ABORIGINAL SELF-GOVERNMENT AND THE FOUNDATIONS OF CANADIAN NATIONHOOD

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If Canada were more like the United States, Aboriginal self-government would raise less fundamental questions, and the issues that divide Aboriginals and other Canadians would be easier to understand and easier to resolve. There are, however, at least two important differences between Canada and the United States. Canada and the United States are pluralistic societies, yet Canadian pluralism is deeper and even calls into question the possibility of a Canadian nation. There is also a significant contrast between the strength and relative purity of the American identity and the fragility of the Canadian identity. These two differences have important implications not only for the rights of Aboriginal peoples, but also for the kind of recognition that can and should be accorded to them.

If anything, the differences between Canada and the United States have become even more important as a result of recent efforts in both countries to reverse the dismal record of assimilation and to give greater recognition to Aboriginal self-government. What is striking about these recent efforts is that they raise very different constitutional problems for their respective societies. If a constitution is more than a piece of paper, if it expresses fundamental values, then much can be learned about the Canadian and the American identities by exploring the constitutional problems raised by the recognition of Aboriginal rights. In the United States, Aboriginal self-government requires Americans to come to terms with the limits of liberalism and to acknowledge ways of life that are not part of the American ethos. What is required in Canada, on the other hand, is nothing less than a re-examination of the Canadian identity and of the subtle ways in which Aboriginals are a crucial part of Canadian nationhood.

Like the secession of Quebec, Aboriginal self-government requires Canadians to come to terms with the fragility of their identity and the distinctive foundations of their country.

At the practical level, coming to terms with such issues requires treaties and agreements between Aboriginals and other Canadians. For that reason alone, the Nisga'a Treaty is an important (if as yet incomplete) step in the self-understanding of all Canadians. However, the Nisga'a Treaty is also part of a larger context and implicitly raises a number of fundamental questions. By addressing these questions, it becomes possible to glimpse a framework of analysis that transcends the particularities of the Nisga'a Treaty, reveals the place of Aboriginal self-government in Canadian Confederation, and illuminates some of the key differences between the Canadian and the American identities.

THE AMERICAN INDIAN AND LIBERAL AMERICA

Whatever else America is, it is unquestionably and predominantly a liberal society. When the US Constitution was adopted, the overriding concern of the American framers was to devise institutional mechanisms that prevented governmental tyranny and secured individual freedom and local initiative. Another indication of the strength of liberalism in the United States is the position enjoyed by John Rawls's *A Theory of Justice*. Although his work is not without its critics, no one disputes the centrality of his liberal theory of justice or denies its importance for understanding the American ethos. To insist upon the liberal character of American society may seem banal, innocuous, and uncontroversial; yet no topic is more passionately debated, and none is more important for Aboriginal self-government.[1]

Aboriginals are critical of America's liberal ethos and regard it as destructive of their way of life. One response to their criticisms is to insist that Aboriginal cultures are dying cultures and have no place in the modern world. A subtle and powerful version of this kind of response is George Grant's *Lament for a Nation*. Grant was not an American and he had almost no interest in Aboriginal issues. He was a Canadian who studied American liberalism and concluded that it was destructive of traditional and particularistic modes of life. The

[1] Vernon Van Dyke, "Collective Entities and Moral Rights: Problems in Liberal-Democratic Thought," *Journal of Politics* 44 (1982): 21; and Frances Svensson, "Liberal Democracy and Group Rights: The Legacy of Individualism and Its Impact on American Indian Tribes," *Political Studies* 27 (1979): 421.

essence of American liberalism, according to Grant, was a commitment to technology and a belief in unbridled freedom. Its ultimate mission was to homogenize the world by spreading the gospel of capitalism. "Even the finest talk of internationalism," he wrote, "opens markets for the powerful."[2] His startling conclusion was that American liberalism was synonymous with modernity, and that Canada (a traditional culture) was doomed to gradual absorption into the American empire because Canadians had accepted modernity. The significance of his book is that it can be used to connect Aboriginal issues to crucial questions about modernity and the kind of lives that can be lived in it.

Is the ethos of American liberalism destructive of aboriginality? Grant's answer, which is embedded in his book, is that, like Canada, Aboriginal cultures are doomed and no human efforts can save them from ultimate extinction. Much of American history exemplifies the operation of such an assumption, backed by vigorous measures designed to undermine tribal authority and extinguish tribal ways of life.[3] In 1887, Congress passed the Dawes Act. Proceeding on the assumption that "any high degree of civilization is [not] possible without individual ownership of land," Congress provided for the allotment of tribal lands to individual Indians and the sale of the surplus to White settlers. Although the program was eventually halted, Indian land holdings were reduced from 138 million to 52 million acres. At times, the Supreme Court has also endorsed assimilationist assumptions. A line of cases, stretching from *Kagama* (1886) to *Lone Wolf* (1903), conceptualizes Indian tribes as lost societies, incapable of wielding government authority. The duty of federal and state authorities, the Court held in these cases, was to fill the void left by the disintegration of the tribes.[4]

However, there is also a line of cases that rejects assimilationist assumptions and that regards the tribes as autonomous and culturally distinct societies within the United States. They include three early decisions by Chief Justice John Marshall that culminated in *Worcester v. Georgia* (1832) as well as a large number of contemporary decisions. Samuel Worcester, a missionary, was sentenced by the State of

[2] George Grant, *Lament for a Nation: The Defeat of Canadian Nationalism* (Toronto: McClelland and Stewart, 1970), 47.

[3] Frederick E. Hoxie, ed., *Indians in American History* (Arlington Heights: Harlan Davidson, 1988), chaps. 7, 10.

[4] Charles F. Wilkinson, *American Indians, Time, and the Law* (New Haven: Yale University Press, 1987), 8, 24.

Georgia to four years hard labour for residing without a licence within the boundaries of the Cherokee Nation. He had obtained the permission of the tribe but not of the State of Georgia. On appeal, the Supreme Court declared the Georgia law null and void. The Cherokee Nation, the Chief Justice held, "is a distinct community, occupying its own territory ... in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress."[5] Although Samuel Worcester won his case, he remained in prison: the State of Georgia simply ignored the decision. Judged by its immediate results, *Worcester v. Georgia* was a defeat both for the Supreme Court and for American Indians.

But *Worcester v. Georgia* also enunciated important legal principles that have been reaffirmed by the contemporary Supreme Court. In *Worcester,* Chief Justice Marshall described Aboriginals before European contact as "a distinct people, divided into separate nations, ... and governing themselves by their own laws."[6] The Chief Justice was aware that Europeans claimed rights of conquest and discovery. The nations of Europe, he noted in an earlier case, were eager to appropriate to themselves as much of the New World as they could. However, the rights of the original inhabitants were never "entirely disregarded." They were admitted to be "the rightful occupants of the soil," even if "their rights to complete sovereignty ... were necessarily diminished."[7] In another case, the Chief Justice insisted that "the relation of Indians to the United States is marked by peculiar and cardinal distinctions." The Indian tribes were "domestic dependent nations" and "their relation to the United States resembles that of a ward to his guardian."[8] When the Chief Justice returned to these themes in *Worcester,* he insisted that the Government of the United States had always treated the tribes as nations, entered into treaties with them, and recognized their status as self-governing communities. For their part, the tribes acknowledged that they were under the protection of the United States. But protection, the Chief Justice emphasized, did not imply "the destruction of the protected."[9]

[5] *Worcester v. Georgia.* Reprinted in Joseph P. Cotton, ed., *The Constitutional Decisions of John Marshall,* vol. 2 (New York: Putnam, 1905), 375.
[6] *Worcester v. Georgia,* 347-8.
[7] *Johnson and Graham's Lessee v. M'Intosh* (1823). Reprinted in Cotton, *Constitutional Decisions,* vol. 2, pp. 4, 34.
[8] *Cherokee Nation v. Georgia* (1831). Reprinted in Cotton, *Constitutional Decisions,* vol. 2, pp. 314-6.
[9] *Worcester v. Georgia,* 362.

Forced assimilation is destructive of a way of life. It is also violates the duty of protection owed to American Indians. Assimilationist policies did not bring the prosperity enjoyed by many White Americans. On the contrary, they devastated the Indians, both collectively and individually. However, American Indians are now better off, partly because contemporary Supreme Court decisions have restored the measured separatism owed to them, and that Chief Justice Marshall enunciated in *Worcester v. Georgia*. "If you talk with Indian people," writes Charles Wilkinson, "you find that conditions in Indian country have improved since the 1960s, and even since 1980. This is due most prominently to the will of the Indian people, but they in turn have relied most prominently on the law." Treaties and treaty substitutes are, for the most part, increasingly enforced. Many tribes can now obtain enough fish and game for subsistence as well as for religious and commercial purposes. Tribes control significant aspects of law and order on reservations. They are also able to control the education and custody of their children. "Perhaps, at last," Wilkinson concludes, "the tribes can begin to withdraw from the judicial system and train their energies on fulfilling their historic tasks of creating workable islands of Indianness within the larger society."[10]

If American Indians are creating islands of Indianness, then it is necessary to reconsider liberalism. Is the ethos of American liberalism more protective of cultural diversity than is usually supposed? Was George Grant, among others, wrong to associate liberalism with assimilation? One answer is to acknowledge liberalism's assimilationist impulse but to deny the inevitability of assimilation. Moreover, a liberal society can impose limits on itself and, by so doing, it can recognize the duties it owes to societies that do not share its ethos. Many contemporary Supreme Court decisions articulate just such a position. Why, asks Charles Wilkinson, has the Court "refused to allow American Indian tribes to be engulfed by the passage of time?" His answer is that the treaties and treaty substitutes emanate a morality that contemporary American judges consider fundamental.[11] Real promises were made, and most judges cannot ignore that. If Indian treaties are part of the law, liberal America cannot ignore them without violating the rule of law. The assimilation of Indians has been halted, even reversed, because contemporary liberal America respects the rule of law and the protection it affords to tribal ways of life.

[10] Wilkinson, *American Indians*, 121, 122.
[11] Ibid., 121.

There is also a second answer. One of the paradoxes of American liberalism is that its assimilationist impulse goes hand in hand with a concern for minority rights. In a famous opinion, Justice Stone insisted that a key function of American courts is to protect "discrete and insular minorities." Societal prejudice, he said, renders the protections inherent in political processes inadequate and justifies "more searching judicial inquiry."[12] In a liberal society, minorities require special protections if the promise of liberal equality is to be achieved. As a minority, American Indians and Indian culture are vulnerable to the choices and prejudices of White society. If liberalism values choice, and if the choices of American Indians are undermined by White society, then American liberalism has another reason to recognize the right to self-government and the other protections owed to American Indians.[13] Of course, minority rights cut both ways: Whites living in Indian country can also claim minority status or, at the very least, can insist that their basic rights should be respected. The rights of American Indians always confront the liberalism of American society. If tribal ways of life are more secure in contemporary America, it is because Americans have acknowledged the limits of liberalism and recognized ways of life that differ from their own.

PARTNERS IN CONFEDERATION

American Indians and Canadian Aboriginals have faced many of the same problems. As victims of colonialism, they have been regarded as members of dying cultures and treated as inferiors in their own countries. When equality has been offered to them, it has often come as a program of assimilation that has required them to renounce their identity. They have responded by rejecting forced assimilation; they have exhibited the will to survive and have insisted on their right to self-government on land that belongs to them. What then are the differences, if any, between American Indians and Canadian Aboriginals? Surely, one difference relates to the societies they confront. Canadian Aboriginals and American Indians do not merely assert

[12] See the discussion of Stone's opinion in John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge: Harvard University Press, 1980), 73-104.

[13] Will Kymlicka, "Liberalism, Individualism, and Minority Rights," in *Law and the Community,* ed. Allan Hutchinson and Leslie Green (Toronto: Carswell, 1989), 181; and John R. Danley, "Liberalism, Aboriginal Rights, and Cultural Minorities," *Philosophy and Public Affairs* 20 (1991): 168.

their rights. Their objective is not simply to oust the colonizer. On the contrary, they believe that they possess legitimate entitlements and seek recognition of their rights. But recognition is a complex process and presupposes two or more parties. For it to occur, each party must acknowledge the rightful claims of the other. In the United States, the dialectic of recognition pits the rights of American Indians against the liberal ethos of the American people and seeks a reconciliation between them. In Canada, the dialectic of recognition is far more complex. Sometimes, it even leads nowhere at all because many Canadians are unsure of their identity and apprehensive about the future of their country.

For many scholars, poets, and writers, one of the most pressing problems has been to discover a distinctive Canadian identity and a reason for Canada's existence. If none is discovered, there is always the possibility that one can be invented. As Canada's prime minister and the principal architect of the constitutional changes of 1982, Pierre Trudeau had a vision of what Canada could become. He said that Canada would belong to tomorrow's world, and he insisted that nothing was unchangeable but "the inherent and unalienable rights of man."[14] "Writers and poets have always searched for the Canadian identity," Trudeau writes in his *Memoirs*. "With the charter [of rights] in place, we can now say that Canada is a country where all people are equal and where they share some fundamental values based on freedom."[15] Trudeau was a liberal, and he had a liberal vision of Canada. Whereas George Grant believed that the spread of liberalism would bring about the eventual demise of Canada, Trudeau embraced liberalism as the new Canadian identity and as the solution to Canada's long-standing constitutional difficulties.

Trudeau's liberalism has not produced the results he envisaged. If anything, Canadians are less politically united and less conscious of their identity. The problem with his vision of Canada is not that it values liberalism, but that it attaches too little importance to everything else. A crucial example is the 1969 *Statement on Indian Policy*. The White Paper acknowledged that Indians lacked money, power, and education. "To be an Indian," it noted, "is to lack power – the power to act as owner of your lands, the power to spend your own money and, too often, the power to change your own condition." The solution proposed was to integrate Indians into Canadian society

[14] Pierre Elliott Trudeau, *Federalism and the French Canadians* (Toronto: Macmillan, 1968), 53.
[15] Pierre Elliott Trudeau, *Memoirs* (Toronto: McClelland and Stewart, 1993), 323.

by opening "the doors of [equal] opportunity" to them and by bringing their special status to an end.[16] In a speech supporting the White Paper, Trudeau insisted that although the government would recognize existing treaty rights in the short run, it was "inconceivable that in a given society one section of society have a treaty with the other section of the society." In the long run, Indians "should become Canadians as all other Canadians."[17]

Although much of Trudeau's vision of Canada found expression in the Constitution Act, 1982, no part of it was more decisively defeated than the *Statement on Indian Policy*. It was rejected by Canadian Aboriginals. Its key assumptions were also repudiated by the Supreme Court in the 1973 *Calder* decision. In *Calder*, the Nisga'a sought to establish that their Aboriginal title to certain lands had never been lawfully extinguished. The lower courts held against them, and the Supreme Court (in a divided opinion that was ultimately decided on procedural grounds) dismissed their appeal. In several respects, however, *Calder* vindicated the rights of Canadian Aboriginals. In the *Statement on Indian Policy,* the Trudeau government, after acknowledging the force of treaties, asserted that "[other] Aboriginal claims to land ... are so general and undefined that it is not realistic to think of them as specific claims capable of remedy."[18] By treating Aboriginal title as a justiciable issue, the Supreme Court rejected this view. Moreover, Justice Hall repudiated the view of Aboriginal societies before European contact as primitive, uncivilized, and warlike. The Nisga'a, he insisted, lived in complex societies and had a sophisticated system of property. Although Indians engaged in wars, "their preoccupation with war pales into insignificance when compared to the ... wars of 'civilized' Europe."[19] The *Statement on Indian Policy* portrayed Aboriginals as members of primitive cultures; *Calder* marshalled evidence that illustrated the dignity of Aboriginals and the sophistication of their way of life.

Even Trudeau eventually acknowledged that the *Statement on Indian Policy* was flawed. "We had perhaps the prejudices of small 'l' liberals," he admitted, "... and that's why we said, 'Well, let's abolish the Indian Act and make Indians citizens of Canada like everyone

[16] Government of Canada, *Statement on Indian Policy* (Ottawa: Queen's Printer, 1969), 3, 6.
[17] Trudeau's speech is reprinted in Peter A. Cumming and Neil H. Mickenberg, eds., *Native Rights in Canada* (Toronto: General Publishing, 1972), 331.
[18] Government of Canada, *Statement on Indian Policy*, 11.
[19] *Calder v. Attorney-General of British Columbia* (1973), 34 Dominion Law Reports (3rd) 185, 169.

else.'"[20] If Canadian Aboriginals are not like everyone else, what are they? Trudeau never answered this question, and there is no easy answer to it. One response is to reverse the assumptions of the *Statement on Indian Policy* and to say that Aboriginals and other Canadians belong to cultural solitudes that are incapable of understanding each other. On this view, the best that each can do is to tolerate the other and to live side by side with little or no contact.[21] This view is no more satisfactory than the *Statement on Indian Policy*. When Harold Cardinal rejected Trudeau's proposals in his now famous book, his appeal was not to cultural solitudes. On the contrary, he insisted that "the vast majority of our people are committed to the concept of Canadian unity and to the concept of participation in that unity." His point was that "the Indian cannot be a good Canadian unless he is first a responsible and a good Indian."[22]

To be a good Indian (or Aboriginal) and a good Canadian is an aspiration that reveals much about Canadian Aboriginals and even more about the Canadian identity. Whatever the status of the aspiration before the changes of 1982, it is now a fundamental principle of the Canadian Constitution. Section 35 (1) of the Constitution Act, 1982, enacts: "The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed." One of the long-standing complaints of Canadian Aboriginals has been that the Confederation Settlement of 1867 provided inadequate recognition of their rights, established a paternalistic regime in relation to them, and set in motion a campaign of deculturation that sought to extinguish their way of life. Duncan Campbell Scott's 1920 statement to the House of Commons is a stark illustration: "I want to get rid of the Indian problem ... Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question."[23] With the entrenchment of Aboriginal rights in the Constitution, such views have been decisively repudiated and the "Indian question" has become a crucial part of the "Canada question."

[20] Pierre Elliott Trudeau, *Conversation with Canadians* (Toronto: University of Toronto Press, 1972), 21.

[21] Mary Ellen Turpel, "Aboriginal Peoples and the Canadian *Charter*: Interpretive Monopolies, Cultural Differences," *Canadian Human Rights Yearbook* 60 (1989-90): 3.

[22] Harold Cardinal, *The Unjust Society: The Tragedy of Canada's Indians* (Edmonton: Hurtig, 1969), 12, 167-8.

[23] Cited in Paul Tennant, *Aboriginal Peoples and Politics* (Vancouver: UBC Press, 1990), 92.

The first and most basic connection between the "Indian question" and the "Canada question" is the human rights nexus. In the 1990 *Sparrow* case, the Supreme Court noted that it could not recount "with much pride the treatment accorded to the native people of this country." For many years, the Court said, "the rights of the Indians to their aboriginal lands ... were virtually ignored." If, as Aboriginals contend, the neglect of their land rights is a violation of their human rights, then Canada's commitment to human rights requires it to acknowledge the land rights of Aboriginals. The second connection is a legal nexus. In *Sparrow,* the Supreme Court ruled that although the Crown possessed the power to regulate and even extinguish Aboriginal land rights, it "owed a fiduciary obligation to the Indians with respect to the lands." The Court added: "The relationship between the government and aboriginals is trust-like, rather than adversarial, and contemporary recognition and affirmation of aboriginal rights must be defined in light of this historic relationship." The Court recognized that Aboriginal rights were not absolute because they may conflict with the legitimate interests of other Canadians or with valid government objectives. In some cases, Aboriginal rights would have to be restricted. However, even in those cases it was necessary "to be sensitive to the aboriginal perspective" and to act in a manner that upheld "the honour of the Crown."[24]

Forced assimilation violates human rights. Cultural solitudes undermine the legal nexus between Aboriginals and other Canadians. Neither, as a result, is a viable option for resolving the "Indian question" or the "Canadian question." There is, however, a third option and a third nexus. The third option is to acknowledge that Aboriginals are partners in Confederation and, thus, to recognize the political nexus that holds Canada together. In a report of the Royal Commission on Aboriginal Peoples, self-government is described as an Aboriginal right that has existed from time immemorial and that has never been completely extinguished. Not only was the right recognized by the Royal Proclamation of 1763, but its acknowledgment has become even more imperative with entrenchment of Aboriginal rights in 1982. It is not a right to complete sovereignty. What it supposes is that Aboriginal governments will have autonomous decision-making powers in relation to matters of vital concern to the welfare of Aboriginal communities, as well as other powers sanctioned by negotiated settlements or arbitral decisions. "Respect for national rights," the

[24] *Regina v. Sparrow* (1990), 70 Dominion Law Reports (4th) 404, 408, 410, 411.

report insists, "has been a ... principle of Confederation from earliest times."[25] What the report recommends is that the principle should be extended to Aboriginal nations so that they can become partners in Confederation. Far from threatening the existence of Canada or undermining its identity, the achievement of a genuine partnership would affirm the principles that have held Canada together.

ABORIGINAL SELF-GOVERNMENT AND THE FUTURE OF CANADA

The achievement of such a partnership presupposes that Canada has a future. But Canada may not have a future, for reasons unrelated to George Grant's forebodings about the fate of particularity in the technological age. Even Quebec, Grant insisted, faced gradual absorption into the American empire. "The reality of their culture, and their desire not be swamped," he said, "cannot save them."[26] Grant's technological determinism is too simple a vision of Canada's future because it underestimates the adaptive capacity of traditions and the tenacity of distinctive ways of life. His vision is too simple even when applied to Aboriginal nations. In the *Delgamuukw* case, Chief Justice Lamer insisted that "all of the parties have characterized ... aboriginal title incorrectly." Aboriginal title "is a right in land and, as such, ... confers the right to use land for a variety of activities, not all of which need to be aspects of practices, customs and traditions which are integral to the distinctive cultures of aboriginal societies." Aboriginal societies are not frozen in time; they are capable of using new technologies and adapting to modernity. They can put their land to a variety of uses, while respecting "the nature of the attachment to the land which forms the basis of the particular group's aboriginal title."[27] Without mentioning Grant, the Chief Justice provided an alternative understanding of modernity that recognizes the coexistence of technology and cultural particularity.

The coexistence of modernity and cultural particularity does not settle the issue of Canada's future. In its landmark decision on the secession of Quebec, the Supreme Court reflected on Canada's future

[25] Royal Commission on Aboriginal Peoples, *Partners in Confederation: Aboriginal Peoples, Self-Government, and the Constitution* (Ottawa: Canadian Communication Group, 1993), 24. See also Brian Slattery, "First Nations and the Constitution: A Question of Trust," *Canadian Bar Review* 71 (1992): 261.

[26] Grant, *Lament for a Nation*, 76.

[27] *Delgamuukw v. British Columbia* (1998), 153 Dominion Law Reports (4th) 240, 241.

and ingeniously linked it to its past. What the Court decided was that although there exists no unilaterally constitutional right to secede, a clearly expressed desire by Quebeckers to do so "would give rise to a reciprocal obligation on all parties to Confederation to negotiate constitutional changes."[28] The Court justified its decision by appealing to four fundamental principles of the Canadian Constitution, all of which it traced back to Confederation. The Court said that Canada was a constitutional democracy committed to the rule of law and that respect for these principles dictated good faith negotiations even on the difficult issue of secession. At the same time, Quebeckers were part of a federation that included other provinces as well as minorities, and equal consideration had to be given to their interests and concerns. Federalism, democracy, the rule of law, and the protection of the minorities were key constitutional principles that went back to Confederation. These principles, the Court insisted, both sustained Canada and permitted its dismemberment.

The secession of Quebec, the rights of Aboriginals, and the future of Canada are topics that belong together. If Canada is to exist as one nation, it must accommodate its members. The irony is that distinctiveness and difference are foundational principles of the constitutional order, yet Canada has difficulty recognizing its own diversity. Part of the significance of the Court's secession decision is that it reminds Canadians that they belong to a distinctive kind of country. The Court did not simply say that Canada is a democracy and respects the rule of law. It also said that federalism and minority rights are fundamental constitutional principles. "The significance of the adoption of a federal form of government," the Court said, "cannot be exaggerated." Federalism "was a legal response to the underlying political and cultural realities that existed at Confederation and continue to exist today." Minority rights have acquired increased importance as a result of the changes of 1982. "However, it should not be forgotten that the protection of minority rights had a long history" and was "an essential consideration of the design of our constitutional structure even at the time of Confederation." Even the protections afforded to Aboriginal and treaty rights, "so recently and arduously achieved," were "consistent with this long tradition of respect for minorities, which is at least as old as Canada itself."[29]

[28] *Reference re: Secession of Quebec* (1998), 161 Dominion Law Reports (4th), 424.
[29] Ibid., 405, 407, 421, 422.

Much has changed since 1867, but the fundamental principles underlying Confederation have become more, rather than less, important. One of the promises of Confederation, the Court noted in the secession reference, was that the "Canadian union would be able to reconcile diversity with unity." The Court then quoted George Cartier. "We shall form," Cartier insisted, "a political nationality independent of the national origin or the religion of any individual." Cartier regarded assimilation as an impossible ideal and insisted that Canadians "are of different races, not so that we can wage war on one another ... but in order to work together for our well-being."[30] Aboriginals believe that the spirit of Confederation should be extended to them, through negotiated agreements and out of respect for their Aboriginal and treaty rights. The Supreme Court has supported their basic objective. In the *Delgamuukw* case, Chief Justice Lamer insisted that the "Crown is under a moral, if not a legal, duty to enter ... negotiations in good faith ... that will achieve ... the reconciliation of the pre-existence of aboriginal societies with the sovereignty of the Crown." He added: "Let us face it, we are all here to stay."[31]

Aboriginal nations have demonstrated the will to survive, and they are "here to stay." Canada's will to survive is far more fragile. Some Canadians would even welcome the disintegration of Canada on the grounds that their country represents nothing of value. Others, like George Grant, have reluctantly concluded that, although Canada once had an identity rooted in traditional values, the spread of modernity has destined it to become part of the American empire. When coupled with questions about the secession of Quebec, these beliefs poignantly illustrate that Canada's future is uncertain. But Canadians often misunderstand their country. To understand Canada it is necessary to understand Confederation and to recognize that Confederation rejected assimilation and brought into existence a country that allows different peoples, cultures, and identities to flourish under a common political nationality. Part of the importance of Aboriginal self-government is that it appeals to Confederation and reminds Canadians of their own first principles. If Canadians neglect these principles, then Confederation does not have much of a future and Canada may simply be absorbed into the American empire. Aboriginal issues would be easier to resolve if Canada did become more like the United States: after all, contemporary American liberalism

[30] Ibid., 407
[31] *Delgamuukw v. British Columbia*, 273

has acknowledged the rights of American Indians. The failure of Canadians to make a similar acknowledgment would have ominous implications for the future of Canada. It would be strong evidence of the inability of Canadians to understand the principles of Confederation and the foundations of Canadian nationhood.