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BARRIERS TOWARDS EU CITIZENSHIP

The EU and the Canadian mirror: citizenship, evolution and minorities

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EXECUTIVE SUMMARY

This deliverable aims to analyse how Canada deals with diversity, internal minorities and immigration at legal and political levels. This exercise is intended to be a source of inspiration for EU policies in the field of diversity. The text is divided in six sections on history of the case study, minorities and diversity at legal and political levels, challenges and general policy recommendations. We draw our conclusions based on a systematic analysis of the recent bibliography and data on this topic.

Features such as diversity in immigration policies, internal minorities and majorities, multiple historical interpretations and constitutional debates on how to accommodate this diversity are common both in Canada and the EU. Moreover, the Canadian case, as we show, is probably among the most relevant examples of federalism and multiculturalism among the world. The main questions guiding the chapter are related to diversity managing. What are the origins of diversity in Canada? Why is history relevant for understanding diversity? How the federal structure shapes immigration policies? Which are the main demands among ethnic and cultural minorities?

In the last section, we point out aspects that coincide or could inspire the European Union institutions. Canada and the EU somehow reflect the Tocqueville's paradox, while become more mixed and cosmopolitan, national and territorial identities become stronger and more relevant in politics. Both the origins of the EU and Canada and also their institutional structure differ. However, several aspects can be a mirror for European institutions. For example, the capacity of the Canadian federal model to accommodate multiple citizenship regimes, the development of a decentralized immigration policy and, most importantly, its multicultural approach while maintaining its internal diversity concerning the francophone minorities, the First Nations and immigration. These policies and constitutional arrangements are not absent of political tensions but we claim that could be a source of inspiration for the EU, a Canadian mirror.

1. THE HISTORICAL FORMATION OF CANADA

1.1. THE BRITISH NORTH AMERICA ACT AND THE FOUNDING PEOPLES

Diversity has been one of the characteristic traits of Canadian society and the country's political system since its origins. The foundation of Canada goes back to the approval of the British North America Act in 1867. Canada was established as a member of the Commonwealth under a system of partial autonomy (Woehrling, 2011). The preamble to the Act noted the desire of the founding provinces "to be federally united into One Dominion under the Crown of the United Kingdom". The four founding provinces were Nova Scotia, New Brunswick, Quebec (Canada East) and Ontario (Canada West). The latter two were previously included in what had been known as the United Province of Canada, following the adoption of the Union Act of 1840 which aimed to overrepresent English Canadians. By the 1860s, due to immigration French Canadians started to be overrepresented, this created incentives for a federation rather than a separation between Upper and Lower Canada again. The composition of the population of the four provinces was notably different, but it must be borne in mind that in no case did citizens push or fight to create this new federal system. In fact, as the standard accounts remind us, the Canadian federation was established with no popular involvement at all. It was the elites of the four provinces who pushed the process forward (Gagnon, 2013). It was not until 1982 patriation of the Constitution that Canada became entirely independent.

The shape of the new federal system corresponded to the need to escape the situation of political paralysis suffered by the British colony. During the previous two decades, the parliament had fallen victim to political instability due to the opposing positions of the two majorities in the legislative chamber. On one side were the French-speaking Catholics of Lower Canada and, on the other, the English-speaking Protestants of Upper Canada (Woehrling, 2011). As has already been mentioned, these two parts of the colony united in 1840, but this did not unlock the problems of governance. Other reasons for the adoption of the federal pact was the need to develop a common market between provinces, build a railway joining the Atlantic coast to the Pacific coast and defend Canadian territories against the expansionist desires its southern neighbour, the United States, was displaying at the time.

As can be seen, diversity is at the very origin of the Canadian federation. Quebec and the Maritime Provinces in some moments demanded the adoption of a federal system, while Ontario would have preferred the establishment of a unitary system (Woehrling, 2011). Standard accounts make it clear that federal systems, both in their intra-State and inter-State forms, appear to be a logical way of dealing with multinationalism (McRoberts, 2001). The existence of various nations, known as "internal nations", can clearly be seen from the origins of the young State. The first theories on the federal system implemented, appearing in about 1880, considered it to be the result of a pact between different colonies (territories) and not a pact between nations. However, by the turn of the century, the standard accounts considered that the Canadian federal system was based on a double pact: on one hand the existence of a "political" pact between provinces could be confirmed and, on the other, there was at the same time a "national" pact between two Canadian colonies (eastern Canada and western Canada). This notion of bi-nationalism – that is, the existence of two founding peoples – became popular among the political and intellectual elites of Quebec, while among Anglo-Canadian thinkers the more established idea is that the federal system is based merely on the existence of a pact between provinces (McRoberts, 2001). Ultimately, if the British North America Act of 1867 is examined, it can be stated that it does not include a very explicit recognition of bi-nationalism. However, the latter author considers that, in the Canadian case, the federal principle was used in a pretty innovative way: a federal system was established to accommodate and protect, if only partially, cultural and linguistic differences rather than merely territorial differences.

1.2. THE ORIGINS OF DIVERSITY

The diversity shown in Canada has its origins in particular events and circumstances that must be taken into account before the current composition of Canadian society is explored. As has already been said, the origins of the Canadian federation are based on a pact, whether it is between territories or nations. In any case, the composition of the populations of eastern Canada and western Canada is very different. On one hand, eastern Canada was where the majority of the French-speaking, Catholic population of the whole State was concentrated, while western Canada consisted almost exclusively of English-speaking Protestants. Cultural, linguistic and religious traditions, and even legal systems, obviously differed, although the vast majority of citizens were from Europe or were descendants of European citizens.

This duality of nations deeply marks the development of the Canadian federal system. According to Bourque (2002), the ethnic and religious based duality between Anglo-Canadians and French Canadians reproduces the characteristic duality of a liberal society constructed on the basis of a deeply marked contrast between the private and the public sphere. According to the author, the national duality was largely based on the private sphere, taking little account of the specifically public Canadian institutions. In the private sphere, the Catholic Church was the main defining element of the “French Canadian” nation, while the colonial link was the main factor delimiting the “British Canadian” nation. The public institutions of the new State did not develop an active role to mitigate this national duality. Individuals in their homes and their daily activities considered themselves members of two different nations, the former strongly marked by the religious factor and the influence of Catholic institutions on social development, and the latter basically defined by the pride of English-speaking citizens in considering themselves still part of the British Empire and upholding this link with the Commonwealth.

It has been stated that it was not until the end of the Second World War, with the coming of the welfare state and the establishment of nation-building policies, when the need arose to affirm a Canadian nationality, overcoming the existing duality and breaking definitively with the Motherland. Nonetheless, in the First World War Canada already appeared as a national project. By 1920s they have a separate foreign policy and, despite of the lack of symbols (flag), signed the Treaty of Versailles. However, since 1945, the role of public institutions increased in all social and economic spheres, encouraging the public authorities to recognise a multinational reality. From then on, a rise in native (indigenous peoples who were already living on Canadian territory before the European colonisation), Québécois and Acadian nationalisms can also be seen. (The Acadians are the descendants of the inhabitants of the places where the first French settlers in North America established themselves, specifically in what are now the provinces of New Brunswick, Nova Scotia and Prince Edward Island. To find out about their history, read Laxer, 2010) The fact that the indigenous people (now called either First Nations – a concept that does not include the Inuit – or native peoples) were not by any means taken into consideration when it came to forming a new Canadian State, either in 1840 or in any other constitutional agreement that followed it during the 19th century, must be borne in mind. It was not until well into the 20th century that mechanisms were established to preserve the rights of the native peoples and guarantee their recognition as nations.

2. POLITICS IN TIME: POLITICAL INTEGRATION OF CANADA

2.1. CANADA: A MULTINATIONAL STATE

In this section, after a very brief analysis of the genesis of the Canadian State and its federal system, the study will focus on a necessarily sketchy description of the different communities in accordance with the diversity criteria specified in the introductory study to this work. Based on this we will describe the following communities: the national minorities, the indigenous or native peoples and the new immigrants who have established themselves in Canada in the last few decades.

Considering the composition of its population and its organisation, Canada can be considered as a multinational State. The new theories consider that a State can be considered multinational only when its existence is entirely or partially based on the multiple nations it contains. Moreover, for a State to be defined as multinational, its dominant political culture must accept and recognise that some or even the majority of citizens identify themselves primarily with one of the internal nations. Identification with the common political community, if it exists, is a secondary element of their identity. Equally, the State must be organised in accordance with the diversity it contains (McRoberts, 2001). The fact is that, since its origins, the Canadian State has implemented legal and organisational mechanisms to manage and accommodate the diversity of the nations it contains, as we will see below when analysing each of the communities making it up.

According to Kymlicka's theories, the coexistence of more than one nation – understanding the concept of nation as a culture (people or human group occupying a territory and sharing rules, institutions and symbols) – is one of the defining elements of a multinational State. The majority culture in Canada – approximately 45% of the population – is English-speaking, while the minorities are formed by the French-speakers (approximately 25% of citizens) and native peoples. To these groups must be added the different communities formed by the new waves of migration that have become established in the different provinces of Canada following the Second World War. This diversity has led to a complex system of governance which is firstly intended to assume and recognise minority groups and, secondly, to preserve their rights. We will now mention some elements of this system. Firstly, some legal institutions have been respected because they preserve the culture of a community, such as the continental legal system in Quebec inspired by French law, which, however, does not apply in the rest of Canada, where the British common law system prevails (Whoerling, 2011). Secondly, the indigenous peoples – a minority compared to the British and French Canadians – have not enjoyed the same prerogatives and benefits. The high-point in the recognition of their national rights has emerged since the end of the 20th century. Along these lines, some of the reservations established enjoy a degree of self-government and, in April 1999, the North-West Territories were divided up to create the Territory of Nunavut (on the formation of Nunavut, see Dahl, Hicks & Jull, 2000). This division was an achievement of indigenous Inuit peoples. Thirdly, the federal Parliament has representation systems that attempt to preserve and match the multinational composition of the State. In Kymlicka's words (1995), the result of this effort is the establishment of "differentiated citizenships" characterised by three basic rights: self-government, multi-ethnicity and special representation. These three basic rights will be explored in a later section of this chapter in relation to Canada.

2.2. THE FRENCH-SPEAKING NATIONAL MINORITIES

Having looked at the characteristics of the Canadian multicultural system, we must now study each of its communities. The first to be analysed consists of the French-speaking national minorities in Canada: the Québécois, the Acadians and the Métis. 15.5% of the Canadian population define themselves as being of French origin, according to the CIA World Fact Book. Nowadays, 90% of French-speaking Canadians live in Quebec and approximately 85% of Québécois are French-speaking. It has already been mentioned

that the French and their people are officially considered (recognized in a Parliamentary Declaration in 2006 but not constitutionally) by history as one of the two State's founding peoples. As for the definition of the community, in accordance with the parameters established in this work's introductory study, it can be stated that the French-speaking national minorities base their common identity on their language (from a historical perspective it should be mentioned their Catholic heritage), although territorial criteria have gained strength in recent times. They are descendants of European colonists of French origin who established themselves in the territories of the Canadian provinces. The community is basically concentrated in Quebec and New Brunswick. Their language is official in their respective territories and policies have been approved considering French the official language of the federal institutions. The borders of all the Canadian provinces are stable. The case of the Acadians can be considered transnational as there are also members belonging to that community living in the United States of America, where they are citizens, specifically in Louisiana.

The particular history of the French-speaking population of Quebec has evolved in many respects. As Dion (1995) explains, before the 1970s, Québécois nationalism was essentially community-based, conservative and largely unpoliticised. The role of the Catholic Church was crucial for the cohesion of the community. During the 1970s, with the coming of the so-called Quiet Revolution, many changes occurred in a short time, deeply transforming Québécois society. The modernisation process was based on industrialisation and this brought with it urbanisation, secularisation and the rise of liberal political and economic elites (this process is known by the name of the Quiet Revolution). These elites became aware of the lack of participation of the Québécois nation and the other French speakers both in the affairs of the province itself and in the affairs of the State. In fact, the citizens of Quebec were generally citizens with low levels of education and they were considered as the labour force for businesses basically managed from the English-speaking Canadian territories. The English-speaking minority in Quebec held management posts in the businesses and controlled the spheres where the most important economic decisions were made. With the Peaceful Revolution, the idea of independence emerged and demands for political autonomy, self-determination and cultural sovereignty increased.

As McRoberts recalls (2001), the majority of the French-speaking Canadian population has shared the nation's discourse for a very long time (they consider themselves to be a different nation, in the cultural sense, from the other communities in Canada) although the terms of the discourse have been changing over time. In principle, between 1820 and until the end of the 20th century, the main element binding the French-speaking Canadian nation together was its language, and this element made it possible to include all French-speakers in Canada (and also North America) into a single national community. However, as Frenette maintains in *Brève histoire des Canadiens français* (Montreal: Boréal, 1998) this idea has disappeared, as it is considered that nations must have a link or connection with a specific territory. From the 1960s onwards, the French-speakers of Quebec began to consider that their nation was Quebec and not French Canada as a whole. Meanwhile, at the same time, the nationalist demands of the Acadians of New Brunswick also increased, along with a partial process of social and economic modernisation, as in the case of Quebec.

As for the national loyalties of Canadian French-speakers, they consider themselves to hold a dual identity, although the duality may not be perfect. Again according to McRoberts, there is solid statistical evidence that the French-speakers of Quebec consider themselves to be Québécois first, while seeing themselves secondly as Canadians. On the other hand, in the case of the Acadians of New Brunswick, who also consider themselves to hold a dual identity, the dominant or primary identity is Canadian.

The self-identification of the Québécois nation and the Acadian nation has ultimately led to the existence of a social and political organisation of the two political communities that is different from the rest of the Canadian population. This has been translated into the creation of structures and institutions

for political participation or in civil society which are often counterparts to those created at the level of the Canadian State as a whole. These carry out their tasks and duties in the specific territory of Quebec independently of State organisations or institutions (we are referring to trade union organisations, workers' confederations, organisations working for social development, associations and professional organisations, etc.). The latter author considers that the very existence of these parallel organisations "reflects distinct, even competing ideas of nationhood" (McRoberts, 2001: 690).

In any case, over the last few years there has been a noticeable evolution of the concept of the Québécois nation. Hohl and Normand (2003) highlight the fact that the very definition of the nation has begun to be questioned in Quebec. The concept has been the subject of permanent debate since the 1970s. Ultimately, they consider that, in official policies, the notion of a nation based on holding citizenship has become dominant. But this has not prevented Québécois society including different and even contradictory definitions of the Québécois identity and of the communities and peoples that should be considered as the members making up the nation. Moreover, the current absolute diversity in terms of origin, language, religion, ethnic group and culture of immigrants has accentuated the phenomenon of the verification of identity ("Who is Québécois?") and has led to the permanent questioning of the conditions of access to citizenship ("Who should decide the future of Quebec?").

One of the factors causing most concern in Quebec is that immigrants tend to become socialised more easily in English, and that the majority of the new immigrants are attracted by the English-speaking culture. This has led the Québécois to feel threatened by immigration in that it threatens the social maintenance of their culture and language as dominant in the territory. To avoid this, they have established their own specific public policies for the Province, and there has been plenty of discussion of what the conditions for welcoming and integrating immigrants should be. On the other hand, when these policies have failed there have also been situations of rejection of communities that have not been integrated quickly and easily from a linguistic point of view. Meanwhile, the Québécois have to manage the very complex situation of being the dominant community in their territory with respect to the immigrants while, at the same time, being dominated by the English-speaking majority of the rest of Canada¹.

2.3. THE NATIVE PEOPLES

In Canada around 800,000 people identify themselves as indigenous people. They are distributed in three categories: Indians or people belonging to the so-called First Nations (69%), Inuit (5%) and Métis (26%) (Cairns, 2002: p.209). In total, according to the CIA's World Fact Book, the Native Americans living in Canada make up 4.2% of the total population of the country and there are more than 800 groups, half of them located in the provinces of Ontario and British Columbia. The native peoples live scattered over the entire territory of Canada, often concentrated on reservations, except for the Inuit in Nunavut. McRoberts (2001) stresses that half this indigenous population lives in urban areas and that the well-known diversity of these groups makes it impossible to talk about a single nation of native people. In fact, the Royal Commission on Aboriginal Peoples stated that there are between 60 and 80 aboriginal nations in Canada. According to the latter author, from 1867 until the 1960s the public policies developed by the Canadian federal government related to indigenous peoples were explicitly a tool for their social, political and economic exclusion. As these authors (Cairns, 2002; Ross-Tremblay & Hamidi 2013) stress, the relationship between the new Canadian State and the first settlers of the colonised territories were based on imperialism; that is, on the prohibition of self-government for these peoples

¹ For example, the debate around the *reasonable accomodation* and the proposal of the Quebec Charter of values (Bill 60) in 2013 which aimed to define Quebec's values such as secularism, religious neutrality and equality between women and men led to political tensions.

whose destiny was overseen by European colonists justified with a supposed racial, cultural, social and economic superiority. Moreover, it is considered that the relationship maintained by the public institutions with the Canadian indigenous peoples until the Second World War was a variant of colonialism known as “internal colonialism”. The historical episode of the Red River Rebellion of 1869–1870, and the figure of Louis Riel as a Métis leader, can be seen as an example of these internal tensions.

According to Ross-Tremblay & Hamidi (2013), the fact that powers over the “Indians” and the “lands of the Indians” (art. 91 of the Constitutional Act of 1867) were reserved to the State led to the establishment of dominance over the first peoples of Canada. The authors stress that, for legal purposes, the Indians and their lands became “things” or “objects” and that this concept has prevailed until the present day. The public policies accompanying this reification of the indigenous population have, in the critical view of the authors we mention, been aimed at attempting to deprive the Indians, firstly, of their land, systematically forcing many communities to move and compelling them to live on reservations, and also of their culture, using many instruments to entirely assimilate them into the dominant society. One example of an instrument for assimilation would be the boarding school system reserved for indigenous people and the enforced changes to the first names and surnames of the children registering. As we can see, the discrimination against these peoples and communities has been direct, systematic and institutionalised in all areas of life (social, economic, cultural, religious, etc.). The reservations set up for the indigenous people, created to “help” them specially in the West, have been described as *“des véritables cliniques biodégradables, dont l’existence ne devait pas dépasser la durée nécessaire à la déprogrammation socioculturelle de leurs bénéficiaires autochtones”* (Savard, 2004:189), bearing in mind, moreover, that the explicit aim of the Canadian government was to progressively eliminate the first peoples from its territory. These policies have had a critical impact on the way these peoples define themselves and on their desire to determine their own destiny (Ross-Tremblay & Hamidi (2013). The Canadian government officially apologised for these Residential Schools programs in 2008. Since the 2000s the so-called Kelowna agreements between the Canadian Government and Indigenous peoples have given access to better education and health conditions to indigenous communities.

The fact is that the indigenous peoples and communities have been deprived of a status of citizenship equivalent to that of other Canadian citizens. Green (2004) emphasises that, until 1960, it was considered that the indigenous peoples were deprived of the rights and benefits of citizenship and attempts were even made to do away with their reservations, their different legal status and the treaties they had signed with the federal government of Canada. It was not until 1973 that the Canadian Supreme Court, in the Calder Judgment, declared that it was time for Canadian citizens to consider *“la possibilité que les peuples autochtones fassent partie intégrante du paysage politique et juridique du pays”* (the possibility that the native peoples should form part of the political and legal landscape of the country). The author also highlights the fact that recently, the dominant paradigms in the legal and political sphere have begun to be called into question by decisions and regulations with international scope declaring that indigenous peoples have suffered systematic human rights violations in Canada. In fact, it was not until 1982 that the Constitution, on the occasion of its patriation, recognised the indigenous peoples as subjects of rights, and it was not until the 1990s that the concept of Canada as a “binational” State was abandoned in favour of a “multinational” state. In McRoberts’ opinion (2001), multinational should be understood as “trinational”. Nowadays, Canada’s indigenous communities lead an ambivalent existence, on one hand, as citizens holding dual indigenous and Canadian citizenship, although the latter was previously rejected as being considered as a colonial imposition. Meanwhile, on the other hand, they are agents of decolonisation strongly opposed to the Canadian State (Green, 2004). As for the self-determination of the indigenous peoples as a nation, it should be stressed that, according to Cairns (2002), this term was deliberately omitted from the political debate during the 1960s and ’70s.

However, the concept emerged strongly in 1975, with the Declaration of the Dene Nation. The use of the concept sparked the claims of the leaders of the indigenous peoples, and there was a spectacular boom in indigenous nationalism alongside that of the French-speaking national minorities.

It is well known that the Canadian constitutional order and the federal system are based on the division of public power into two instances: federal and provincial. The recognition of the rights of indigenous peoples, in 1982, called this dual division of power into question. In this sense, Green (2004) recalls that both the federal and provincial governments show a degree of reticence to considering that there might be a third, indigenous order of government. The same idea of the tripartite division of power involves a degree of recognition of political sovereignty and the constitutional legitimacy of the native peoples, which would therefore mean they had to share some administrative powers.

As for the vehicles for their demands, it can definitely be stated that the native peoples have organised themselves, although it is difficult for them to establish a sole leadership due to their intrinsic diversity. Their demands have been manifested at internal and international level (McRoberts, 2001). Their social organisation, meanwhile, is dispersed, but some success stories can be mentioned. For example, native peoples have organised themselves into political associations, such as the Six Nations of the Grand River in Ontario and the Paddle Prairie in Alberta, as well as economic cooperatives, such as the Saskatoon Tribal Councils Economic Development Corporation or the Kitsaki Development Corporation. The Congress of Aboriginal Peoples (CAP) represents the aboriginals off-reserve in urban or rural areas (almost 70% of them). Among the successes deriving from the actions of these associations and organisations, it should be stressed that, according to González (2002), not only did the percentage of native Canadians benefiting from social assistance increase from 37 to 45 per cent between 1981 and 1995, there have even been demands for the return of land sold at the beginning of the 20th century.

2.4. IMMIGRATION IN CANADA

To the three original cultural groups from the foundation stage of modern Canada (British, French and Indigenous peoples), should be added, from the very beginning, people who were then considered to be “newcomers” – in other words immigrants. It can therefore be stated that the national issue and immigration are two fundamental ingredients of Canada. The long Canadian tradition of managing immigration has crystallised into a model of managing the various multicultural manifestations known as the “Canadian mosaic”. This model shows itself as the configuration of social union or harmonious coexistence while legally and politically consecrating difference. This, as we will see later, even leads people to speak of “differentiated citizenship”.

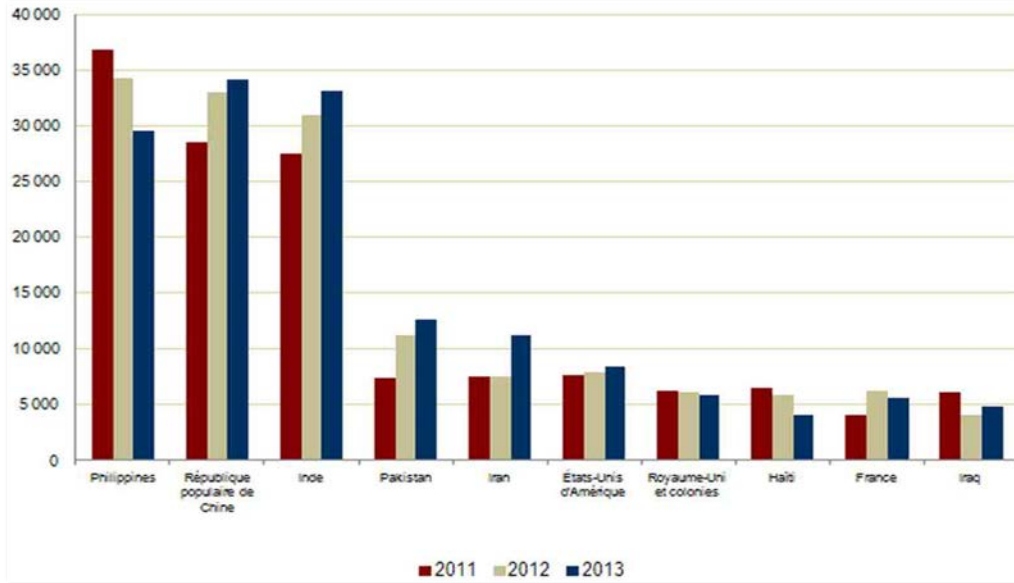
As has been said, Canada’s history is a story closely linked to immigration, and the country’s social and economic history could not be understood without this phenomenon. According to official sources, between 1991 and 2006 the average number of immigrants arriving in Canada was 229,000 people. This period was one of the longest uninterrupted periods of reception of a great migratory flow since 1871. During this stage, the proportion of the Canadian population not born in the country has risen from 16.1% to 19.8%. By contrast, in a previous 40-year period, between 1951 and 1991, the same figure moved from 14.7% to 16.1% (Statistics Canada, 2011 report). As highlighted in the CIA’s World Fact Book in its report on Canada, immigration has also, of course, had an impact on ethnic composition. Currently (estimated figures for 2011), 32.2% of the population considers it has Canadian origins; 19.8% define themselves as of English origin; 15.5% identify themselves as of French origin; 14.4% consider themselves to be of Scottish origin, 13.8% claim Irish origin; 9.8% have German roots; 4.5% define themselves as of Italian origin, 4.5% identify themselves as of Chinese origin; 4.2% consider themselves Native American and 50.9% identify with other origins. As can be seen, if the percentages are added

together a value of more than 100% is obtained. This is due to the fact that the people surveyed identified themselves with more than one ethnic origin.

The authors who have devoted themselves to studying the waves of migration to Canada differentiate three waves (Li, 2003). The first of these occurred from the arrival of the first Europeans in the territory of what is now Canada, including the mass Irish migrations of 1845 motivated by the famine suffered by the European country at that time. The second stage of migration covered a period of one hundred years from 1867 to 1967. This period is based on a policy of ethno-cultural (racial) selection under the paradigm of “white, Anglo-Saxon, protestant” immigrant known as “White Canada”, subsequently opening up to people of central European origin displaced by the First World War. The third wave of migration, and the changes this brought with it, began to be perceived after the Second World War, because, although immigration policy was still based on the selection of people of European origin, after 1967 a universal points selection system was established. It was after 1990 when the phenomenon of globalisation began having a direct impact on Canada’s immigration management system which began a new period which cannot yet be considered to be over. In this new period the selection criteria (for some authors labelled “neo-liberal”, Laban and Gabriel, 2002) are based on choosing immigrants who are “desirable” from an economic point of view to be future Canadian citizens. Immigration is therefore closely linked to the needs of the labour market and the economic sectors the authorities want to strengthen. In line with this, but from a more positive viewpoint, Fanjul (2010) considers that, unlike the situation in EU countries, the economic advantages of immigration are widely recognised in Canada. Immigrants are not considered or perceived to be coming to take jobs from Canadians, as immigrants arrive to fill jobs that Canadians cannot do, above all at the extremes of the labour market: in other words the most and least qualified jobs. According to the latter author, the diversity of Canada’s population is officially an asset for coping with the economic situation in a highly globalised world. It is therefore believed, firstly, that immigrants can act as intermediaries in business between Canada and their countries of origin and, secondly, it is maintained that immigrants provide contacts and relationships – essential elements for economic operations and international business.

As for the origin of immigration, this has changed radically. Although in the beginning, as has been said, the vast majority was of European origin, this type of immigration has ceased to be predominant and nowadays the main origin of immigrants establishing themselves or trying to establish themselves in Canada is Asian. According to official Canadian Government figures, immigrants’ main countries of origin are those given on the following graph:

Table 1: “Canada – Permanent residents according to their main countries of origin, 2011-2013”.



Source: Government of Canada.

<http://www.cic.gc.ca/francais/ressources/statistiques/faits2013/permanents/10.asp> (last consulted, 23.03.2015).

Table 2: New permanent residents admitted in 2013 in Canada

Immigrant Category	2013 Plan Admission Ranges		Number Admitted in 2013
	Low	High	
Federal Skilled Workers	53,500	55,300	52,877
Federal Business	5,500	6,000	5,098
Canadian Experience Class	9,600	10,000	7,216
Live-in Caregivers	8,000	9,300	8,797
Provincial Nominee Program	42,000	45,000	39,915
Quebec-selected Skilled Workers	31,000	34,000	30,284
Quebec-selected Business	2,500	2,700	3,994
Subtotal Economic Class: Principal Applicants	—	—	64,765
Subtotal Economic Class: Spouses and Dependants	—	—	83,416
Total Economic Class	152,100	162,300	148,181
Spouses, Partners and Children (including Family Relations - Humanitarian and Compassionate Considerations (H&C))	42,000	48,500	49,513
Parents and Grandparents	21,800	25,000	32,318
Total Family Class	63,800	73,500	81,831
Protected Persons in Canada	7,000	8,500	8,149
Dependants Abroad	4,000	4,500	3,714
Government-Assisted Refugees	6,800	7,100	5,756
Privately Sponsored Refugees	4,500	6,500	6,277
Visa Office Referred Refugees	200	300	153
Total Refugees	22,500	26,900	24,049
Public Policy	—	—	29
Public Policy—Federal Resettlement Assistance	500	600	—
Public Policy—Other Resettlement Assistance	100	400	—
Humanitarian and Compassionate Considerations*	900	1,100	2,885
Other H&C cases outside the Family Class / Public Policy	—	—	1,934
Permit Holders	100	200	44
Total Other	1,600	2,300	4,892
TOTAL	240,000	265,000	258,953

Source: Citizenship and Immigration Canada, *Facts and Figures 2013*. Additional CIC data is also available through the [Quarterly Administrative Data Release](#).¹³ Any numbers in this report that were derived from CIC data sources may differ from those reported in earlier publications; these differences reflect typical adjustments to CIC’s administrative data files over time. As the data in this report is taken from a single point in time, it is expected that it will change over time as additional information becomes available.

* Includes Deferred Removal Order Class and Post-Determination Refugee Claimants in Canada.

Source: Annual report to Parliament on Immigration, 2014. Citizen and Immigration Canada.

In the case of Canada, immigration policy is one of the most interesting elements for the European Union. The confederal structure of the Union which we have already mentioned, may, in some respects, be compared with Canadian federalism and the need to internally coordinate a country with deep cultural diversity (Redhead and Taylor, 2002) is a challenge Canada has in common with the old continent.

However, before analysing this aspect in the case that concerns us, a couple of preliminary considerations should be made. Firstly, Canadian society – like those of Australia and the United States – has historically been created from immigrants. It is important, then, to understand the distance that separates a country which has received 250,000 immigrants uninterruptedly for more than two decades from European societies where the arrival of foreigners is much more recent, at least on a mass scale. Secondly, the geographical isolation of the country has allowed the Canadian authorities to control the border much more effectively than other countries. Despite growing globalisation and the modernisation of transport, it is clear that it is still “easier” for individuals fleeing their country of origin in search of a better life, for either economic or political reasons, to illegally enter Europe than Canada.

These two factors mean we have to be careful when it comes to giving all the credit for public policies or constitutional design to the “Canadian model”. The cultural and geographical context has also, to a degree, shaped and conditioned those policies.

We will now make a brief review of the nature of those immigration policies in order to then reflect on the aspects that could be useful in the European case. In previous sections we have made a brief description of the history of the various waves of immigration received by the federation. In this section we will first look at the legal and constitutional basis for the policies that have been carried out to deal with these waves. Secondly, we will talk about specific policies and the most important characteristics. Finally, we will devote a brief section to the possible trends and challenges that will shape Canadian immigration policy over the next few years.

2.4.1. LEGAL AND CONSTITUTIONAL BASIS

a) Constitutional framework

The British North American Act (BNA) of 1867 created what was known then as the Dominion of Canada in the British Empire. It is the constitutional text of reference for understanding the legal framework for Canadian immigration policies. Article 95, devoted to agriculture and immigration, refers to the right of the provinces to make laws on this issue, a concurrent power as the same article considers that the federal parliament can legislate “from time to time” on the matter. Moreover, provincial laws may not contradict federal laws (Iacovino, 2014: 128)². Powers concerning citizenship are reserved to the federal government which will enjoy exclusive powers concerning the naturalisation and control of people from outside the State. In this sense, section 91 (25) is clear: “(...) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,(..) 25. Naturalization and Aliens.”

According to Iacovino (2014: 129), this constitutional provision means two aspects that were to become important in subsequent decades must be borne in mind. Firstly, the federal government will be in

² See the article of section 95: “95. In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the Province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.”

charge of laying down the rules for coordinating and authorising immigration, although the provinces will implement these policies. Although during the 19th C. they had led the way in policies for recruiting and controlling the arrival of migratory waves, during the 20th C. the provinces lost this role in favour of the State. In fact, the first immigration act established an active role for the provinces on this issue, in 1869. However, this lasted only until 1874, when the Act was amended to centralise the functions (Iacovino, 2014: 131). Subsequently, as we will see in subsequent sections, the federal parliament repeatedly amended Canadian law to adapt it to the new times and create a model immigration policy. In any case, it was not until the seventies, with the demands of Quebec and the bilateral agreements, that the provincial governments adopted their own policies, also bilaterally. Secondly, the constitutional repatriation of 1982 led to an important change in this initial legal framework. The Charter of Rights and Freedoms, included in the repatriation and ranking as part of the constitution, incorporated the following guarantee in section 6 (2): “(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right: (a) to move to and take up residence in any province; and (b) to pursue the gaining of a livelihood in any province.”. It is clear that this element, absent from the Constitution of 1867, marks the need for coordination and, above all, a degree of harmonisation in terms of provincial immigration policies. As is happening in Europe after the Schengen Treaty or as has been put on the table in the case of hypothetical “maximum devolution” for Scotland with respect to the rest of the United Kingdom, without a joint policy between the units forming the same frontier space, there is a *de facto* loss of immigration control capabilities due to internal mobility.

b) The Immigration Act

The Immigration Act of 1869, the first law on immigration, was accompanied by specific measures, such as the opening of embassies abroad and the promulgation of a parallel law, the Dominion Land Act to attract new colonists to the West. These policies were openly racist and essentially selected white, American or British farmers and rural workers³. At the time of the First World War, the federal government temporarily restricted immigration policies, particularly for citizens of enemy countries, which led to the inter-war period being marked by the rejection of immigration in general. After the Second World War, however, successive immigration law reforms established the modern immigration policies we will describe in the next section. The 1976 amendments finally did away with policies that discriminated by nationality or “race” and, with the economic growth of the country; they encouraged successful mass immigration based on the need to fill jobs. Finally, the law was amended several times to correct the that had been established, principally in 1980 and more recently in 2001, above all concerning security aspects following the 9-11 attacks in New York.

c) Emergence of provincial bilateralism

We have already said that provincial immigration policy was greatly restricted at the beginning of the 20th C. In the fifties, there was no reason to make anyone think that it would be the French-speaking province of Quebec that would lead the resurgence of the provincial role in this matter. Its elites had an isolationist policy compared to the federal government and, instead of promoting immigration, which would have been mostly British, it encouraged citizens to increase the birth rate via the Catholic church in order to preserve the French-speaking difference. The few immigrants who arrived in Quebec at that time were integrated into the local English-speaking minority (Iacovino, 2014: 131). The situation changed radically with the emergence of the peaceful revolution and the nationalist pressure leading to the election of the PQ government in 1976. In 1971, the Quebec government had signed the Lang-

³ The most important feature was discrimination against the group of Chinese immigrants who, even though they had worked on the construction of the Canadian Pacific Railway, had to pay high immigration taxes and suffered discrimination until 1947 due to the Chinese Immigration Act of 1885 and subsequent policies.

Cloutier agreement and, in 1975, they also signed what was known as the Andras-Bienvenue agreement. Both agreements were aimed at Québécois civil servants working in Canadian embassies so they could interview candidates for immigration to the country⁴. Subsequently, in 1978, the Quebec-Canada Accord in Matters of Immigrants and Selection of Foreigners, also known as Cullen-Couture, allowed the provincial government also to take an active role in selection. Nowadays, this asymmetry with respect to the other provinces is governed by the latest update to these agreements, which happened in 1991, at the time of the failure of the Meech Lake Accord constitutional reform project. The Gagnon-Tremblay accord – the Canada-Quebec accord relating to immigration and temporary admission of aliens – basically leaves three great functions as the exclusive competence of the Quebec government: selection, total volume and the search for sponsors for immigration candidates (Iacovino, 2014: 134).

Based on this Canadian-Québécois accord, in 1998 the Provincial Nominee Programs (PNP) became official. Although initially they were very limited compared to the powers of Quebec, they have become stronger over the last few years (Reitz, 2012: 530). Unfortunately, in the case of the other provinces, it is difficult to measure the impact of these policies which are often compensated by intraprovincial movements, particularly towards Ontario and British Columbia, which attract this internal migration (Reitz, 2012: 531).

2.4.2. POLICIES OF IMMIGRATION

The “successful model” represented by Canada because of its immigration policies relies on three great pillars which we will analyse below: the points system for qualified immigrants; the policies of integration into the labour market and society (multiculturalism) and, finally, the capacity to decentralise and federalise these policies (Reitz, 2012: 520).

a) The points system and recent trends

Canada was a pioneering country in breaking with policies that depended on origin. In the seventies, with the support of various government reports, it implemented a programme focused on assessing each individual and their personal qualifications in relation to the labour market at the time. The Federal Skilled Worker (FSW) points system⁵ began to be used in 1967 and cannot be understood without comprehending a certain political consensus on the need to attract immigrants to promote economic growth. This system was largely focused on immigrants without an agreed job and the first version gave priority to: education, experience, knowledge of the language, age, family, etc. The points grid has changed depending on the needs and effectiveness of the model. This has moved towards seeking candidates for specific occupations in which linguistic knowledge and specific education are more important. Experience can prove decisive for a list of 29 specific occupations beyond the points grid (Reitz, 2012: 526). In any case, it must be said that the evolution of the Australian model (initially copied from the Canadian system) had an important effect on the first points system. Particular occupations (specific offers of work), which were initially the guide for final admission with work agreements often established, have been replaced by a wider range of options as the demands of the labour market change very quickly (Reitz, 2012: 526).

Meanwhile, the points system has been complemented with parallel programmes to incorporate temporary workers into the labour market. There are currently two big initiatives in this direction. Firstly, the Temporary Foreign Worker Program (TFWP), tried out for the first time in 1973, sets a

⁴ Quebec had a special interest in promoting immigration. The low fertility rate and the emigration rates of many English-speakers (partly because of the PQ's linguistic and cultural policies) had led to an alarming population decline (Black and Hagen, 1993: 288).

⁵ Since 1994 in the hands of the Canadian Department of Citizenship and Immigration (CIC).

cumulative limit of 4 years and is used for shortages in specific occupations. This way of working in Canada has been criticised and is usually a matter of concern to the authorities because of the possibility that the workers could remain in Canada once the period is over or could be exploited because of their temporary situation (Ferrer, Picot and Ridell, 2014: 856). Secondly, in 2008, the Canadian Experience Class Program (CEC) was introduced, allowing temporary workers and students (with a Canadian diploma and a year's experience of working in Canada) to apply for permanent status without leaving the country. The transition from student or temporary worker status to permanent resident via the CEC has been made by 30,000 people over the past few years (Ferrer, Picot and Ridell, 2014: 857).

The recent trend in Canadian immigration policy is determined by three great objectives: 1) the desire to improve the economic results of immigration policies in a context of deterioration of the labour market; 2) improving the response to short-term labour shortages; 3) a better distribution of immigration at regional level (outside the big cities like Toronto, Vancouver and Montreal) (Ferrer, Picot and Ridell, 2014: 848). For this reason, in 2002, the Immigration and Refugee Protection Act (IRPA) was approved, substantially changing the points system and including new programmes and indications that we have not described in this article (ministerial instructions, live-in caregiver), as well as a greater emphasis on temporary workers in the TFW.

In these changes, largely approached based on a double strategy for dealing with the three objectives mentioned in the short and long term. On one hand, an attempt is made to improve the rapid response to economic problems (short term). On the other, the general immigration policy comes to be focused on human capital (long term). If we take a look at the pre- and post-IRPA points table it is clear that education, knowledge of the language and experience are now most important. While they used to account for 35% of a total of 112 points, they now make up 70% of the score out of 100⁶.

Table 3. Pre- and post-2002 IRPA reform selection factors

Criteria	Pre-IRPA points	IRPA points
Education	16	25
Official language	15	24
Experience	8	21
Specific vocational preparation	18	
Age	10	10
Arranged employment	10	10
Personal suitability	10	
Adaptability		10
Relative in Canada	5	Under adaptability (5)
Occupation	10	
Demographic factor	10	
Total	112	100
Pass mark	70	75/67

Source: Begin, Goyette, and Riddell 2010, in Ferrer, Picot Riddell, 2014.

⁶ It must be said that 62.5% of points used to be needed for admission and now between 67% and 75% is required, which means it is still necessary to score in the other criteria, although to a much lesser extent.

b) Multiculturalism

A second element for understanding the success of Canadian immigration policy has been multiculturalism policy. Canada was the first country in the world to adopt a multiculturalism policy in 1971, alongside the development of its immigration policy, but also in recognition of its internal diversity in relation to the native peoples and French Canada. The Multiculturalism Policy of Canada⁷ stated that all citizens have equal dignity, regardless of their origins, language or religious affiliation. The policy also recognised the rights of native peoples and the official English/French bilingualism. Subsequently, in 1982, the same prime minister who had promoted this policy, Pierre-Elliott Trudeau, included section 27 of the Charter of Rights and Freedoms in the repatriation of the Constitution. This recommended that the Charter should be interpreted “in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians”. At the end of the same decade, in 1988, this desire to promote internal diversity and welcome immigrants of all origins took the form of the Canadian Multiculturalism Act. This Act wanted to ensure that all Canadians received equal treatment from their government, based on respecting and celebrating diversity. The Act specifically recognises: the multicultural inheritance and the need to protect it, the rights of native peoples, the co-official nature of languages (and the use of others), equality of rights and the rights of minorities to enjoy cultural rights.

However, despite this definition of Canadian identity, known worldwide, three important nuances must be made. Firstly, there is some doubt over whether this legislation and constitutionalisation of multiculturalism has taken the form of tangible policies. Although it is true that, in the process of integration into the labour market, immigrants receive aid for language courses and integration into the district, the difference in results compared to the USA, for example, does not seem very significant (Reitz, 2012: 529). The fact that the generous direct finance received by immigrants’ associations considerably increases the demand for citizenship after permanent residents (Bloemraad, 2006) looks a more promising indicator. Secondly, the same Canadian multicultural discourse forms part of majority nationalism and is, therefore, integrationist. The fact that this definition allows a plural or open identity must not be confused with the idea that there is no Canadian State nationalism. This statement has been challenged strongly, particularly in Quebec, above all since repatriation in 1982 when the province did not sign the constitutional accord, but also ever since it was announced in 1971. The strengthening of federal symbolism, such as the omnipresence of the Canadian flag in public spaces, and particularly the citizenship acquisition oath, have been highlighted as nationalising elements. The oath is particularly controversial in Quebec, where new citizens go through exactly the same ceremony as in Canada and recite the words: “I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen.”⁸In this ceremony the judge gives a reminder of the

⁷ This policy was announced by the Canadian prime minister in a parliamentary speech on 8 October 1971 during the third session of the 28th parliament. In his speech, he referred to it as follows: “For although there are two official languages, there is no official culture, nor does any ethnic group take precedence over any other. No citizen or group of citizens is other than Canadian, and all should be treated fairly. A policy of multiculturalism within a bilingual framework commends itself to the government as the most suitable means of assuring the cultural freedom of Canadians. Such a policy should help to break down discriminatory attitudes and cultural jealousies,” quoted in Gagnon and Simeon (2010).

⁸ In French, the oath can also be taken in lay form, with two different drafts of the oath or solemn affirmation: “Je jure fidélité et sincère allégeance à Sa Majesté la Reine Elizabeth Deux, Reine du Canada, à ses héritiers et successeurs et je jure d’observer fidèlement les lois du Canada et de remplir loyalement mes obligations de citoyen canadien.” or “J’affirme solennellement que je serai fidèle et porterai sincère allégeance à Sa Majesté la Reine Elizabeth Deux, Reine du Canada, à ses héritiers et successeurs, que j’observerai fidèlement les lois du Canada et que je remplirai loyalement mes obligations de citoyen canadien.” The ceremony has also provoked reactions from the Muslim communities because of the religious nature of the oath.

duties of a Canadian citizen. It closes with the Canadian national anthem. Thirdly, it is precisely in Quebec where it has been most opposed and has generated controversy because of its nationalising nature. The fact that this province has its own national identity – we have already mentioned the awkwardness of its fit into the federation – has led to Canadian immigration policy being accused of promoting the federal, instead of the Québécois, identity. This has led the province to develop its own model of integration called interculturalism, which coexists with the Canadian multicultural model. While some Canadian intellectuals have considered interculturalism to be the Québécois version of Canadian multiculturalism, others have theorised that it is rather different. For Kymlicka, for example, federal and provincial policies would be identical, as they promote recognition and integration, lying somewhere half way between the opposing positions of liberal British and republican French policies (Labelle and Rocher, 2009: 73). By contrast, other authors have underlined the differences of Québécois policy. Carens has pointed out that democratic participation (together with the pre-eminence of the French language, pluralism and cultural exchange) is a key element for understanding its specific nature (Gagnon, 2009: 43).

c) *Federalisation*

Leaving Quebec aside, Canada was a highly centralised State in relation to immigration policies until the nineties. The model was strongly asymmetrical and, for the other provinces, the federal government treated powers over aliens and immigration as an exclusive competence, without leaving room for manoeuvre (Caicedo, 2014: 26). As we have mentioned, the situation began to change from 1998, when, using intergovernmental mechanisms, a series of agreements was established to involve the provincial governments in attracting and receiving immigrants. So, every province designed its own *Provincial Nomination Program* (PNP), programmes generally aimed at economic immigration. There were two reasons for establishing these agreements. On one hand, we have already mentioned the fact that immigration was highly focused on Vancouver, Toronto and Montreal (the three big Canadian cities) and therefore needed a more balanced regional distribution. On the other, the economic growth experienced by Manitoba, Alberta and Saskatchewan generated a local labour shortage that required the attraction of new immigrants (Caicedo, 2014: 28). So, in 1998, British Columbia, Manitoba and Saskatchewan were the provinces that established agreements. Later, in 1999, the New Brunswick, Newfoundland and Labrador PNPs were added. Subsequent years ended with the extension of the programme throughout the federation, as by then the results were satisfactory⁹. These agreements were established between the provincial governments and the CIC for a period of 4 years. Their operation is relatively complex and includes three elements: finance, transfer of powers and planning. The federal government transfers the necessary funds depending on needs, number of arrivals and volatility (forecast needs); at the same time it transfers powers to the province concerning integration and initial reception programmes (as had been done with Quebec). Meanwhile, the provincial governments are completely responsible for designing and managing the information and guidance services, language courses for adults, and careers advisory and access services. In this way, the provinces can select a definite number of immigrants agreed with the federation, resolving applications based on their criteria without taking the federal points system into account (Caicedo, 2014: 28).

In this popularisation of the PNP at provincial level, the respective bureaucracies of each territory and province have played an important role. In this sense, since the nineties, a growing mobilisation of civil servants to take part in the immigrant selection process and to attempt to establish more refined criteria for the admission of candidates depending on the economic situation has been observed. In a

⁹ Yukon (2001), Alberta (2002), Nova Scotia (2002), Prince Edward Island (2002), Northwest Territories (2009), Ontario (2007).

way, beyond political demands, the provinces experienced bottom-up “bureaucratic activism” that pressurised the federal government to accommodate policies to regional needs (Paquet, 2015).

An example of the PNP provincial agreements is the one signed between Alberta and the federal government in 2002. 400 immigrants were selected through a pilot programme, including management of their integration and initial reception. In this case, the management of the flow of immigration in this programme is carried out jointly, and in 2012 it already represented 29.1% of the total number of immigrants in the province (10,287) (Caicedo, 2014: 30).

A study focusing on the case of Manitoba and comparing it with the rest of the federation indicated the relative success of provincial immigrant integration programmes. The three big Canadian cities continued to attract 69% of total Canadian immigration in 2006, a figure only six points lower than the one for 2006. In the rest of the country, it had increased from 25% to 31% in the same period. In the case of Manitoba, the key role of public/private partnerships to attract new candidates was pointed out as an important element of the relative success of this policy (Carter, Morrish and Amoyaw, 2008).

3. PROBLEMS AND CHALLENGES POSED BY DIVERSITY IN CANADA

3.1. INTRODUCTION: THE MULTICULTURALISM CLAUSE

In this section, we deal with the challenges and problems posed by the high level of diversity in Canada, based on four dimensions. Firstly, we deal with the national accommodation of Quebec, an issue which is still, as we will see, far from being resolved. Secondly, we will look at the challenges raised by linguistic policy in Canada; thirdly, we will analyse the way in which different problematic cases have been tackled to accommodate the diverse religions present in the State and, finally, we consider the issue of the relationship between the concepts of citizenship and immigration.

Before analysing these issues, we must remind, as we explained before, that Canada is the only Western State that has incorporated the principle of multiculturalism in its fundamental values, as early as 1971, considering it worthy of being explicitly included in its Constitution (Ruiz, 2009). Article 27 of the Canadian Charter of Rights and Freedoms, included as Part I of the Constitution Act of 1982, indicates that: "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians." The systematic location of article 27 makes it a precept for interpreting the rest of the Charter, which has to be read in accordance with it. However, the issue of its specific scope is not without controversy.

Some authors like Mendes (2002) maintain that article 27 implies that the ethnic minorities deriving from immigration must enjoy collective socio-cultural rights: rights which are of a different nature from the rights of national or historic minorities. On the other hand, there are other authors, who reject this possibility and maintain that its scope refers only to rights or articles already contained in the Charter. As Ruiz (2009) recalls, it is well known that both the Charter and the other Canadian constitutional regulations expressly protect certain collective rights or interests. Along these lines, we might mention the constitutional arrangements benefiting four groups: the indigenous peoples; the religious communities of Quebec and Ontario; the English-speaking minorities in Quebec and the French-speaking ones in the rest of Canada, and, finally, the Province of Quebec. Overall, as has been explained above, the inclusion of the multicultural clause of article 27 raises the possibility of considering that constitutional protection can be extended to the other groups that nowadays also form part of the multicultural heritage of Canadian society.

This idea, however, has been rejected by constitutional case law and by most of the standard accounts. Magnet (2003) maintains that minority groups not expressly mentioned in the Constitution cannot have the same rights as those that are. This reading advances several genuine reasons to justify such a position, such as the absence of promises at the time of foundation, the assumption that the immigrant groups have pledged to incorporate themselves into an already established consensus, and even the protection of interests already guaranteed in the applicable regulations¹⁰.

Finally, it must be borne in mind that the notion of multicultural heritage is an idea that evolves over time and, as such, must cover not only traditional groups, but also those formed as a result of immigration (Rolla, 2003).

3.2. NATIONAL ACCOMMODATION

One of the main problems not yet resolved by diversity management policies in Canada is the national accommodation of Quebec within the federation. The idea of the "federal pact" we have presented

¹⁰ See Jack Jedwab, 2014, *The Multiculturalism Question: Debating Identity in 21st Century* for more evidence on how multiculturalism policies have been applied to immigrants in Canada.

above as the genesis of modern Canada has been rejected by certain critical currents with the official view of the federation. Chevrier (2008), in a legal-historical comparison of the 1867 Canadian agreement and the 1707 Scottish one, reaches the conclusion that the asymmetrical agreement of the Canadian elites of the time would have had the aim of preserving the asymmetry of French-speaking civil law but not the political liberty of the community (defeated in previous wars and revolts). The importance of the true intentions of the founding fathers of the federation is relative. But although these intentions are not legally binding, they do weigh in the political and sociological interpretation of the system. From a political point of view, because they have often conditioned the way the Constitution of 1867 is understood, above all the patriation of 1982. From a sociological point of view, because they have been the determining element in what are known as the “two solitudes” (McLennan, 1945). Despite the popularity of the “federal compact” theory, in practice, the idea that Canada was an agreement between the French and British Canadians was rejected by the Canadian Supreme Court in 1981 and 1982, with the patriation of the Constitution. However, the idea emerged again politically at the end of the 1980s, during the failed Lake Meech negotiations to achieve a constitutional reform inspired by the binational idea of Canada and, in 1992, with the Charlottetown attempt at constitutional reform which was finally rejected in a referendum. It would also form a key part of the debates occurring during Quebec’s sovereignty referendums of 1980 and 1995 (Brooks, 1996).

Alternatively, the idea of the federation as a contract between the provinces has generated multiple interpretations, above all concerning the division of powers and constitutional reform. Brooks distinguishes three tendencies: firstly, seeing the federation as a contract of the four founding provinces, in which case constitutional reform would require their consensus; secondly, a contract between all the provinces, which would require the unanimity of all of them for reform, and, thirdly, a contract between all the provinces, requiring a majority tending towards unanimity (1996: 125-126). The constitutional reform driven by Prime Minister Trudeau in 1982 put these theories to the test when Quebec did not sign the new constitution. Since then, Quebec has been a province legally bound by the Constitution, but, based on the theory of the “federal compact”, outside the political consensus on the Canadian federation (Brooks, 1996: 126). It must be recalled that this is the dominant theory in Québécois political culture.

3.3. LINGUISTIC POLICY

One of the fundamental aspects of the Canadian system is managing diversity in linguistic policy. This is precisely an area in which the application of the aforementioned article 27 of the Charter of Rights is difficult, as Oliveras recalls (2001). The author considers that there is a conflict between the multiculturalism clause and articles 16 to 23 of the Charter, guaranteeing an official bilingual system in French and English. Like the Canadian Supreme Court (decisions *Mahe vs. Alberta*, 1990, and *Quebec vs. Ford*, 1988), the author considers that there is a link between language and culture, and that this link also has ramifications in the educational sphere. Overall, the Court has highlighted that the privileged position of the two official languages cannot be questioned or reduced by the applicability of article 27 and that other minority languages cannot therefore be placed on the same level as French and English. As a result, Oliveras states (2001: 273) that bilingualism and multiculturalism maintain contradictory relationships, basically for two reasons. Firstly: “It is not possible to truly dissociate culture and language and so, in accordance with the Constitution, only two languages, and the cultures that use these languages, are privileged.” And, on the other: “Because in practice there is a gradual integration of speakers of other languages into one or other of these two great Canadian communities”, integration which is inevitably accompanied by their “acculturation”.

Finally, in the area of linguistic policy, the position of French must also be borne in mind, as the language is now noticeably declining in use, both in Quebec and in the other French-speaking communities spread

around the territory of the State¹¹. The reception of increasing numbers of English-speaking immigrants from other Canadian provinces, who have their linguistic rights protected as a minority within Quebec, and the welcoming of immigrants from outside Canada who, in many cases, end up opting to be socialised in English despite living in a province where the only official language is French, threaten the results obtained by the policies to spread and promote the French language implemented in Quebec by the public authorities since the 1970s. The preservation of the French language – and, along with it, the French-speaking culture – has become a challenge, not only for the provincial institutions but the federal ones too.

Table 4. Knowledge of Official Languages Among Permanent Residents, 2013

Immigration Class	English	French	Both	Neither	Total
Family Class	31,397	3,652	3,087	41,548	79,684
Economic Immigrants—Principal Applicants	42,725	3,542	12,521	5,977	64,765
Economic Immigrants—Spouses and Dependants	45,634	5,077	5,345	27,360	83,416
Refugees	9,962	2,050	899	11,138	24,049
Other Immigrants	5,523	858	272	386	7,039
TOTAL	135,241	15,179	22,124	86,409	258,953
PERCENTAGE	52.2 %	5.9%	8.5%	33.4%	100%

Source: Citizenship and Immigration Canada, *Facts and Figures 2013*.

Note: Due to operational adjustments to CIC's administrative data files, data under the variable "official languages" constitutes preliminary estimates and is currently under review.

Source: Annual report to Parliament on Immigration. 2014. Citizen and Immigration Canada.

3.4. RELIGIOUS POLICY

One of the areas where the effects of article 27 of the Charter of Rights are strongly deployed is religious freedom. Canada is governed by the principle of religious freedom and it should be highlighted that the Constitution does not prohibit the State from being a confessional one. In this area, as highlighted by Odello (2012), Supreme Court case law has developed a supervision and interpretation system making it possible to eliminate possible forms of direct and indirect discrimination deriving from the actions of the public authorities based on recognition of a particular religion. An analysis of Supreme Court decisions shows the existence of a rich variety of cases defining and shaping the scope of the right to religious freedom in many spheres. These include public education and the relationship between this right and the employment sphere, particularly in relation to the declaration as unconstitutional of the Lord's Day Act of 1906, which prohibited any activity on Sundays in accordance with the Christian tradition.

One of the leading cases on this issue, is the classic *Regina vs. Big M* of 1985. In these circumstances, according to Relaño Pastor (2005), the Supreme Court specifies two aspects of the scope of religious freedom: one positive and one negative. On the negative side, the right to religious freedom has considerable importance for minorities, as it consists of the right to challenge any religious uniformity imposed by the majority, such as the right to dissent from compliance with neutral laws that could have a pernicious effect on their religious freedom. On the positive side of religious freedom, it guarantees

¹¹ Since the Official Language Act in 1974, Quebec is the sole province whose official language is French. Since 1977, this position has been reinforced by the Bill 101, the Charter of the French Language, which stated as an objective "to make French the language of Government and the Law, as well as the normal and everyday language of work, instruction, communication, commerce and business". See: <http://legisquebec.gouv.qc.ca/fr/ShowDoc/cs/C-11>. In other provinces French language has been politically and legally chased. An example was the Manitoba Language Act of 1890 which made English the sole language of the province and was declared unconstitutional in 1979 by the Supreme Court of Canada.

that any citizen or religious group can freely profess and practice their faith following the precepts of their conscience or their religious community, unless these practices are prohibited by article 1 of the Charter of Rights. It is true that, as Fanjul (2010) emphasises, the system for managing diversity implemented in Canada and the multicultural policies that have been implemented do not imply the applicability of the principle of cultural relativity or tolerance with respect to practices going against the fundamental values of the Constitution or human rights. In Canada, the principle of multiculturalism can under no circumstances tolerate a behaviour that threatens equality between people or involves prohibition due to discrimination for any reason (sex, race, religion, etc.). In this sense, behaviour closely related to cultural and religious practices that threatens the values of the State is prohibited (for example, stoning adulterous women, ablation of girls, etc.). Diversity must, therefore, be subject to the basic values and principles of society. The first value that cannot be ignored by the right to religious freedom is the democratic principle; the second would be the principle of the equality of people; the third would be the commitment to the community and, finally, comes respect for the principle of multiculturalism itself.

The right to religious freedom has been applied, according to Odello (2012), largely in resolving conflicts concerning French-speaking groups (largely Catholic) and English-speaking groups (largely protestant). However, it has been very important with respect to the religious minorities deriving from immigration, such as Jews and Muslims, particularly with respect to cases related to the employment. There are, however, authors critical of the application of the principle of multiculturalism in the religious sphere. For example, Wegierski (1998) considers that the implementation of these policies has resulted in an accelerated secularisation of Canada's largely Christian population and a tendency to place too high a value on the importance of minority religions (such as Muslims, Sikhs or animist indigenous beliefs). In the area of religious freedom, policies referred to as "reasonable accommodations" have been developed, for example to allow Sikhs to be members of Canadian Royal Mounted Police and wear their turbans instead of uniform hats, along with their ceremonial daggers.

Finally, it should be highlighted that, in relation to indigenous peoples, the right to freedom of conscience has been applied rather than the right to religious freedom, as it is considered that the practice of their animistic beliefs cannot be considered to be equivalent to structured, institutionalised majority or minority religions. For Odello (2012), this concept leads to a compression and marginalisation of the native peoples on the religious side too.

3.5. IMMIGRATION AND CITIZENSHIP

Finally, to round off this part of the chapter, the challenges raised by the so-called new immigrants and access to citizenship must be highlighted. In this sense, in Canada, unlike the EU, citizenship is a positive value used with the aim of integration. In the EU, citizenship is the objective to be achieved after the integration process and the emphasis is placed, above all, on performing duties in order to access it (depending on the State member). As De Lucas et al. state, in Canada "citizenship is not the end of the integration process but a means, an instrument for integration" (2008: 185 and following). The authors consider that citizens in Canada are not treated in a monist way, or with demands for political loyalty, but in an openly multicultural way, which explains why their original nationality can be preserved within a double nationality system promoted by the Canadian authorities.

In any case, when speaking of citizenship it is impossible to conceal the tension between the *demos* (political community) and the *ethnos* (the cultural or national community). According to De Lucas et al. (2008), it can be seen that immigration is a real political challenge in that it raises the issue of our responses to fundamental political questions. These questions might be, for example, who has a right to belong to a political community and why? Also, what is the relationship between the ethno-cultural and

the national community? It is also necessary to consider how far the exclusion of those who are not originally members of our community from the public sphere can be maintained.

According to Li (2003), this subjects sovereignty and citizenship to examination. The author considers that immigration raises the argument between old-timers and newcomers in relation to how they identify themselves, bearing in mind that in Canada citizenship is not constructed based on social and cultural uniformity either as a starting point or even as an objective. This approach is, however, characteristically present in the way immigration is dealt with in EU member states.

4. THE DEMANDS OF QUEBEC AND FIRST NATIONS

4.1. THE DEMANDS OF QUEBEC AND CONSTITUTIONAL FAILURE TO ADAPT

The national situation of modern Quebec cannot be explained without the history of French colonisation and the subsequent British conquest. It would be dull and probably unnecessary for our purposes to provide a historical introduction to the Québécois nationalist movement. So, in what remains of this section, we will focus on the moments of constitutional reform and the main secessionist demands, and the subsequent Opinion of the Canadian Supreme Court.

In 1968, the modern nationalist movement began in Quebec with the foundation of the Parti Québécois, amid the cultural modernisation of the province. The *Union Nationale* Government, the school language act in 1969 (*Law to promote the French language in Quebec*), and the Bourassa provincial government in 1970s promoting a more strict application of language laws triggered political tensions and provincial territorial demands. Since then, the constitutional agenda has been shaped by the way in which Quebec can be fitted the Canadian federation, a question which had always formed part of the broader issue of French Canada in its various historical manifestations. Since the seventies, the Québécois government asked for control of social policies in the province and, with the victory of the PQ in 1976, measures were taken to protect the French language from assimilation with the Linguistic Act 101. The decade of the 1970s was politically convulse, including political violence and important social changes. In 1980, René Lévesque's government organised a referendum on the sovereignty/association of the province, with plans for a free association between Quebec and the Canadian federation, which were defeated at the ballot box with a 60/40 majority. Subsequently, Prime Minister Trudeau promoted the reform of the Constitution in 1982. This was approved by all the provinces except Quebec, which unanimously rejected it. Not only the PQ, but also the Liberal Party in the province were against it, as the constitutional text did not include traditional Québécois claims. The so-called constitutional patriation came into force without Quebec's support. In a constitutionally anomalous context due to lack of support from the French-speaking majority, the federal Prime Minister Brian Mulroney attempted to promote the Lake Meech Agreement to reform the Constitution to include Quebec's demands, defining the province as a "distinct society". Despite the initial agreement of some provinces (six out of ten, led by the Maritimes and Ontario), British Canada's rejection finally led to a failure to reach agreement in 1990. In 1992, after a huge increase in secessionism in the province of Quebec, there was another attempt to reform the Constitution, this time in Charlottetown. The new agreement, which once again included the Lake Meech demands, included 25% of members of the House of Commons for Quebec, and a considerable decentralisation of powers. However, the agreement was rejected in a referendum in Quebec and in four other provinces for precisely opposite reasons. Finally, in 1995, a new Parti Québécois majority, led by the Prime Minister Jacques Parizeau, promoted a new sovereignty-partnership referendum, which the secessionists lost by a few tenths of a percentage point (50.58% / 40.42%). Such a close result, however, did not bring about any substantial constitutional change, although the Opinion of the Supreme Court of 1998 and the Federal Clarity Act 2001 are considered to have regulated a possible future secession from Canada.

In 1998, the Canadian government asked the Supreme Court whether Quebec had the right to secede unilaterally. The Supreme Court judged that, although no province has the right to unilateral secession, the principles of federalism, democracy, the rule of law and the protection of minorities suggest that if ever the Québécois voted by a clear majority on a clear question about separation, the Government would be obliged to negotiate the status of the province in good faith (if the two conditions are met).

This Opinion is now held as a reference in comparative case law on federalism, self-determination and secession¹².

4.2. INDIGENOUS DEMANDS AND ACCOMMODATION

Together with the French-speaking province of Quebec, the indigenous diversity of the First Nations is another big pending issue for the Canadian federation. They were not invited to the constitutional negotiation table in 1867 and, from the Indians Act of 1876, developing article 91(24) of the constitution, until the 1960s, the official policy was openly assimilationist. The main idea was that, sooner or later, the people who were the first inhabitants of Northern America would end up forming part of Western culture or becoming extinct. It was after the sixties that, thanks to the struggles and claims of these indigenous groups on several fronts, the wave of decolonisation at world level had repercussions on the policies of the Canadian federation.

However, as we have seen in previous sections, the accommodation and self-government policies are themselves highly controversial. In the case of Canada, the decolonisation of a State formed by colonists adds an almost insurmountable difficulty. As Cairns recalls, the solution to decolonisation for Third World countries was secession, applying the principle of self-determination (Cairns, 2004: 349). However, in the case of the indigenous minorities in Canada this option was not viable, for both political and practical reasons. So, from the sixties onwards, with the supposed gradual abandonment of assimilationism (some authors consider that it has never been abandoned) the need to decide what to do about the accommodation and self-government of indigenous peoples became an issue.

There is tremendous diversity within the issue of indigenous peoples. According to Papillon, there are more than 800 First Nations, Inuit and Métis groups in the Canadian federation, some of which are politically or culturally related. According to the most recent and elaborate report drawn up by the Canadian Government in 1996 (Royal Commission on Aboriginal Peoples) these groups form between 60 and 80 self-defined nations. These were recognised on an equal footing in the 1982 Constitution and, during the subsequent period (continuing today), increasingly diverse forms of self-government have been developed. The Constitution recognises their right to self-government as a fundamental right stemming from their historical existence rather than from the Parliament or the Canadian Government (Papillon, 2014: 118). This recognition ended the period of disputes begun by the 1969 White Paper intended to do away with the differentiated status of reservations and it was simultaneously accepted and rejected by the leaders of the First Nations (Papillon, 2014: 117). The Calder case, discussed in the Supreme Court in 1973, had given the green light to the territorial rights of indigenous peoples where treaties had not been signed.

So, since 1982, we find a series of experiments and developments that have affected both the administrative and the politico-institutional shape of the Canadian federation in negotiations with the First Nations on self-government (we must not forget that these negotiations are carried out in parallel with the Québécois self-determination process we have mentioned in the corresponding section). Administrative decentralisation was the first result of the new constitutional framework, arriving with the James Bay agreement (1975) with the Cree nation and the Inuit of Nunavut in northern Quebec. In 1984, the Cree-Naskapi autonomous government was set up by the federal government and applied at local level. Another example of self-government was the agreement of the Quebec government to the Paix de Braves with the Cree nation, linked to forest exploitation. These experiments were superseded by second generation agreements like the final Yukon agreement (Nisga and Tlicho) or the Tlicho agreement in 2003. These self-government agreements included legislative powers in certain sectors.

¹² See the full text: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>

Meanwhile, the 1992 agreements with the Inuit of Nunavut facilitated the creation of the territory of Nunavut in 1999, with a government that is democratically elected, although with a very peculiar political system, without political parties.

The current stage, as Papillon notes, is characterised more by the economic agenda than the political one. The emphasis in the latest negotiations has been on the participation of the First Nations, the Métis and the Inuit in the economy linked to natural resources in a dynamic we might call a neoliberal one (Papillon, 2014: 125). This consists of exchanging economic support and territorial exploitation for freedom of powers over goods and services or exemptions from federal policies. This would, for example, be the dynamic of the accords in British Columbia between the First Nations and the federal government. This includes partnerships under which the education system can be organised in an autonomous way outside the Indian Act, while, at the same time, the First Nations have to take economic responsibility for their policies (Papillon, 2014: 126).

4.3. THREE CITIZENSHIPS FOR THREE DEMANDS

The flagship Canadian policy for the protection of diversity is undoubtedly the Charter of Rights and Freedoms. The idea of “differentiated citizenship” is specified here in a structure of institutional protection combining different measures to accommodate the triple diversity of the multinational, multi-ethnic Canadian federation. Historically, Canada is the product of a double European colonisation, first French and then British. This peculiarity makes it different from other States emerging from single colonial powers (such as the Latin American republics with respect to Spain). However, this double colonisation cannot hide the fact that the pre-colonisation native population formed part of the origins of the federation, despite the assimilation it subsequently suffered. That is why Kymlicka speaks of a pact between three nations: French, British and Native (2004: 22), the latter with the hundreds of native identities forming part of the Canadian population from their position as minorities compared to the other populations in all the territories. To this multinational (and not binational) situation must be added the diversity which Kymlicka calls multi-ethnic or poly-ethnic, based on immigration coming from all over the world. As early as the 1970s, Canada abandoned attempts to assimilate the immigrant communities and agreed to the demands of the main associations of newcomers calling for policies more tolerant of their cultures and religions. The term multicultural, Kymlicka recalls, has often been used to refer to these two types of diversity (multinational and multi-ethnic) in an indistinct and rather inaccurate way. This confusion, often encouraged by the Canadian Government with “multicultural policies”, has meant been perceived in Quebec as an attempt to delegitimise its national character, putting its claims on the same level as those of immigrants.

The fact is that policies to accommodate national and ethnic diversity have been different depending on the institutional “responses” given to each type of demand. There has been a total of three kinds of institutional response (Kymlicka, 2004):

1) *Rights of self-government*: the minority nations of Quebec and the indigenous peoples or nations have made and still make territorialised demands to govern themselves on certain matters (or independently). These demands have, as we have mentioned at some length, been translated into measures making the federal model of 1867 asymmetrical and reinterpreting the federal tradition in controversial fashion. While in Quebec the demands have come through a strengthening and differentiation of the provincial government, in the case of indigenous minorities the internal frontiers have not been useful for exercising self-government.

2) *Rights to accommodation*: the tremendous diversity arising from immigration has demanded forms of institutional recognition and the protection of cultural and religious practices very different from the territorial demand of multinationality. Here, all kinds of policies could come into play, from reviews of

the school curriculum to the financing of cultural festivals (including exemptions, ethical guides and the prohibition of racist discourse). All these policies are aimed at integration rather than seeking self-government for the immigrant minorities. Later we mention the impact of the Bouchard-Taylor Commission on the public debate on this kind of right to accommodation and its limits.

3) *Rights to special representation*: finally, a third kind of multiculturalism policy refers to the need to provide a voice in the democratic system for a type of minority not arising from multinationality or multi-ethnicity, although sometimes overlapping with this kind of demand. Quotas for women on electoral lists have been a legislative project that some provinces (Ontario, British Columbia and Nova Scotia) have considered but not approved, together with recommendations (Ontario) to companies to include more women in top management. Meanwhile, during the Charlottetown attempt at constitutional reform, it was proposed to provide special representation for indigenous minorities, but this was not accepted. Generally, this kind of measure runs up against the idea of the “slippery slope”. Many Canadian citizens think special representation could lead to an endless list of representational rights for all kinds of minorities (Kymlicka, 2004: 44).

Kymlicka theorises that the set of policies described above and the controversies they have generated are related to the tension between individual and collective rights. The Charter of Rights and Freedoms is a clear example of the homogeneous protection of individual rights throughout the federation. However, this protection is not incompatible with collective rights (self-government, accommodation or representation). There can be two types of collective rights in relation to individual rights: internal restriction (intra-group) or external restriction (inter-group). According to Kymlicka, external restriction is compatible with individual rights (if the minority group being protected from the majority respects them) and this is the kind of policy predominating in Canada. Quebec’s asymmetries and indigenous territorial rights would be aspects of this. For the Canadian philosopher, internal restrictions are in the minority and are generally rejected by minorities (for example, some observers feared a restriction of women’s rights in Quebec in terms of family policies, but this has not occurred) (Kymlicka, 2004: 48-49).

An example of the public debate on the diversity issue resulting from immigration would be what was known as the “*Commission de consultation sur les pratiques d’accommodement reliées aux différences culturelles*” which Premier Jean Charest entrusted in 2007 to the Québécois intellectuals Gerard Bouchard and Charles Taylor. The result was a public report generating a widespread media impact in the province of Quebec and around the federation on the “reasonable accommodation” of cultural diversities¹³.

The Commission, which had been set up following the scandal of the municipal bylaw in Hérouxville (Mauricie), which restricted certain aspects of the lives of new immigrants, began a far-reaching round of public consultation to reflect on these practices and situations based on three great values: gender equality, the primacy of French and the separation between Church and State. Public hearings were held in seventeen municipalities and hundreds of associations and community groups were able to take part.

The conclusion of the report, running to more than three hundred pages, included general reflections and specific recommendations on policies to be followed. Bouchard and Taylor criticised the way certain cases or local conflicts had become media issues and declared the particular nature of Quebec in that its majority culture (French-speaking with a Catholic tradition) is a minority one in Canada. Certain specific recommendations had an impact, such as the need to withdraw or patrimonialise religious symbols, whether religious holidays other than Catholic ones should be allowed, and the recommendation to

¹³ See the full report: <https://www.mce.gouv.qc.ca/publications/CCPARDC/rapport-final-abrege-fr.pdf>

abandon religious prayers at municipal meetings. The report is therefore a reference to the debate on minorities and their accommodation in Canada.

5 THE CANADIAN MIRROR FOR THE EU

5.1. THE EU AND TOCQUEVILLE'S PARADOX

A far-reaching reflection on the tensions of the Canadian federation which can shed light on European citizenship policy is what is known as Tocqueville's paradox. In *Democracy in America*, the French thinker pointed out the apparent contradiction between the facts that the world was becoming increasingly globalised and cosmopolitan while, by contrast, territorial identities were increasingly strong. Tocqueville anticipated the rise of nationalism in the 19th century, pointing out that the loss of local and traditional identities linked to feudalism, together with democratisation, would allow citizens to freely claim their own cultural roots which, at the same time, they would need to hold on to in order to distinguish themselves in an increasingly homogeneous world. Dion (1991) applies Tocqueville's paradox to the Canadian federation, with respect to historical distances, and underlines the fact that, within the 1867 constitutional framework, Québécois and Canadian citizens have become increasingly equal, particularly after the Peaceful Revolution and the modernisation of the Canadian economy. However, not only have political tensions failed to disappear, since the 1970s they have become increasingly acute. Dion adds the role of the political elites as being responsible for political conflict, but whatever the truth of this, it is a true that, while cultural distances have reduced, political ones have not. As we see it, the EU is undergoing a similar phenomenon light needs to be shed on the underlying causes. Ultimately, although since its foundation as an economic community after the Second World War there has been stronger economic and legislative integration (despite the considerable setback to the constitutional project at the beginning of the millennium), demands for respect for the internal democracy of each country and its particular cultural features have gradually increased.

5.2. ORIGIN AND MODEL

If we look at the elements of the Canadian federation we have briefly studied, we can see there have been constant disputes about the nature of its foundation and the mutation of the federal model. This recalls the institutional structure of the EU and the development of the Economic Community down to the Treaty of Lisbon, moving from a transnational organisation to a quasi-federal or confederal institutional reality. The narratives on the foundation of the EU are important elements for its consolidation and for the education of citizens who feel identified with its institutions. What in Canada was the need to modernise and leave the colonial past behind, in the EU can be said have been the horizon of peace and the common market of the post-World War Two scenario. Meanwhile, the constant evolution of the European federal model towards more efficient, collaborative integration have opened questions and challenges similar to those in Canada (what is the importance of nation States? How far should their powers stretch? Is a European Constitutional Court necessary? Etc.)

The origin of immigration policies of the EU compared to the Canadian federal ones is totally the opposite (at EU level). As we have seen the Canadian process has been towards an increasing decentralization dynamics whereas in the EU immigration policy has been communitised step-by-step. In parallel to the integration process, the common area has been developed objectives, agreements and certain shared policies among the Union members. It is important to bear in mind the disparities in terms of migration fluxes across European countries. Certain former colonial EU members are countries of immigration after a long period (Belgium, France, United Kingdom), however, in other cases such as Germany or Austria immigration became salient only after the 2nd WW, or even more recently since the new waves of Third World immigrants in Greece, Italy, Spain or Portugal. All European countries have been affected by the external migration fluxes in some historical moments, but also by the battle against the ageing of their own citizens. Therefore, there has been a progressive necessity of coordination of migration policies across EU members, a reality that is currently even more pressing because of the Middle East conflicts refugees.

The first experience on immigration policy in the EU came after the first Schengen Agreement in 1985. This agreement, initially concluded by the former members of the Benelux besides France and Germany but later on expanded to the current 26 members, would be the framework in which intergovernmental relations on a common approach to immigration were developed. Nonetheless, the steps towards compulsory agreements on migration policies have always been blocked by member states. In fact, the Treaty of Lisbon, negotiated in 2007, secured the right of member states to control the volume of admissions in their territory. Article 17 of the Lisbon Treaty envisages a “common immigration policy” but no real efforts have been done in this sense to make it work.

Visa policy is to date the most successful common policy, since there is a list of more than a hundred countries whose citizens need a visa to enter to EU member states territories through the EU’s external border. Moreover, member states cannot do exceptions concerning the citizens in this list. A second important element of the EU policies in this area is the Directives harmonizing the admission of certain categories of immigrants such as the long-term residents (2003/1009) or the family reunification (2003/86). The latter is the only directive that provides an European regulation concerning the influx of third country nationals (Focus, 2009: 5). Despite of the disputes and exceptions introduced by member states, such as France or Austria, this Directive represents a big improvement since family reunifications amount for 40 to 60% of legal immigration that enters to European Union state members (Joppke, 2011: 18)

However, legal labour migration remains as a “the last bastion of state sovereignty” (Joppke, 2011: 21). The steps towards a policy attracting high-skilled workers, in general more prone to emigrate to the US than Europe, ended in the Council Directive 2009/50/EC implementing the “Blue Card, initially a four year work permit allowing, free movement across Schengen after 18 months and a salary superior to 1,5 times the average gross salary in the respective member state. But this initial success, motivated by the US competition for skilled workers, was aborted by introducing the right of member states to introduce or maintain their own residence permits (Joppke, 2011: 24).

In a nutshell, the comparison between the Canadian and the European models of immigration is somehow paradoxical. On the one hand, it is difficult to talk about an “European model”, since immigration policies remain as a “national matter” despite of the Schengen common area and the still developing integration process. On the other hand, recent trends emerged from a plethora of Directives and policy recommendations seem to point out an evolution of the EU position towards a certain “Canadianization” of its policies. The “Blue Card” affair, is one of the initiatives towards a skilled-workers oriented immigration, and changes a historical tendency of containing instead of encouraging immigration. Since the oil crisis (1973) the EU position has been related to different ways of rejecting migration trends and avoiding family reunification. However, since the 2000s this tendency has been reversed towards distinguishing “chosen immigrants” (because of their skills) from the unwanted ones (Joppke, 2011: 17).

5.3. MULTIPLE CITIZENSHIP

Another important aspect that must be taken into account, if we take Canada as an example, is the capacity to establish a plural, flexible system of citizenship combining individual and collective rights. We have seen that, although not free of controversy, these superimposed rights and freedoms of citizens allow the institutional accommodation of the identities and demands of diverse minorities. The debate on the application of the Charter of Rights and Freedoms in the province of Quebec and on whether this Charter invades the definition of identity (lay and French-inspired) of the French-speaking majority should be an inspiration for the accommodation of various points of view on fundamental rights in

Europe. As various decisions of the European Court of Human Rights have shown, minority religious rights and other cultural aspects do not always fit harmoniously into European countries.

There is a direct connection between the Canadian federation debates on citizenship and the European ones. The EU challenges the conventional ideas, both in theory and practice, on the conceptual marriage between citizenship and nations-state. The multiplicity of national and subnational identities in Europe, is combined with an European citizenship which can only be acquired through member state citizenships. This European citizenship, besides every single nationality, gives certain political rights (voting in European elections and municipal elections, accessing European government documents and petitioning Parliament and the Ombudsman), language rights, free movement rights, and even rights abroad (consular protection). Moreover, there are as ways to be European citizen as members' states, in the sense that there are multiple ways to be "European" always related to the original nationality and its substate diversities in regional or federal EU members. There is an ongoing debate on the current definition of this citizenship related to rights, identity, membership and belonging. But also on the future of EU membership: should this kind of citizenship be derived from a statist approach to the EU, an entitlement voided of content, a new transnational kind of membership or a radical new kind of citizenship? (Espen, 2012: 6).

This European reality clearly reminds the Canadian debate as we said. The Canadian Multicultural Act 1988, that we have already commented, switched the debate from "the return of the citizen" towards a "multicultural citizenship" (Llanque, 2015: 104). There are at least three understandings of the EU citizenship since the Maastrich Treaty, in 1992, made European citizenship official. Firstly, "the Nation-State" based approach, considers European citizenship accessory to the member state nationalities. Therefore the legitimacy of EU institutions comes from the national level citizens, and the scope of rights is mainly defined by the members of the Union. Secondly, the "federalist view" considers the EU as a federal or quasi federal state. Therefore, takes into account the direct representation of the citizens to the EU as a legitimacy base and citizenship is based on a multilevel system of rights and duties. However, in this case, the membership designation should be centralized at EU institutions level. Thirdly, "cosmopolitan and transnational views" are more prone to an idea of the EU which does not see national governments as obsolete but as functioning administrations which are part of a multilevel decision-making process. In this account, citizenship becomes more cosmopolitan in the sense that is individually based and adhered to universal values and high-rank constitutional order laws (Espen, 2013: 510).

This second, and specially the third account, seems to be the more similar to the multicultural tradition of the Canadian federation (inspired by Trudeau). However, in the European case there is a certain nuanced use of this cosmopolitan belonging to the Union which is not correlated with political rights of participation, those rights are still controlled by the member states: "The case law on residence, health, and social rights speaks to the thesis of strong Europeanization of membership and rights in national citizenship. Limiting national control over such issues is a sign that non-citizens have become empowered as a consequence of European citizenship politics. But, these rights developments do not address political citizenship and democratic participation. In other words, such 'post-national' rights are more often than not linked to some form of movement between member states and a modicum of linkage to a member state through national citizenship" (Espen, 2013: 514).

5.4. SELF-GOVERNMENT AND GOVERNANCE

Finally, the case of indigenous diversity, where there is still a long way to go, but also the strong intergovernmental activity has reminded us of the possibility of establishing *ad hoc* arrangements, by treaties, and multilateral negotiations at several levels. In the case of the EU, with little indigenous

presence, Canadian territorial agreements could inspire territorial demands linked to local types of economy and natural resources at substate level. But they could also be a model for developing the relationship with the minorities through specific treaties which could go beyond the general supra-State/nation-State framework. The development towards a relationship with indigenous minorities based on governance agreements on specific public policies, within a framework of economic austerity and a market model, as described by Papillon (2014), recalls the development of European fiscal policy.

In Europe, there are at least three types of territorial and non-territorial diversities which should be addressed from a multilevel perspective, perhaps with a Canadian inspiration. In the first place, the majority of EU legislation is implemented at regional and local level with several nuances and sensibilities. The Committee of Regions (CoR), established in 1994, precisely to develop the substate level of government implication in the European integration. This institution works on the basis of subsidiarity, proximity and partnership, and the Treaties oblige the European Commission and the Council of European Union to consult the Committee when new legislation is going to have a repercussion at regional or local level. Nonetheless, territorial minorities, such as European minority nations, are far from being represented through this Committee and in some cases lack of an official recognition at EU level because of the member states blockage. In the second place, non-territorial minorities such as the Roma people are a kind of diversity which has recently attracted the attention of the EU institutions. Since the 2008 the common institutions have taken some steps to address the situation of marginalization of these minorities in several European countries. Concretely the legally binding EU Charter of Fundamental Rights, since 2009 Lisbon treaty, has been the basis of an European Union integration strategy. The objective is having concrete plans and every member state to improve the situation of these minority groups in the areas of housing, education, healthcare and employment. The horizon of this strategy is 2020, but, in this case, the role of the European Commission is monitoring the EU members, especially those with an important presence of this minority in their territory. Finally, a third institutional arrangement, are those territories which have a special relationship with the EU. Besides the overseas territories of some former European colonial countries such as UK, France or Netherlands, there are several special relationships within the Union that can be considered asymmetrical concerning substate territories and minorities (Åland Islands, Büsingen am Hochrhein, Campione d'Italia and Livigno, Ceuta and Melilla, Channel Islands, Isle of Man or Cyprus).

An example, are the Åland Islands, that belong to Finland but have a generous political autonomy because of the Swedish-speaking majority. Despite of belonging to the EU, these islands have some special conditions such as VAT and turnover taxes and indirect taxation exemptions, and allowance of certain restrictions concerning property, real state or the right of establishing businesses.

The asymmetrical nature of those special cases in the framework of the European evolving integration reminds the institutional diversity of the Canadian federation beyond the provinces. The creation of the territories, as well as special autonomy agreements towards First Nations and opt-out possibilities for Quebec, might be a source of inspiration for the future of the EU in terms of diversity governance agreements.

5.5. IMMIGRATION AND IMMIGRANT POLICIES

Having analysed the immigration policies developed in Canada, it is necessary to analyse their implications or, in other words, the lessons that might be useful for the EU on this issue. The main differences detected when comparing the cases of Canada and the EU in relation to the design and implementation of immigration policies have already been briefly mentioned in the previous section. Canada's more isolated geographical position; its tradition, since its origins, of receiving large immigrant populations, and its policies based on multiculturalism as a tool for integrating newcomers explain the

relative success of the Canadian model. In addition, from the point of view of policy management, the active participation and demands of the province of Quebec on the issue in order to have an influence on the management of migratory flows as a means to preserve its distinct cultural and social features compared to the population of Canada as a whole demonstrate that the general interests of the whole system can be combined with the specific interests of part of the whole. Quebec's participation in a matter of federal scope has allowed the other provinces to subsequently claim and achieve greater involvement of its respective governments and administrations in this matter.

5.5.1. THE APPROPRIATENESS OF DEVELOPING A PROCESS OF "LEGISLATIVE" CENTRALISATION AND EXECUTIVE DECENTRALISATION OF IMMIGRATION POLICIES IN THE EU

The European Union's difficulties for fixing common criteria on immigration evenly applicable to all member States are well known. The States are not prepared to give up more sovereignty than they have to on a matter that is a particularly sensitive domestic issue. In fact, matters relating to immigration and asylum were not originally included in the powers of European institutions. The basis for dealing with this sector at Community level was established between 1986 and 1992 and it was not until the signing of the European Union Treaty (Maastricht Treaty) that these issues were incorporated into Cooperation in Justice and Social Affairs, in which decisions are adopted following intergovernmental cooperation mechanisms. After the Treaty of Amsterdam (1997-1999) the transformation of these issues into Community matters accelerated slightly as they were closely linked to the achievement of the European area of freedom, justice and security (Delgado, 2002).

Despite these advances, the policies put into practice by the EU in an attempt to regulate the complex migratory phenomenon lack a holistic or integrated approach¹⁴. In fact, there are no common all-inclusive regulations dealing with the issue of immigration. This is explained by the fact that the different European societies have different views of immigration depending on their historic relationship with the phenomenon. The "European Area of Freedom, Security and Justice" is being developed at an uneven pace and the difficulty of establishing a common position on the issue of immigration is due to the fact that the opinions, interests and perceptions of the European partners vary greatly and diverge deeply, with a negative impact on a truly European approach to the issue (Sorroza, 2007). As Ortega (2014) says, the questions of contingencies, participation in the Schengen system and the volume of people in an irregular immigration situation are differences marked by the States so that they can continue to be in charge of their respective immigration policies, even if this puts them at odds with their Community partners. Other important differences between European partners making it difficult to achieve a truly common immigration policy basically derive from the different forms and requirements for acquiring nationality which are individually approved by the States; the divergences between national regulations on recognising the right to asylum, and the strong dependency of States' migration policies on national public opinion, which is often "shifting, restrictive and obsessed with security" (Ortega, 2014:28).

Waves of immigration have affected, and continue to affect, the various EU member States in different ways. The northern countries that traditionally received intra-European immigration after the end of the Second World War began to develop policies of border closures and zero immigration following the oil crisis in 1973. Nowadays, southern European countries, particularly those on the shores of the Mediterranean, which are traditional sources of emigrants, see migratory pressure on their borders increasing, with the mass arrival of people from the Middle East, North Africa and Sub-Saharan Africa.

¹⁴ For a comparative approach in the EU member states and a EU institutions analysis see: Rainer Bauböck, Bernhard Perchinig and Wiebke Sievers (eds.) 2009. *Citizenship Policies in the New Europe*.

These people flee their places of origin not only for economic reasons but also, and increasingly, because of armed conflicts or political and religious persecution. As has been said, the migratory phenomenon has an unequal impact on EU member States but, even taking into account the great differences arising, experts consider that this is not an area that can be regulated autonomously by each member State now the internal frontiers have come down (Schengen Area). It must also be taken into account that, since the foundation of the European Communities in 1957, the territory of the member States has become a space in which four fundamental freedoms are exercised (freedom of circulation of goods, people, capital and services). In particular, the freedom of circulation of people seeks to achieve free circulation of workers in order to use the labour resources inside the Community area in the best possible way. In relation to this, a clear differentiation between the regulations and policies regulating the internal mobility of EU citizens and those concerned with the movements of people from countries outside the Community has been established (Alba & Leite, 2004).

The Canadian experience, going back to the 19th century, shows us that immigration policies were initially in the hands of the provinces (as now they are in the hands of the EU member States). However, history shows that these measures have gradually become centralised in the hands of the federation. This gradual centralisation allowed the establishment of a coherent common framework for managing migration flows which later, as has been seen, was opened up to the participation of the provinces at a subsequent stage, particularly in the establishment of measures concerning the integration of immigrants.

Table 5: Federeal/Provincial-Territorial Agreements currently in Force

Agreement	Date Signed	Expiry Date
Canada-Newfoundland and Labrador Agreement on Provincial Nominees	November 22, 2006 (Original signed in September 1999)	Indefinite
Agreement for Canada-Prince Edward Island Co-operation on Immigration	June 13, 2008 (Original signed in March 2001)	Indefinite
Canada-Nova Scotia Co-operation on Immigration	September 19, 2007	Indefinite
Canada-New Brunswick Agreement on Provincial Nominees	January 28, 2005 Amended: March 29, 2005 (Original signed in February 1999)	Indefinite
Canada-Québec Accord relating to Immigration and Temporary Admission of Aliens	February 5, 1991	Indefinite
Canada-Ontario Immigration Agreement	November 21, 2005	Expired March 31, 2011 (Provincial Nominee Program authority extended to May 31, 2015; Temporary Foreign Worker Annex continues indefinitely)
Canada-Manitoba Immigration Agreement	June 6, 2003 (Original signed in October 1996)	Indefinite
Canada-Saskatchewan Immigration Agreement	May 7, 2005 (Original signed in March 1998)	Indefinite
Agreement for Canada-Alberta Cooperation on Immigration	May 11, 2007	Indefinite
Canada-British Columbia Immigration Agreement	April 9, 2010 (Original signed in May 1998)	April 8, 2015
Agreement for Canada-Yukon Co-operation on Immigration	February 12, 2008 (Original signed in April 2001)	Indefinite
Canada-Northwest Territories Agreement on Provincial Nominees	September 26, 2013	September 26, 2018

Source: Annual report to Parliament on Immigration. 2014. Citizen and Immigration Canada.

Mutatis mutandi, in the European Union the construction of a common immigration policy can be discerned, albeit very slowly. In this sense, if it is achieved, a huge step forward will have been taken for European integration, as this is one of the areas in which the importance of the national sovereignty of the States continues to be predominant. To speed matters up, the fundamental or basic decisions, providing the broad lines of inspiration, on this issue should be taken by the European institutions. Such a decision, made in common by the European partners, should use decision-making systems seeking consensus but not allowing the majority decision to be blocked by one State or groups of States using their right of veto. We are fully aware that this would involve radically changing the procedures for adopting decisions currently in force on this matter (this is perhaps utopian), although we consider that this new approach is urgently required considering the dramatic situation irregular immigration and the humanitarian crisis being experienced on the Mediterranean frontiers of the EU.

Once the broad lines for managing migratory flows have been adopted by the European institutions, nothing should stop the States to participate in the phase of developing and implementing the European regulations. It is at this second point where the States could introduce some particular features (without contradicting the regulations approved by the EU) to adapt European policies on the matter to their own situation. This is exactly the mechanism adopted in Canada in relation to the participation of Quebec and the other provinces in managing immigration.

5.5.2. A CHANGE IN THE ORIENTATION OF IMMIGRATION POLICIES: FROM CRIMINALISATION TO THE VALORISATION OF THE PHENOMENON

It has been indicated in a previous section of this study that Canada's geographical position makes it easier, to a point, to control immigration flows. The extent of Europe's frontiers (particularly the fact that it borders many countries) and its position on the globe make this task very difficult. In addition – and this is a phenomenon that has developed at global level since 11 September 2001 – the current concern of States is to control migratory flows to ensure security inside their respective territories. Once again, Europe's geostrategic position puts it in a more difficult position than Canada. This could largely explain why the concern of EU member States and European institutions focuses more on controlling and fighting irregular immigration – as a mechanism to stabilise labour markets and guarantee the sustainability of social protection systems (internal State welfare systems) at the same time as preventing attacks within their territory – than it does on establishing common, shared or homogeneous systems for integrating immigrants. An example of this attempt to control flows and preserve the EU's external borders is the establishment of the Frontex Agency.

As highlighted by Delgado (2002: 6): “Great importance has been given to the efficient harmonisation of visa regulations and the accelerated implementation of common border control practices. By contrast, social integration policy is still considered as a responsibility of the member States considered individually”. Despite this, the author believes that the regulations and principles established by the European Charter of Fundamental Rights, the European Charter of Fundamental Social Rights for Workers and the decisions of the European Court of Justice have a notable influence on member States' regulations. Ferrero (2008:15) agreed, considering that “the establishment of a model European immigration policy based on police matters and security has resulted in a series of reactive/restrictive policies apparently dealing with immigration from an political perspective, while in fact treating it as ‘a security threat’”.

Despite the understandable security concerns shared with its southern neighbour, as has been explained in previous pages, Canada looks at the migration phenomenon in a completely different way. The positive social opinion of immigration (there are many public awareness-raising initiatives on the matter); Canada's long tradition as a State receiving immigrants; the establishment of innovative and

experimental policies on the matter, and the acceptance and encouragement of diversity at all levels have meant immigration is basically linked to the reception of refugees, on one hand, and, on the other, the admission of economic migrants related to the proper operation of the labour market and the expansion of the Canadian economy. Once in the country, both categories of migrant enjoy the mechanisms and integration policies briefly described above.

A lesson that can be learned by the EU and also by the member States is that effort should be made to change the image European societies have of immigration. It is possible to combat the criminalisation of the phenomenon with the development of active policies in favour of a change towards perceiving immigrants as factors for the rejuvenation of European societies, contributors to the maintenance of welfare systems and essential agents for the proper operation of the economy in a globalised world. This change of perception should be accompanied by the implementation of active integration policies, the broad lines of which should be established by the EU, allowing the members states to have their own choices on the implementation phase.

5.5.3. FROM ASSIMILATION TO MULTICULTURALISM

After making an overall analysis of the various systems EU member States have set up in relation to the integration of immigrants, Ortega (2014: 23) considers that there has been a “generalisation of new ‘mechanisms’” with the aim of facilitating and guaranteeing such integration. States like Sweden, Denmark and Finland were pioneers in the establishment of integration courses and contracts. Other States such as, recently, Spain, have imposed citizenship examinations, which have already been implemented by countries like Belgium, Austria, Holland, France and Spain.

According to Niessen (2000), the establishment of integration contracts means understanding that integration and community relations are issues that affect society as a whole, not just immigrants and minorities. According to the author (2000:29) “Community relations refer to the whole range of challenges and opportunities resulting from the interaction between nationals and newcomers and between majority and minority groups. Integration involves not only adaptation by immigrants and minorities, but also the responses and adjustments of the society at large.” But, in any case, the majority of policies undertaken by EU member States to encourage the integration of immigrants and these mechanisms we have mentioned (contracts or citizenship examinations) are one-way measures (from the State to the immigrant) looking to integrate them individually into society as a whole and, although not explicitly, seeking their assimilation).

The inadequacy of this type of measure can be detected by observing the way immigrants are largely ignored and their potential, not as individuals but as members of a new community that could come to be considered as a minority within a State, is wasted. As we have seen, in Canada, public policies on this matter embrace not only the individual diversity of the immigrants but also the diversity of the communities that integrate them. It is precisely this type of treatment, under the umbrella of multiculturalism, which makes the Canadian situation notably different than the European one.

6. CONCLUSIONS

The analysis of the Canadian case has been useful to draw some conclusions on the characteristics of its political system which could inspire the EU institutions. Despite of the obvious differences between studying a nation-state and an international institutional structure such as the EU, a number of aspects concerning diversity and its management have been listed. The Canadian case can illuminate several features of EU policies and a more in depth study of each of them could eventually be a guide for the EU management of diversity beyond theoretical and more abstract models. As we have seen, the most prominent aspect of the Canadian model of citizenship is its multicultural definition. In the promotion of this multiculturalism, and somehow in parallel to its institutionalization, we observe a range of policies of accommodation combining individual and collective rights in a flexible way (without absence of political conflicts) which has helped to manage the deep diversity of the Canadian reality and its several minorities.

A Canadian approach of European policies of citizenship and diversity would certainly require a centralization of powers from member state to the EU institutions. That was, for example, the historical evolution of the immigration policies in Canada until the recent reforms to promote and encourage immigration from skilled workers and refugees. However, this centralization has been reversed by a degree of executive decentralization at the same time. This balance between unity and diversity can be observed through this multicultural citizenship which is accompanied by at least two important elements. On the one hand, Canadian citizenship is strongly attached to the rights and freedoms protection through the Charter. On the other hand, is combined with collective rights balancing its individualistic potential. Moreover, these collective rights have also been entrenched through *ad hoc* arrangements such as the self-government agreements and treaties with First Nations or the provincial policies.

Finally, we have to highlight that concrete policies and constitutional arrangements have always to be considered as a source of inspiration, but not as solutions to be copied. Canada is a diverse country, multicultural and multinational, but the EU is nowadays far more complex and its construction will require an exercise of political imagination. Nonetheless comparing and searching for other cases, such as the Canadian one, might help to improve these institutional challenges in the future.

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