

Bill 21 is an outrage, but Canada must tread carefully

In both Quebec and Alberta, irritation with overbearing federalism and the promise of a better fiscal regime could combine to feed secessionist sentiment.

by Conrad Black



My dear and esteemed friend of more than 50 years, Peter White, wrote in the *Globe and Mail* on Nov. 9 of the dangers to Canada of too severe a criticism in English Canada of Quebec's Bill 21. This measure prohibits some categories of recently hired provincial government employees who deal with the public from wearing articles of clothing or decoration that indicate religious belief or affiliation. Government monitors may judge that such articles transgress the province's official requirement of laicism. This could become a serious wedge between Canada and Quebec, in ways that incite pessimism in

Quebec that the primarily English-speaking majority of Canada and the French-speaking majority of Quebec can durably co-exist in the same country. Lord Durham, the governor of Canada sent to investigate what to do about the Gilbert and Sullivan Mackenzie-Papineau uprisings in 1837, famously wrote in his report that "Canada is two nations warring in the bosom of a single state." His solution was to unite Upper and Lower Canada (Ontario and Quebec) into the so-called United Province of Canada, with English-Canadians given the mission of relieving the French of the supposed burden of being French and assimilating them to the English language.

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This, Durham blindly assumed, was what they wished, was the cause of the minor rebellion (little more than a few rowdies in a bar north of Toronto, and the florid tracts of some Quebec pamphleteers) and would be a form of liberation for French Canadians. Durham was quickly fired for exceeding his jurisdiction, but his report was implemented and Quebec and Ontario were united. Fortunately, the leaders of the two communities, Robert Baldwin and Louis-Hippolyte LaFontaine, ignored the nonsense about assimilation and worked closely together to gain responsible government – legislative autonomy in everything except defence and foreign affairs and external trade, and to secularize the University of Toronto and open a great deal of land reserved to the Church of England for non-sectarian development. These were great causes in the day, and on their achievement, Baldwin and LaFontaine, having accomplished their purposes, graciously retired, selfless public servants, like Cincinnatus and Washington. Their places were shortly taken by John A. Macdonald and George-Étienne Cartier and George Brown to bring on Confederation (and restore the provinces of Quebec and Ontario).



Opponents of Bill 21 rally outside Les Galeries de Hull in Quebec on Oct. 6, 2019. Ashley Fraser/Postmedia News

Confederation accorded authority over property and civil rights to the provinces and ever since there have been frictions intermittently over the English Common Law defence of individual rights and the French Civil Law tradition of putting the collective rights of society on vital issues ahead of the rights of individuals, which are otherwise as respected as they are in common law jurisdictions. The Anglo-Saxon view that rights must be universal to individuals, even opposite the state, other than in extreme and temporary emergencies, sometimes collides with the Quebec traditional view that it is nonsense to allow official promotion of rights to be abused by people who agitate for systems of belief and government that suppress rights. This issue arose with Quebec premier Maurice Duplessis' Padlock Law, which allowed the provincial police to close buildings where communist literature was published for up to a year and impound subversive materials. It was a publicity stunt that was only resorted to a few times between its adoption in 1937 and the determination by the Supreme Court of Canada in 1957 that while it was within the provincial jurisdiction of civil rights, it trespassed in the federal jurisdiction of criminal law (although the penalties involved did not extend to imprisonment and the offence was not designated a crime).

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Bill 21 revives such questions, though not the criminal aspect and there is no window to attack it on the basis of jurisdiction; Quebec is acting within its constitutional rights. But it is, on its face, outrageous to allow government officials to prohibit individuals from wearing any religious symbolism: a cross, star of David, scimitar, female head coverings while leaving the face visible. It is a gratuitous and unjustified restriction of individual rights, use of property, freedom of expression and exercise of constitutionally guaranteed rights of religious practice. It

is generally conceded that public security requires that all people be identifiable in public, but this measure is objectively oppressive.

But there is more to it than the traditional Quebec legal and philosophical treatment of rights. Quebec is now, for reasons that are unclear, but cyclical, at the peak of its denial of its Roman Catholic past. When the British army defeated the French army (narrowly) in the North American theatre of the Seven Years' War, (1756-1763; Canadians, English or French, have never been conquered by anyone), all the French departed except the clergy. The Roman Catholic Church is almost solely responsible for the survival of the French culture in Canada from 1763 to the end of the Second World War. Then Duplessis' government maintained clerical personnel in the schools and hospitals at low pay levels (compared with secular jurisdictions), kept taxes low, budgets in surplus, and devoted most of the budget to infrastructure and school and university construction. Quebec became a modern state with a standard of living comparable to Ontario's. And the proverbially high Quebec birthrate in the times before oral contraception maintained Quebec's relative demographic importance in Canada despite heavier immigration to Ontario and the far West.



People protest Quebec's Bill 21, which prohibits teachers, police, government lawyers and others in positions of authority from wearing religious symbols, in Montreal on June 17, 2019. Christinne Muschi/Reuters

With the change of government in 1960 following the death of Duplessis and his successor, Paul Sauvé, the schools and hospitals soon had the same people performing the same vital functions in the education and health-care systems, but as secular employees at much greater cost to the taxpayers and with much more disturbed industrial relations, necessitating much higher taxes and large deficits. The unborn children who were the consequence of the collapsed birthrate were replaced

by immigration from Haiti, Morocco and Lebanon, but they were more multicultural or Canadian in their perspectives than Quebecers, and were less susceptible to the appeal of Quebec nationalism than were native Québécois. It was reform, but it was not, objectively, a great public policy improvement in its results. However the entire mythos of modern Quebec is based on the agreed upon fiction that Quebec has liberated itself from a dark age (hence the rubbish about "la grande noirceur"). In fact, social and economic progress was much greater between 1945 and 1960 than since then, but that is a psychologically unbearable contradiction of a necessary historical invention. Quebec was priest-ridden and narrow-minded, but it was very focused and successful.

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Bill 21 is partly a reaction to Islamist annoyances, but it is mainly a group affirmation of the triumph of atheism in Quebec. History indicates that that may not always be considered a liberation; religious practice fluctuates and has never been durably eradicated. But since the entire society is invested in the liberation myth, too much hostility from English Canada, and especially the federal government, could, as Peter White wrote, be dangerous for Canada. That is particularly true as the Trudeau government's war against Alberta and the oil industry continues, and as Alberta contemplates a provincial constitution (as Quebec possesses), disassociation from many shared programs including police and tax collection (as in Quebec), and the right to petition for a referendum on continued participation in Canada (as Quebec has held twice).

In the past five years Quebec has been by some margin the most prudently and successfully managed jurisdiction in Canada and has a better economic growth rate and lower unemployment rate than the rest of Canada. In both Quebec and Alberta,

irritation with overbearing federalism and the promise of a better fiscal regime could combine to feed secessionist sentiment. This is no time for Canadian federalists to tell the government of Quebec how it should exercise its constitutional rights, even though Bill 21 is an irritating act of authoritarian myth-making and a churlish manifestation of psycho-historical reaction.

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