otherwise would be. For example, in a single chapter he talks about the tension between "rights" and democracy; about "rights" as indications of what we as citizens value; and about "rights" as the positive and negative entitlements citizens can lay claim to from the state. Ignatieff also weighs group and individual rights against each other at times as though they were comparable units of measurement and not, as some people believe, altogether different things. (None of this includes "human rights," which he treats separately and at length by way of moving examples from international and refugee law and the history of war crimes.) There is something to be said for underdefining arguably overtheorized ideas, not only when lecturing on a radio show. Yet for those who have been trained to recognize each of his observations as shorthand for entirely separate conversations, the effect is disorienting. More importantly for his general audience, which may not have tried to reconcile equality with diversity from this perspective before, the result is a somewhat unwieldy "backpack" concept of rights to have to carry around.

⁸ IGNATIEFF, *supra* note 1 at 23.

⁹ MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* (1991).

historical ties may not pre-exist. That community is based on the principle that all individuals are deliberative equals, that no group may be excluded from the public forum simply by virtue of who they are, and that the essential strategy and the ultimate goal are both to stay in the room and keep talking, no matter how large our differences may seem. Inevitably the political space of rights cultures will be conflictual and unfinished, but this is not a bad thing. For Ignatieff, the balance that just, pluralistic societies need to seek is one in which there is “just enough collective sense of purpose to resolve these disputes, but not so much as to force individuals into a communitarian strait-jacket.”¹⁰ In his view, if the goal is to permit human agency and diversity, then this is as much unity as modern life can afford.

Ignatieff finds it painful that outsiders don’t recognize how significant and how promising the Canadian experiment is. Ours is not the only modern heterogeneous society facing the great challenge of “[reconciling] equality with diversity in an age of entitlement,”¹¹ but it is one of only a handful trying to do so within a political space so contested that continued national existence is at risk. Moreover, what Ignatieff calls Canada’s civic nationalist rights culture is remarkable for how much weight it gives to both group recognition and individual rights, equality and human agency. Ignatieff argues compellingly that Canada’s political culture may even be the country’s most distinctive and unifying feature. The truth, however, is that we cannot yet be sure that the Canadian experiment will work here, let alone be instructive to anyone else. Ignatieff has posed the burning question facing us – a hugely significant act – but he has not answered it.

It is frustrating that there is so little *how* in this book. Ignatieff believes, as I do, that equal rights alongside ongoing, respectful dialogue between individuals and groups represent the most promising way forward for the country. We agree that that where common history and experience are lacking, equal and reciprocal rights alone cannot create a community, but they can create trust. Yet the concept of equal rights is too vague to ensure an automatic progression to recognition, mutual trust, and community. Respectful dialogue does not just happen. The very least that can be said is that deep diversity, equal rights, and effective public deliberation relate in complicated ways.

The next step for Canada has to be more work on the tricky details of turning a rights revolution into the foundation of a satisfying and sustainable community. Some important work already exists: even within the covers of this short book Ignatieff could have pointed to the work going on in the

¹⁰ IGNATIEFF, *supra* note 1 at 34.

¹¹ IGNATIEFF, *supra* note 1 at 138.

(foreign-sounding but not actually that foreign) Civic Republican school of constitutional legal thought, to which his presentation owes a great deal.¹² Modern Civic Republicanism, which emphasizes active citizen participation as a means of creating community and evolving social norms, could be an attractive approach for a country that nearly unravelled for lack of a common vision of itself. I would also have liked to see Ignatieff turn his mind more explicitly to bridging the gap – surely this work is not done – between liberalism, republicanism, and the Canadian “multicultural” school of thought with which he also identifies.¹³

Just as importantly, Ignatieff could have talked about the actual processes by which this rights revolution could be nudged in the direction of respectful community-building dialogue – processes that include ensuring that effective and accessible forums exist for democratic conversations about rights-balancing; that public decision-making processes are demonstrably legitimate, accountable, and transparent; and that mechanisms are in place to recognize and build on the successful trust-building strategies that do evolve in practice.¹⁴

¹² This American school of political theory has nothing to do with either the political party of the same name, or the governmental structure that may be distinguished from constitutional monarchies like Canada's. Modern civic republicanism's fundamental assertion is that highly participatory political deliberation is indispensable to a well-functioning democracy. Like Ignatieff, the republicans emphasize a “romantic” view of human agency and the relationship between human agency and evolving public norms. “Active citizenship” is crucial as a means for ensuring that peoples' rights are observed and for emancipating marginalized groups. Political participation is also intrinsically valuable, both because it demonstrates respect and recognition of the participants, and because inclusion produces bonds of community. Modern republicans assert that the respectful interaction of communities and individuals allows social norms to evolve and community to be created even where it does not pre-exist. In other words, they believe that democratic deliberation is what Frank Michelman calls “jurisgenerative.” Frank I. Michelman, *Law's Republic*, 97 YALE L.J. (1988) 1493, 1495. See also RICHARD K. DAGGER, *CIVIC VIRTUES : RIGHTS, CITIZENSHIP, AND REPUBLICAN LIBERALISM* (1997); Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. (1988) 1539, 1566-71. On republicanism's relevance to Canadian constitutional evolution, see Janet Ajzenstat and Peter J. Smith, *Liberal-Republicanism: the Revisionist Picture of Canada's Founding*, in JANET AJZENSTAT AND PETER J. SMITH (EDS) *CANADA'S ORIGINS: LIBERAL, TORY, OR REPUBLICAN?* (Ottawa: Carleton University Press 1995).

¹³ The debates between liberals, civic republicans, and “multiculturalists” is beyond the scope of this review. Each school disagrees with the others on issues of varying magnitude; for example, Kymlicka's main issue with republican citizenship is that it is not neutral as between different cultural groups; see, for example, “Liberal Egalitarianism and Civic Republicanism: Friends or Enemies?”, in Anita Allen and Milton Regan (eds) *Debating Democracy's Discontent: Essays on Politics, Law and Public Philosophy* (Oxford University Press, Oxford, 1998), pp. 131-48.

¹⁴ Ignatieff observes that rights-balancing conversations in Canada traditionally have taken place in the courts, but I am not convinced that courts are the only, or the best, institutions for dealing with disputes of this scope and significance. My views are expressed in Cristie L. Ford, *In Search of the Qualitative Clear Majority: Democratic Experimentalism and the Quebec Secession Reference*, 39:2 ALBERTA LAW REVIEW 1 (Sept 2001). In that article, I

In truth, so much of the *how* is working itself out on the ground (or on the internet, or in the myriad other interstices of our networked and decentralized society.) To come back to Ignatieff's starting point, rights-consciousness has transformed the way we interact at every level, and the rights revolution has spilled far beyond the boundaries of the formal political sphere. Now that we have recognized this new reality, our goal must be to develop real-world strategies to channel this rights revolution into a community-building force.

If Michael Ignatieff is right about the amount of consensus we can expect in a rights-based pluralistic society, then negotiable, contingent solutions are all we ever had anyway. So what *if* we are an improbable combination of three founding nations, and we don't always agree about deep things, and our collective destiny is not always manifest to us? It is not the end of history. Since the 1995 Referendum, we Canadians have been making our way back from the brink of disintegration not by grand design, but through an accretion of incremental, pragmatic accommodations by individual people and groups. The rights revolution offers us a renewed opportunity to build a sense of collective identity, as the-ones-who-worked-it-out-together. The hope – optimistic, but far from impossible – is that we can realize through practice what we may only be able to name, with pride, in retrospect: the foundation of a richer, more authentic, and more democratic Canadian community.

attempt to integrate direct democratic deliberation with the enforcement of constitutional norms in the context of the Quebec secession debate. I argue that, rather than attempting another referendum, the debate over Quebec's future needs to be re-oriented by reference to the normative framework set out by the Supreme Court of Canada in the *Secession Reference*, combined with a renewed democratic process. In describing that renewed democratic process, I incorporate a non-Canadian constitutional model called "democratic experimentalism," which proposes concrete mechanisms for ensuring legitimacy, participation, and accountability within heterogeneous, complex democratic systems. My conclusion is that democratic experimentalism is compatible with Canada's constitutional values and traditions, and with the notion, emerging from the *Secession Reference*, of creating a "clear qualitative majority." Creating the clear qualitative majority, as I have defined it, is precisely an act of community-building through ongoing and respectful democratic dialogue.