A SURVEY OF MODERN SOCIAL HISTORY

by

Archer D. O'Brien

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Accepted:

Noel Verzosa, Ph.D. Committee Member	Corey Campion, Ph.D. Program Director
Corey Campion, Ph.D. Committee Member	April M. Boulton, Ph.D. Dean of the Graduate School
Jay Harrison, Ph.D. Portfolio Advisor	

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Introduction

What is the energy that makes a society go? What features are necessary to build a community? English is spoken around the world, with 1.5 billion speaking it as a first or second language, and about 600 million using for business, education, or for inter-community communication. The most important qualities that the English-speaking nations share are a suspicion of state power, jealously guarding individual rights, a robust and responsive judicial system, the primacy of single-member constituencies to include a cross section of the community in the legislative process, and the ideal of inalienable, fundamental rights, a concept that came to Continental Europe only in the nineteenth and in some cases, the twentieth century.

This portfolio will concern itself with four topics. It concerns itself with questions of political participation, minority rights, and the position of the citizen. The first essay examines minority rights, community relations, cohesion, and federalism in the context of Quebec with a special emphasis on religious freedom and language rights. Following that is a longitudinal study of both legal and illegal abortion and the right to die in the United States and Canada since 1900. The next essay contains an examination of native rights in North America, with special consideration being paid to the question of nation-to-nation relationships and whether Native nations actually exist. The portfolio concludes with a retrospective study on the attitudes and policies of the Republican party as they relate to human rights since 1948.

Both Great Britain and Ireland and their Colonial possessions have been magnets for some of the largest voluntary human migrations known in recorded history. Questions of assimilation and the acculturation and tolerance of minorities have been paramount in the English-speaking world for centuries. In modern Europe cultural tensions between immigrants and native-born populations have peppered a lived social experience. The great human

maelstrom created by immigration and economic striving and advancement that was not possible in Europe until well into the twentieth century led to a kaleidoscope of social movements and causes that seem to be unique, at least at first, to nations where the dominant language is English, including abolitionism, suffrage, the Protestant Awakenings, agrarianism, trade unionism, and the environmental movement.

English-speaking societies seem to accommodate more push and pull than those of Continental Europe and Asia, except for the American Civil War and the Irish War of Independence. Political and social struggles have been settled peacefully, for the most part without a violent revolution. These societies seem much more receptive to revolutions of the mind and heart. This tendency co-mingles with long traditions of non-conformist thought and thriving Jewish and Atheist communities even as far back as the eighteenth century.

Another distinguishing feature of the British Isles and the lands that Britain would settle was an embrace of capitalism in place of mercantilism or feudalism. Britain and its offspring societies would create the beginnings of modern banking, credit, insurance, stock exchanges, and other fundamental components of a capitalist society that would be replicated the world over. As a result of this tradition, the English-speaking nations have mostly been immune to Communist movements that found much more fertile soil in Europe and Asia in the nineteenth and twentieth centuries.

In the twenty-first century, we are currently living through some of the most profound economic and social changes in recorded history. Not since the coming of mechanized labor has an economic transformation on the scale of the fourth industrial revolution been upon us, and never in recorded history have so many people been allowed to migrate freely from one place to another. More people can migrate today than at any point in recorded history and more people

are seeking to live or have already immigrated to an English-speaking nation since at least 1850. The societies I have chosen to study here are remarkably free, dynamic, and open. Economic transformations, religious movements, crackpot theories, and social revolutions have littered this history of the Anglosphere. Both the great religious revivals or Evangelical pietism and the demand for a secular state first took root in the English-speaking world. Except for the American Civil War, hundreds of millions of people have found a way to live in relative concord with each other, maintaining cultural and religious traditions within the confines of a dominant language; something unheard of in Europe. The English-speaking societies are worth studying because they are templates of how diverse peoples can live together, excel together, strive together, tolerate and love one another and demonstrate that unity in diversity is not simply a rhetorical idea—it can be lived every day.

The four works that will comprise my portfolio are an analysis of mass movements and of societies struggling with answers to the question of how to live together pluralistically and peacefully in a liberal democracy. In the absence of authoritarianism, citizens in a democracy must choose to live together and they must make conscious choices every day that affirm rather than degrade the social order. In the twenty-first century, these choices are made more strenuous and difficult with economic changes, dislocating large pieces of an industrial economy and successive waves of non-white immigration to the English-speaking world since 1960, which has amounted to the largest free movement of people in recorded history.

While all these societies operate with an understanding of religious freedom and tolerance, changes in immigration patterns and the role of women in society have presented unique stressors for the Anglosphere. In the context of Quebec, recent legislative initiatives seeking to restrict public sector employment by banning public employees from wearing

religious garb at work appears to be an affront to freedom of religion as enshrined in the Canadian Charter of Rights and Freedoms. I find it difficult to imagine that a cross, Star of David, or a headscarf worn by a public employee represents an affront to the secular state as the proponents of Bill 21 have proclaimed. While debates on the secular nature of the state are healthy and sometimes warranted, I feel it is appropriate to view Bill 21 with great skepticism as the very nature of the legislation appears to target religious minorities who seek to carry out their functions as public employees while remaining true to the fundamental tenants of their faith. It is not democratic nor is it liberal to target a minority simply because they are in the minority. The concept of minority rights is indispensable because those rights provide a pedestal upon which all other rights and freedoms can be erected.

Moving to my discussion on the Republican Party, I begin with a simple question. When did it become conservative to deny rights to one group of people and fetishize the whims and desires of another? I am speaking of social conservatives and the question of protections for sexual and genetic minorities. The demands of social conservatives have made on the Republican party in terms of abortion rights, regulating private sexual activity, denominational schools, and the death penalty are inconsistent and in the long run, impossible. A conservative party that values individual freedom and liberty ought not to seek to regulate the choice to become pregnant or to carry that pregnancy to term, or to deny basic rights to certain minorities when in its history it has expanded rights to every other minority. On the issue of denominational schools, the First Amendment conflicts with itself. The Establishment and Free Exercise clauses exist in permanent tension with each other, declaring both the secular nature of the state and absolute religious freedom. While denominational schools are not unconstitutional, the question of whether the taxpayer should support denominational schools along with the question of moral

and religious education in state public schools are questions the Republican party has sought to avoid for fifty years.

A portion of this portfolio is dedicated to Native people, both the recognition of tribes and bands and the question of what role these tribes and bands can play in societies with delineated levels of government. Do tribes and bands seek a status equivalent to states and provinces? Do they seek second-tier status normally granted to counties and cities, or do they seek a separate status as nation-states, albeit ones that do not coin their own monies or raise their own armies, but nation-states nonetheless; or, perhaps do they seek a combination of all three striving to hold on to their own identities in some of the world's largest melting pots? The question of resource extraction and the consent of Native people is of particular interest because it hinges on the fundamental question: does the right to be consulted and the right to consent allow for anti-social behavior and other lawful manifestations of this discontent that seeks to disrupt economic activity, transportation, certain functions of government, and everyday life? One of the reasons I elected to include a study on Native issues is that particularly in the United States, Native people are overlooked and forgotten. Their relations with the federal government are managed by an office in the Department of the Interior which allows Native people and issues to be overlooked. Questions of recognition, educational attainment, economic development and environmental issues are as vital to Native people as they are to any other American, along with the immensely troubling legacy of the residential school system for which the United States federal government and the various denominations have never officially apologized.

While abortion rights give millions of people disquiet, this disquiet ought not to be represented by unreasonable restrictions on the procedure before the 24th week available

statistical data demonstrated that before legalization began in 1967 at least 1.75 million termination procedures were occurring annually in the United States.

Exemptions for the life of the mother existed in the common law as far back as the 17th century. While Bill 43 and the Canadian context provides a very interesting counterpoint with the inability of parliament to amend the law to conform to the Supreme Court decision, the inability of parliament to bring reasonable restrictions before fetal viability is both a historical fact and a sociological and anthropological reality that may not prove workable as maternal-fetal medicine advances if there are no restrictions on the procedure after fetal viability.

Fetal viability is a necessary component of any historical sociological, political, or legal studies involving regardless of the protest of Christian conservatives. A fetus is not viable outside of the uterine environment until the twenty-fifth week of pregnancy or until such time as the lungs gas exchange and the lungs and heart can oxygenate the body. Before the twenty-fourth week of pregnancy, this is not anatomically possible, therefore abortion should be legal under all circumstances before the twenty-fourth week of pregnancy. Roe v. Wade, its companion cases, and its reaffirmations have clearly and unequivocally stated that abortion should be available without any constraints before the twenty-fifth week of pregnancy. Intent to restrict abortion services before the lung can achieve surfactant production and gas exchange is both unconstitutional and untenable based on medical science.

The right to die is inextricably linked to the right to terminate a pregnancy. Both rights are dependent on each other because they each exist at the core of human existence. The right to have dominion over one's body is an indivisible part of the right to life in the liberal tradition. By life, I mean the right to exercise agency, free will, and choice over what happens to the body while the individual is of sound mind. The question of dementia presents a profound moral

question: at what point does the patient lose the autonomy afforded them by virtue of their senility? In this case the patient must make a reasonable advance directive laying out their end of life decisions before they are declared senile. The law must allow the patient when they are of sound mind to decide for themselves how they will live, how they will be nurtured, and how they will die.

I want to be absolutely clear that the right to terminate a pregnancy and the right to die are not absolute. After the twenty-fourth week of pregnancy, requests for abortion services must be carefully scrutinized, with the law only allowing for abortion after the twenty-fourth week of pregnancy in cases of rape, incest, fetal deformity, likely fetal death, the mother being under the age of eighteen, and concerns for the life and health of the mother including psychosis. On the question of the right to die, the idea of "the competent minor" is still debatable in legal, philosophical, and medical circles. In most cases children should not be afforded medical aid in dying unless a rigorous, medical, ethical, and spiritual examination has been carried out on a case-by-case basis. This is to say I do not believe a uniform amendment to the medical aid in dying laws to allow for persons under the age of eighteen to request medical aid in dying is necessarily prudent because it would open the door to children making adverse decisions through coercion, dominance, and or/undue control over the thought processes of the minor patient, and it would present an extreme ethical decision for parents and physicians.

Before the end of the current decade it is likely that one of the forty-two states that prohibit medical aid in dying will see that statute challenged in the Courts. Presumably the question will eventually reach the Supreme Court on appeal, at which point the court will have to consider as it did in 1973 with Roe, whether or not inconsistency of state laws on a question of bodily autonomy is tolerable under the Fourth and Fourteenth amendments. Unlike in 1973, the

movement to liberalize the medical aid in dying law will be in a much more advanced stage than abortion legalization was in 1973. As of 2020, eight states permit medical aid in dying and New York, Maryland, Massachusetts, and Connecticut are seeking to legalize the process through the legislature or referendum. When the question eventually reaches the Court, it will have to consider the national mood on this question, the positions of the several states, and the position of physicians, patients, and families. If the Court, at least in its current composition, wishes to be bound by precedent then it must consider Roe and its reaffirmations, Quill and Gonzalez, especially considering that Gonzalez left the decision to the several states. Conversely, it will have to consider its previous findings on bodily autonomy that prohibit the several states from imposing undue burdens on private conduct.

The will of the individual to do as they please, if violence is not being used and the social order is not being threatened, must be paramount regardless of the objections of social conservatives. While certain limitations can be put on these rights, it is not in keeping with the Anglo-American tradition to favor restricting a right for its own sake, if the restriction is not reasonable. I will posit a question here: is it reasonable to force a dying person to leave their home and community to undergo the deeply private and individualized act of ending their own life? These are a set of actions that are performed when we are at our weakest, and often in extreme and excruciating pain, be it physical or mental. How can it possibly threaten the social order as social conservatives have often intimated for the individual to exercise autonomy over their own body? If autonomy can be taken away at that stage of life, where else might the state decide to chip away at the autonomy of the individual in matters of property, organized religion, the accumulation of wealth, whether or not to insure against loss, employment, marriage, the organization of the family, and the privacy of the family? There must be certain areas of private

conduct where the state can never interfere. The individual must be sovereign in areas of private conduct for individual freedom to mean anything. If pillars of individual freedom can be co-opted to whims of the state, then individual freedom means nothing.

The challenge of living together by choice is one of the most interesting problems humankind faces. In a free society we enjoy a surplus of choice. In a democracy, the citizen has the freedom to choose almost anything he or she could possibly want. The choice under totalitarianism is remarkably simpler—either tolerate the system and bend it to one's own ends or resist.

The Chinese economic experience since 1978 is remarkable because the Communist Party of China has attempted to build a capitalist economy in a totalitarian command state. The Chinese experiment is attempting to prove that economic freedom and personal freedom do not have to co-exist, and they are attempting to export their model to the developing world. The English-speaking model remains insistent on the idea that personal freedom and economic freedom are linked together in the right to vote, the right to dissent, the right to free speech, the right to freedom of religion, association, and petition are permanently bound with the right to own property and the right to accumulate wealth for one's own purposes, and profit from private enterprise. Both sets of freedoms depend on the other. If the citizen is not free to speak, or associate as we see fit, the right to own property is meaningless. The right to only participate in the market economy is an empty shell. Economic freedom alone does not make a vibrant society. A society can only pulse with electricity when all freedoms are respected and all components of the life of the citizen are given equal respect and authority by the state.

Since the American and French Revolutions, the foundational questions surrounding the scope and limits of freedom are the contrast between the Anglo-American concept of liberty and

the Continental concept of equality. English-speaking constitutional revolutions have generally sought to expand liberty. Those emanating from Continental Europe sought to destroy the old order to promote equality and equity. The genius of the English-speaking tradition, for all of its flaws, is that this tradition has been able to maintain those elements of tradition that are indispensable while adapting and changing with the times, allowing for reform within the system without spasms of violence, social breakdown, and illiberalism that have bedeviled revolutions the world over. The English system favors evolution to revolution and that is the primary reason that it has endured for over eight hundred years and is well-positioned to meet the challenges of tomorrow with vigor, energy and purpose.

A Distinct Society Within Canada – A Question of Belonging – A Question of Community

The Quebec Nationalist Movement has been sporadically violent, but to a much lesser degree than the comparable movements in Northern Ireland, Spain, and Turkey. Quebecers have sought to channel their nationalist desires and goals through the political process, with the exception of the "October Crisis" of 1970, which was precipitated by the terrorist organization Front de Liberation du Quebec and necessitated the imposition of the War Measures Act of 1914 in 1970. Another distinguishing feature of the Quebec Nationalist Movement is that it does not rely on one political Party or movement to achieve its ends and desires. At various points in history, the Liberal Party (both Federal and Provincial), the Progressive Conservative Party/Conservative Party, the National Union, the Parti Quebecois, the Bloc Quebecois and its historical antecedents, and to a lesser extent the New Democratic Party have all found ways to channel and articulate the Nationalist Position.

Nationalism is a unique and powerful force. It brings the community together on almost every organizational level, from the individual to the family, to the community, region, and nation. It is a binding and focusing energy that unites disparate and often opposing forces around a shared goal, identity, or sense of being that allows a nationalist project to have energy and staying power down the generations.

Quebec is a unique case in that Quebecers have been a linguistic and religious minority in the land they call home since 1763, because of the French defeat in the French and Indian War. Quebec after 1763 existed almost as an island surrounded by Anglophone Canada and British America, and then the United States. Quebecers understood their survivalist mission in five main parts: protecting and promoting the French language, enshrining unique protections for Roman Catholicism both within Quebec society and the emerging Canadian project, denominational

schools and hospitals, to protect the Roman Catholic nature of the Quebec family, and a loophole in the Divorce Act that removed divorce petitions from the civil courts and left that responsibility up to Quebec's twenty-four senators.

While Quebec nationalism always existed after the French defeat in the Battle of Quebec in 1763, the disagreements and compromises that lead to Confederation in 1867 brought the movement into a rapidly modernizing world. Allowance for Quebec in the Constitution included twenty-four seats in the Senate to be apportioned between the Francophone and Anglophone communities, based not on the province, but by divisions based on the linguistic makeup of the counties of Quebec, ensuring Anglophone representation in the new Federal Parliament. In 1873, the Supreme Court would be created with three justices for Quebec, trained in the civil law and fluent in French, safeguarding the rights of both litigants and those justices sitting to hear the cases before them in a language with which they were most comfortable.

In 1896, Sir Winifred Laurier became Canada's first Francophone prime minister. His first Ministry was preoccupied with two central issues: the separate schools' question for Catholics west of Ontario and Protestants in Quebec and the prohibition question. Rather than submitting a bill to Parliament on prohibition, the government orchestrated an advisory plebiscite on September 29, 1898 opposing the question as to whether Her Majesty's government should introduce legislation to ban the sale of liquor and intoxicating spirits. On a turnout of 44%, 51% of those electors voted in favor of Her Majesty's government introducing legislation. However, in Quebec, 81.2% of the electorate voted no, signaling the first meaningful break between Quebec and Anglophone Canada since Confederation in 1867. As a result of opposition to the proposal in the Liberal stronghold of Quebec, the Laurier Ministry elected not to pursue Federal legislation, instead leaving the matter to the provinces.

While nationalist questions would persist in the first decade of the twentieth century, most notably with the introduction and defeat of the Naval Service Bill in 1911 (which would have created a separate Royal Canadian Navy, independent of London), it was the issue of conscription in the First World War that reignited the Quebec Nationalist Cause. In 1917 the Borden Ministry brought forward the Military Service Act of 1917, which would have mandated conscription of all eligible British subjects falling into one of four distinct classes: men under the age of 35 who were unmarried, those under the age of 45 who were declared fit for duty by a medical inspection, members of His Majesty's Reserves, and those men registered to vote on the Dominion Electoral Role on or after New Year's Day, 1907. (Military Service Act 1917, George V, 7) While French Canadians were not opposed to the war in principle, Francophone sentiment was decidedly against participation in the war at the behest of the British Empire, particularly through a forced vehicle such as forced conscription. Prior to the introduction of the act, the Liberal Party had agreed to enter into coalition with Borden and the Conservatives for the duration of the war in order to allow for the relatively smooth functioning of the Federal Government. Upon the introduction of the bill, the Quebec wing of the Party led by Laurier and Henri Bourassa split from the Liberal Party to fight the Federal Election of 1917 as Laurier Liberals, with a platform explicitly opposed to the enforcement of the Military Service Act in relation to conscription. Those Liberals that wished to remain in coalition fought the election on the Unionist Ticket. On December 17, 1917, the Unionists were re-elected with 153 seats, a comfortable majority of 45. The Laurier Liberals dominated Quebec, winning 62 of the 65 seats in the Provence on 73% of the vote. All Liberal victories outside of Quebec occurred in constituencies with plurality or Francophone populations in Ontario, Manitoba, New Brunswick, and Prince Edward Island.

On New Year's Day 1918, enforcement of conscription began in force. As of that date, 404,385 men were eligible for conscription and 385,510 sought various deferments. Beginning on Holy Thursday, March 28, 1918, a riotous mob began to throng through downtown Montreal against conscription. Their primary target was the Dominion Registration Office on San Roch Street and Victoria Avenue. Upon reaching the building they successfully ransacked it and set it alight. Other registration offices throughout the city were also targeted throughout the Easter weekend with violence continuing through Easter Monday on April 1st. Alarmed by the escalation and violence, the Federal Government invoked the Federal War Measures Act of 1914, placing Quebec under Marshal Law. In March of 1918, the act was further amended to eliminate all by conscientious and religious objections, and conscription would continue until the Armistice of November 11, 1918, at which point the vast majority of the Canadian Expeditionary Force was demobilized.

For most of the 1920s, nationalists in Quebec would remain united under the Liberal Party at the Federal and Provincial levels. In 1935, Maurice Duplessis became Leader of the Conservative Party in Quebec. He united the Tories with the National Liberals to form the National Union. In 1936 he would lead the National Union to power for the first time, defeating Adelard Godbout. With the outbreak of the war in 1939, the Federal Government became concerned that Duplessis would use the conscription question to undermine the war effort. Asserting its Federal police power, the Attorney General's office censored Duplessis' radio broadcasts during the 1939 Provincial election. These efforts propelled Godbout to an overwhelming victory, with the Liberal Party taking 70 of the 85 seats in the Legislative Assembly. The second Godbout Ministry put forward its first Speech from the Throne on February 14, 1940. One of the first Government bills to be read to Parliament by Marie Joseph

Fiset was a guarantee to extend the franchise to women. By the close of that parliament in l944, conservative forces in Quebec mobilized almost immediately against the bill. Led by Cardinal Rodrigue Villeneuve, who grounded his objections to equal suffrage around "the authority structure of the family and that women would be better served through the influence of female organizations outside politics." (Montreal Gazette, September 7, 2012) Godbout, being a devout Catholic, was nevertheless taken aback by Villeneuve's unprecedented intervention into the business of the legislature.

Reaching Villeneuve by telephone, Godbout cautioned him that should he withdraw the bill and resign as Premier, his extremely anticlerical deputy T. D. Bouchard would likely succeed him and go further in a progressive nationalist direction hostile to the church. Villeneuve rescinded his objections and the bill received Royal Assent.

In 1940, the third W.L.M. King Ministry brought forward the National Resources Mobilization Act, which required all men to register for conscription. The Minister of National Defense James Ralston advocated immediate mobilization of all able-bodied men regardless of opposition from Quebec. Montreal Mayor Cammilen Houde became the public face of opposition to conscription, railing on the radio and in front of massive crowds across Quebec that no French-Canadian man should register for conscription. Instead, he implored them to choose Option F on the registration form, which enabled conscription but not mobilization deployment. This act of civil disobedience led to the famous Zombie Regiments, which had been called up but could not be fully mobilized due to the selection of Option F on the registration form. Most Zombie Regiments would have only been mobilized in the case of a Japanese invasion of Alaska and British Columbia, which would have necessitated a national mobilization for home defense.

Attorney General Ernest Lapointe, with the Cabinet in protest, campaigned for a "no" vote on the conscription question. In order mobilize French-Canadian discontent, Lapointe used the existing Liberal Party patronage system to set up local committees to disseminate anti-conscription propaganda and to mobilize votes for the referendum. Lapointe committees were also allocated money for radio and newspaper ads in Quebec and Francophone Ontario and New Brunswick.

After the disastrous allied defeat in the Battle of Hong Kong, in which two Canadian divisions were obliterated, domestic pressure on King to enforce general mobilization led to the Conscription Referendum on April 27, 1942. Sixty-four percent of Canadians voted in favor of allowing general mobilization, but 73% of Quebecers voted no, with Lapointe committees' organization organizing a "no" vote among Francophones. Henri Bourassa, who was by this time 76 years old, was still a focal point for the "no" campaign, taking to English and French dailies and the wireless to strenuously advocate for a "no" vote. Rising Quebec politicians included Pierre Trudeau and Jean Drapeau, who also barnstormed Quebec and spoke widely on the wireless, giving each man a foundation for political careers after the war. In 1944 Godbout was defeated by Duplessis, who would remain in office until 1959. Duplessis's second term in office would be known as "The Great Darkness." His fusion of Catholic conservatism and Quebec nationalism would ensure that the church would be the primary provider of education, health, and social and human services in Quebec. Due to a quirk in the original Constitution of 1867, Quebec was not legally required to form a Ministry of Education or to provide public education at any level, as education in Quebec had historically been provided along denominational lines.

After the war, Duplessis's reactionary policies evolved further with the Communist Control Act and the Trade Union Act. The first statutory instrument banned the Communist

Party, and the second required labor unions to register and then expel any known Communist members. Failure to do so would lead to the suspension of the union and the revocation of its organizing privileges.

The National Union would be re-elected comfortably in 1948, 1952, and 1956. On September 23, 1959, Duplessis died of a heart attach at the age of 69. His successor, Paul Sauve, died on January 2, 1960, and was succeeded by Antonio Barrette. The death of two of its leaders in less than a year greatly weakened the National Union and its electioneering and patronage machine. Godbout's death in 1959 allowed the Liberals to select a new leader in Jean Lesage. Lesage promised a quiet revolution and pledged a Quebec for the Sixties with his slogan "Masters of our own house." Winning 51 seats to the National Union's 43, the first Lesage Ministry put forward an agenda for a hundred days of change, establishing the Ministry of Education and Public-School Boards and greatly increasing public spending, including child benefit, mother's allowance, urban development, and health and social services. Outside of education, the government's most important legislative accomplishment was the Nationalization of the Electrical Grid under Hydro Quebec in 1962. The creation of the Hydro Board allowed the government to concentrate resources on rural electrification and the beginning of mass transit systems for Montreal and Quebec City. Lesage also entered preliminary negotiations with Prime Minister Lester Pearson around amending the Constitution and certain constitutional guarantees for Quebec.

In 1966 the leader of Her Majesty's Official Opposition in Quebec, Francis Daniel Johnson, Sr. published *Equality or Independence*, pledging a new constitutional settlement that recognized Quebec as a distinct society within Canada, along with protection of the French language, protection of Quebec's allotment in both houses of Parliament, and more power for

Quebec to raise her own monies in education, health and social services, transport and the protection and promotion of Francophone culture and media, and the environment.

The book became the centerpiece of the National Union's 1966 Election Manifesto and its title became the Party's slogan. Johnson reflected much of what aspirational middle-class Quebec saw in itself. Raised by an Irish father and a Francophone mother, he was fluently bilingual, but educated entirely in French. On the back of his personal charisma, and the youth he displayed against the aging Lesage, he led the National Union to victory with 56 seats to 50 for the Liberals.

In 1968, Johnson suffered a mild miocardial infarction and passed away in his sleep. At the ensuing leadership convention, called in October 1968, The National Union was divided into two camps. The Federalist wing of the Party threw its support behind Attorney General Jean Jacque Bertrand. The Nationalist wing of the Party strongly favored Minister of Education Jean Guy Cardinal. Although Bertrand won easily with 58% of the vote on the floor at the convention, the Nationalist wing of the Party was bitterly disappointed as it viewed the contest primarily as a struggle for the identity of the Party and of Quebec. Cardinal resigned as Minister of Education, crossing the floor to sit with the Parti Quebecois, where he would remain as the member first for Bagot, the constituency he had represented since 1968, and later for the neighboring constituency of Prevost. He would serve as leader of Her Majesty's loyal opposition in the 30th National Assembly, which sat from November 22, 1973 until its dissolution by Lt. Governor Hughes LePointe on October 18, 1976, upon the issuance of the writ for the 1976 General Election.

In 1969, the Federal Government of Canada enacted the Official Languages Act, which guaranteed equal status for the French language in terms of obtaining Federal services, pleading and representation in Federal courts, and to equal access to employment for Francophones in

industries regulated by the Federal Government. The act also explicitly prohibited discrimination based on the first language of the Speaker or discrimination based on ethnic or national origin by ensuring that services could be provided to Francophones and Anglophones where they were in the minority. The act was designed to guarantee a basic level of services for both communities without favoring one language over the other.

In the 1969-1970 academic year, the Montreal School Board voted that all children currently enrolled in the borough of San Leonard would be enrolled in English language public education regardless of the language spoken at home, and that no accommodation for Francophone students would be allowed. The Board further announced that proficiency in English would be mandatory for those students matriculating from grade twelve. Although the borough did and still does have a majority Italian population, most families in the borough had successfully assimilated by adopting French as their first language. Groups of parents protested vociferously that the Board reconsider the English language requirements, and they began to grow violent at School Board and Borough Council meetings. The Bertrand Government sought to calm the situation by introducing Bill 63, an act to promote the French language in Quebec. The bill required that all students, regardless of linguistic background, matriculate from secondary school with a working knowledge of French, making French language courses optional for both Catholic and Protestant school boards and requiring that immigrants demonstrate proficiency in the French language in order for them to receive means-tested welfare benefits and workforce development and employment assistance. The bill also greatly expanded The Office of The French Language Commissioner. The Nationalist wing of the National Union thought that the proposals were too narrow in scope. (Fishman, 1991, p. 303) (Rsv. Quebec Statutes, Chapter 3, Elizabeth XVII) Dissatisfaction led to a serious internal

division within the Party, which severely hampered its readiness for the 1970 General Election. The Government of Robert Bourassa extended Bill 63, with The Official Language Act of 1974 declaring French to be the official language at the provincial level. The act further mandated that services be provided primarily in French, that commercial signage be primarily in French, that government contracting be conducted primarily in French, that English language education be restricted to those pupils being fluent in English, and that the Civil and Criminal Code be reprinted primarily in French. Anglophone members of the Liberal Caucus, led by John Ciaccia, resigned in protest and sat as independents in protest after the bill received Royal Ascent.

The Faculty of Law at McGill University, led by Dr. Francis Scott, Dr. J. P. Humphrey, and Dr. Irwin Colter sought to sue the province for violating the rights of Anglophones that were protected under Section 133 of The British North America Act, 19867. The McGill Declaration stated that no act of the National Assembly could preempt or invalidate pre-existing protections for minority language rights under the Constitution. The guarantee of minority rights was considered to be inviolate and part of the social compact between Francophones and Anglophones. The provisions dealing with education were seen to be inherently discriminatory toward Protestant school boards. Said provisions were seen as an attempt to weaken them based on their linguistic and confessional composition. (Until 1998, public school boards were organized on the basis of denomination, with each county or territorial equivalent required to create a school board for Catholic and Protestant education. A 1998 constitutional amendment replaced confessional school boards with ones drawn up on linguistic lines.)

In 1976, the Bourassa Government sought to capitalize on the 1976 Olympics in Montreal by calling an early election. Although an election was not required until 1978, Bourassa sought to capitalize on the publicity created by the Olympics and catch the Parti

Quebecois and its leader Rene Levesque unawares with the early election campaign. The PQ devised an election strategy of two prongs. One was guarantying a referendum on negotiations for independence and a new associative relationship with the rest of Canada before the end of 1981, and the other was attacking the government on cost overruns relating to the 1976 Olympics. Rather than emphasizing the drive for independence, the slogan chosen for the campaign was "We need a real government." Hoping to drive home the Party's image and guarantee of ethical and accountable government and making independence a secondary issue for most of the electorate, and riding a wave of massive support of Francophones outside of Montreal, the PQ won a convincing majority of 71 seats, increasing its seat count by a factor of 11, from 6 to 71. This coincided with a loss of 76 seats for the Liberals and the defeat of Bourassa in his constituency of Mercier.

When the 31st National Assembly convened for the first time on December 14, 1976, the first bill presented to the Legislature was a draft proposal to extend Bill 22 with The Charter of the French Language. While the bill did not abolish English speaking services in Quebec, Title I declared French to be the province's sole official language and further codified the right to receive services, conduct business, and be serviced primarily in French.

Chapter 3 declared French the be the official language of the Court System, which was challenged at the Supreme Court in Attorney General of Quebec v. Blaikie—the case was appealed to the Supreme Court after a judgment against the government in The Court of Appeal for Quebec. By a decision of 8 to 0, the Supreme Court found those provisions relating to the courts to be invalid as they expressly discriminated against Anglophones in the court system. "Both English and French versions of all statutes are of equal official status, otherwise the bill cannot be promulgated to have been enacted."

The Levesque Government did not seek to put the referendum question of independence to the electorate immediately in 1977. Rather the government wanted a sufficient period of time to demonstrate its promise of good and clear government before moving on to the independence question. The second major bill put forward by the government was campaign finance reform, which sought to cap donations to political parties at $3,000.00 per person/per year. It also passed the Referendum Act to guaranty equal time and funding for the "yes" and "no" campaigns in any province-wide referendum.

The independence referendum was called with the publication of a white paper published on November 1, 1979, entitled "New Deal: The Quebec Government Proposal for a New Partnership Between Equals Sovereignty Association." The question which was first put to the electorate on December 20, 1979 was as follows: "The Government of Quebec has made public its proposal to negotiate a new agreement with the rest of Canada based on the equality of nations; this agreement would enable Quebec to acquire the exclusive power to make its laws, levy its taxes, and establish relations abroad—in other words, sovereignty—at the same time to maintain with Canada an economic association including a common currency; any change in political status resulting from these negotiations will only be implemented with popular approval through another referendum; on these terms do you give the Government of Quebec the mandate to negotiate the proposal agreement between Quebec and Canada?" (Referendum Question, May 20, 1980)

The proposal was essentially a framework in which Quebec would become independent but maintain a customs union with the rest of Canada. Quebec would become politically independent, but the Canadian dollar would remain the currency and The Bank of Canada would continue to print money and set interest rates for Quebec. Though the proposal did envision a

unilateral declaration of independence in the event of a "yes," the declaration would only be enforced after successful negotiations with the Federal Government on a customs union, immigration and citizenship, defense, taxation, and other presumed shared heads of power. The actual provisions in the proposal envisioned an associative relationship between Quebec and Canada rather than complete independence. By maintaining a customs union with Canada, the "yes" campaign hoped to sway undecided voters by focusing on the associative aspect of the proposal rather than sovereignty.

Prime Minister Pierre Trudeau sought to outflank the "yes" campaign by promising constitutional reforms should the proposal be rejected. Trudeau built on the "Beige Paper," published by the Provincial Liberals on May 18, 1980, which envisioned an asymmetrical federation with devolution of power to the provinces and territories and an elected senate rather than an appointed one to better reflect provincial interests. Trudeau's promise of constitutional reform undercut the early lead of the "yes" campaign, particularly with Francophones outside of Montreal; the Prime Minister was offering a concrete proposal to address Quebec concerns regarding the nature of the federation, whereas the "yes" campaign remained vague and nonspecific about the exact nature of Sovereignty Association. In his final speeches during the campaign, the Prime Minister, who by then was the forefront of the "no" campaign both on television and on the stump, took pains to point out the Irish ethnicity of many prominent PQ ministers and the leadership of the "yes" campaign, even as he pointed out his middle name of Eliot on the stump. The normally cerebral Prime Minister made an attempt to reach the voters where they were, and on Referendum Day, the "no" campaign was successful by a margin of 59.5 to 40.4%. After the results had been tabulated, the Prime Minister reiterated that constitutional change would be paramount for the Federal Government. Any constitutional

amendments would need to be agreed to by at least seven provinces comprising 50% plus 1 of the overall population.

On March 13, 1981 Levesque called a general election for April 13, 1981. Rather than focusing on independence, the Party pledged a new deal for Quebec within Canada and to continue good government. The PQ was reelected with a majority of 18—a gain of 9 seats from 1976. In April of 1982, constitutional negotiations concluded with The Charter of Rights and Freedoms, entering into force on April 17, 1982, with the ascent of Her Majesty Queen Elizabeth II. Levesque refused to sign the document, as it made no provision for Quebec as a distinct society or a co-equal partner in confederation. Levesque demanded an addendum reflecting the unique nature of Quebec within North America.

The Progressive Conservative Party, which at that point formed Her Majesty's loyal opposition, headed into 1983 relatively confident of a victory at the next general election. However, there were elements in the Party led by Montreal industrialist and barrister Brian Mulroney and Shadow Minister for Finance Michael Wilson that saw a change of leadership before the general election, whether it was called in 1984 or 1985, as essential to electoral success among Quebec Nationalists, who had shunned the Conservatives since 1962. After former Prime Minister Joe Clark failed to gain a supermajority of delegates in favor of his retention of the leadership, he agreed to step down and trigger a leadership election on June 11, 1983. Mulroney immediately entered the race as both a Quebec Nationalist and the leader of the Moderate Wing Party. After initially agreeing to resign, Clark immediately ran to succeed himself with the backing of his home province of Alberta and most delegates from suburban Ontario. Wilson emerged as a compromise candidate, but favored Mulroney for electoral opportunity in Quebec. While Clark led on the first three ballots, he was not able to win an

overall majority of the delegates. Mulroney emerged victorious on the forth ballot by a margin of 54 to 46%.

On February 28, 1984, Trudeau announced that he would not lead the Liberal Party into the next general election and that he would resign as soon as his successor was chosen at a leadership convention. Former Finance Minister John Turner won on the third ballot and was sworn in on July 30, 1984. While the Parliament Act did not require Turner to dissolve the House of Commons and seek his own mandate until September of 1985, Turner felt that an early election was in his interest due to flawed internal polling that showed the Liberals with a lead over the Conservatives and with Turner enjoying the lead over Mulroney in personal popularity. On July 9, 1984, Turner advised Governor General Jeanne Sauve to dissolve the Commons and issue the writ for September 4, 1984. The Liberal campaign was disastrous from the beginning. Turner's pledge for a Federal jobs program for unemployed and underemployed youth gained almost no traction with the electorate and his proposal for paid maternity leave and child benefit was deemed ridiculous by the national media in both official languages.

Mulroney's focus on bringing Quebec into the constitution, free trade with The United States, an asymmetrical federation in line with the Beige Paper, and cutting the deficit in half resonated strongly with the electorate, particularly with Quebec. On election day the Progressive Conservatives won 211 seats to 40 for the Liberals and 30 for the New Democrats. In Quebec the Conservatives won 58 of 75 seats on 50% of the vote—the Conservatives' best performance in both seat count and vote share since 1958.

Levesque reacted to proposals for further constitutional reform with caution. As 1984 became 1985, Levesque became convinced that some kind of constitutional amendment could satisfy his desire for a distinct society clause for Quebec in the constitution. In March of 1985,

Levesque informed the Cabinet that he would enter into negotiations with the Federal government without independence on the table, focusing instead of the distinct society clause. The Levesque proposal fractured the Party, with hardliners immediately demanding his resignation, which he would eventually tender on June 3, 1985.

Pierre-Marc Johnson won the leadership race to replace Levesque on September 29, 1985. He advised Lt. Governor Giles Lamontagne to call an election for December 2, 1985, with Bourassa having returned from Harvard to take the Liberal leadership and the role of leader of Her Majesty's Loyal Opposition. Johnson would face a supremely experienced opponent in the General Election. Johnson was uncomfortable in English, even though his father Daniel Johnson Sr., who was fluently bilingual, had no difficulty speaking in both languages in public. Johnson refused to debate Bourassa on television in English. The position of both leaders on the constitutional question was largely indistinguishable, with both leaders favoring Mulroney's offer of a constitutional settlement. Johnson's openness to constitutional reform rather than outright independence greatly weakened the Party. Hardliners, particularly on the left of the Party, saw independence as a fait acompli and that no amount of constitutional reform could be sufficient. On election night, the Liberals gained 57 seats, trouncing the PQ government with 56% of the popular vote. Ironically, Bourassa lost reelection in his constituency of Berthand and had to reenter Parliament at a bi-election for the constituency of Saint-Laurent.

In 1987, Mulroney elected to seize the initiative opened by Bourassa's reelection and offered a series of Constitutional amendments, calling a First Minister's Conference on June 3, 1987. The proposal put forward would have guaranteed a Distinct Society clause for Quebec in the constitution, protection of minority language rights in all ten provinces, mandatory selection of Senators by the provinces in the event of a vacancy, rather than direct appointment by the

Prime Minister, more provincial control over immigration and workforce development, provincial input for vacancies to the Supreme Court, and provincial opt outs for Federal spending in education, health, social and human services, child welfare, and other heads of power normally reserved to the provinces and territories. (Meech Lake Accord, June 3, 1987)

On June 3, 1987, the agreement was submitted to the provincial legislatures. If seven of their number of ten, constituting 50% plus one of the population, voted in favor of the accord, it would henceforth deemed to be adopted and transmitted to the Governor General for her ascent.

In 1988 the Palwey Ministry in Manitoba fell on the budget, necessitating an early general election. Gary Filmon and the Progressive Conservatives won government, but in a minority position with 25 seats in the new parliament, which was four seats short of an overall majority. While Filmon supported the accord, the numbers in the new parliament would prove to be problematic. With the Conservatives short of a majority, five Liberals or NDP members would have to cross the floor and vote with the government for the government to achieve an overall majority. A change of government occurred in Newfoundland in 1989, with Conservative Premier Brian Peckford being defeated by Liberal leader Clyde Wells, who had pledged to put the accord to a referendum rather than a vote in the House of Assembly. Wells declared that he would not call the referendum until Manitoba had completed or rejected the ratification process. Wells also declined to hold the referendum concurrently with the Manitoba legislature sitting on ratification. This was primarily a political calculation. Although the Federal Liberal Party supported the ratification, this position was not binding on its provincial affiliates, who were issued no guidance on whether they were support or reject the accord. As of 1987, the Liberal Party was only in government in Ontario, and Premier David Peterson had agreed to the accord and put it to parliament in the approved time frame.

The Distinct Society Clause was meant to explicitly recognize the linguistic, cultural, and religious heritage of Quebec in Canada and North America. The clause was also meant to protect the rights, privileges, and separate school systems of Anglophones in Quebec and Francophones in the other nine provinces. The other proposals were meant to enshrine asymmetrical decentralized federalism, which had been a policy plank of the Progressive Conservative Party since 1967, with the arrival of the Two Nations Policy under Robert Stanfield. The Senate and Supreme Court proposals were designed to devolve power to the provinces by allowing them to nominate or indirectly elect senators who would then be appointed by the Prime Minister, to allow the provincial Attorneys General input on the six Anglophone Supreme Court seats. (The three Quebec appointees must be called from the Quebec Bar.)

The situation in Manitoba changed somewhat with an early election called on September 11, 1990. The Filmon Ministry was reelected with 30 seats, one over the threshold for an overall majority. The NDP became Her Majesty's Loyal Opposition with 20 seats, and the Liberal Party held seven.

On June 7th, 1990, Elijah Harper, who was the member from Rupertsland in the Manitoba legislature, began to filibuster the accord by raising an Eagle Feather. The Eagle Feather represented Harper's concerns as an Aboriginal person over non-consultation of Native Peoples in the drafting of the accord. Harper continued to filibuster until June 22, which was the final day to achieve ratification of the amendments. The legislature did not have a standing order to break the filibuster with a guillotine motion, which would have ended the filibuster with a simple majority vote. Meanwhile, in Newfoundland Premier Wells and the Leader of Her Majesty's Loyal Opposition Thomas Rideout had agreed to cancel both the free vote on the amendments and the proclamation allowing for the referendum should Manitoba fail to adopt the

amendments. One June 23, 1990, the accord lapsed and Premier Filmon telephoned both Premier Wells and the Prime Minister to inform them that it would be impossible to break Harper's filibuster under the standing orders of the legislature. The amendments had already met the constitutional threshold for adoption, but not the unanimous consent rider included in the original accord.

After the failure of the accord, the Federal Government and the provinces returned to negotiation, but not before Bourassa addressed the National Assembly stating "English Canada must clearly understand that no matter what is said or done, Quebec is now and forever a distinct society, free and able to assume control of its destiny and development." (National Assembly Hansard, June 24, 1990) The following day, between a half a million and three quarters of a million participated in the St. John The Baptist Day in Quebec City, which was the largest turnout for the Nationalist movement since French President Charles De Gaulle toured Canada in 1967. A poll taken a week after the failure of the accord indicated that 64% of registered voters in Quebec would vote in favor in some form of Sovereignty Association should the questions be put again in a binding referendum. On July 2, 1990, Bourassa put forward Bill No. 160, which necessitated further negotiations with the Federal Government and a binding confirmatory referendum no later than New Year's Eve 1992 on whatever constitutional amendments were to arise from said negotiations. At the Federal level, eight Progressive and two Liberal MPs led by Minister of the Environment Lucien Bouchard and Liberal MP Jean Lapierre formed the Bloc Quebecois. The BQ was the first Party to explicitly endorse succession rather than recognition of Quebec as a distinct society. Bouchard was able to corral support from seven other conservatives, including Nicholas LeBlanc and Benoit Trenblay, who was a whip for the government, breaking the progressive conservatives' connection with soft and moderate

nationalists in Quebec, which had been building since Mulroney's election as Party leader in 1983.

The failure of the accord was presented as a betrayal in both the French and English language media in Quebec. Since the 1980 Referendum, constitutional change and the guarantee of a distinct society clause for Quebec had been considered an absolute necessity across the political spectrum in Quebec. The failure of the accord ignited the feverish response unlike any in Quebec history. The 35% jump for Sovereignty Association in the space of a week is a statistical spread unheard of before or since by any polling firm in North America. The rapid coalescence of breakaway MPs represented a level of coordination in political Party formation which has no precedent in North American history. Throughout 1991, the Federal Government resumed negotiations with every province except Quebec. Minister of External Affairs Joe Clark was shifted to the role of Minister of Constitutional Affairs to complete the constitutional amendment process. On August 28, 1992, Clark announced that a package of amendments had been agreed upon, including: recognition of Aboriginal self-government for all recognized bands and tribes beginning on January 1, 1993, a distinct society clause for Quebec along with a guarantee of minority language rights, gender equality, an explicit ban on discrimination based on race or national origin, the transfer of Federal jurisdiction in forestry, natural resources, culture, and communications, and the harmonization of policy in telecommunications, workforce and skills development, education, and immigration. Further amendments would have eliminated power of the provincial lieutenant governors to disallow legislation. With regard to the Senate, elections to the Senate were to be held directly or indirectly no later than January 1, 1995. The Senate's power to defect legislation other than supply bills would have been practically eliminated and replaced with a suspensive veto, which could be overridden by a joint sitting of

parliament called by the Governor General. Each province would be allotted six seats in the Senate, with seats and electoral rolls reserved for Aboriginal voters registered with the Federal Government. The accord was put to a national referendum, held on October 26, 1992 after the passage of The Referendum Act, by the Federal Government. The referendum was defeated by a margin of 54.3% to 45.7%, with "no" votes in Alberta, British Columbia, Manitoba, Nova Scotia, Quebec, and the Yukon Territory, with a turnout of 72%. (Elections Canada and elections Quebec, October 26, 1992) After the defeat of the referendum, support for both the PQ and the BQ skyrocketed. Mulroney's personal approval rating plunged to ten percent, and in January of 1993, he announced that he would not lead the Conservatives into the next general election.

The race to succeed him gravitated towards two principal candidates, Attorney General Kim Campbell and Minister of the Environment Jean Cherast. Campbell won the leadership on the second ballot and opted to spend the summer of 1993 on an informal barnstorming tour rather than calling a general election.

On September 8, 1993, facing the expiry of the 34th Parliament, Campbell advised the Governor General to call an election, issuing the writs for September 25th. While Campbell had begun the campaign with a narrow lead over the Liberal Party and leader of Her Majesty's Loyal Opposition, Jean Chretien, a series of gaffs on underemployment and social mobility erased the Conservatives' three-point lead on September 14th, compounded by an incredibly negative ad appearing to mock Chretien's Bells Palsy by focusing on the weakened side of his face in a close up shot on national television. A surge of support for the BQ in Quebec and the Reform Party in the west shattered the electoral coalition that had held the Conservative Party since Confederation. The Conservatives were reduced to just two seats, to 54 for the BQ and 52 for

Reform. The Liberals won a comfortable majority with 177 seats, taking a majority of the vote in Manitoba and Saskatchewan for the first time since 1968.

In December of 1993, Bourassa announced that he would be resigning as Premier and Liberal Party Leader due to his prostate cancer. On January 11, 1994, he was succeeded as Premier by Daniel Johnson Jr. The PQ was resurgent under its leader Jacque Parizeau, who pledged a referendum on independence within twelve months of a PQ victory in 1994. Johnson called the election on July 30, 1994.

The PQ entered the 1994 campaign extremely confident in their ability to win power for the first time since 1981, with their slogan "The Other Way of Government." Parizeau capitalized on Nationalist discontent to win 77 seats, a majority of 14. At the first sitting of the 35th National Assembly on November 29, 1994, Parizeau brought forward Bill No. 1. (Hansard, 11, 29, 1994 an Act respecting the sovereignty of Quebec). Bill No. 1 explicitly stated that the referendum on sovereignty would take place no later than New Year's Eve 1995. Unlike in 1980, the question was much more streamlined and direct. "Do you agree that Quebec should be sovereign after having made a formal offer to Canada for a new economic and political partnership within the scope of the bill respecting the future of Quebec and the agreement signed on June 12, 1995." (Quebec referendum, 1995) Unlike in 1980 the official campaign was much shorter, only lasting 28 calendar days. After a lackluster beginning to the campaign, Parizeau was replaced by Lucien Bouchard, leader of Her Majesty's Loyal Opposition, who injected the "Yes" campaign, swinging a majority of the voters to "Yes" for the first time in the campaign. After an intervention by the President of France, and an address by the Prime Minister Parizeau and Bouchard, polling continued to indicate either a narrow lead for "Yes" or a statistical tie. As the result began to be tabulated, the "Yes" side held the lead for a majority of the evening. It was

only after constituencies in the Eastern townships voted “No” that a narrow “No” victory became possible. Had the constituencies of Drummond, Oxford, Shefford, and Richmond voted “Yes,” a majority for sovereignty would have been achieved. It is important to note that turnout was recorded at 94%, which was the highest turnout for a free and fair election in North American history with the no side prevailing by 50.6% to 49.4%. (Elections Quebec, 1995 Referendum)

Bouchard would remain as Premier until 2001, leading the PQ to re-election in 1998. The Federal Government sought a clear constitutional basis under which Quebec may or may not elect to secede, while simultaneously determining the legality of the Federal position that secession was an ambiguous, if not potentially unlawful, proposition. On February 16, 1998, the Supreme Court began to hear arguments in the secession reference. On August 20, 1998, the court ruled unanimously that Quebec could not secede unilaterally; however, the court also ruled that “A clear majority vote in Quebec on a clear question in favor of secession would confer Democratic legitimacy on the secession initiative which all the other participants in Confederation would have to recognition. Quebec could not, despite a clear referendum result, purport to invoke a right to self-determination to dictate the terms of a proposed secession to the other parties in the Federation.” (Secession Reference, August 20, 1998 which was a Bench Opinion)

One compelling case of the impact of Quebec nationalism is the case of Montreal, particularly the impact of Bill 101 on Anglophone, media, and eduction. A distinct feature of Montreal, especially in comparison with the development of other major North American cities, was the coexistence between the city and the twenty-seven independent municipalities on the island of Montreal. Instead of annexing these fairly large cities, Montreal co-existed with them in

a relationship that was ambiguous and often co-dependent. As a result, for most of its history, Montreal was extremely densely populated, with a density comparable to Brooklyn.

Up until 1981, Montreal was the largest city in Canada by population. However, after the enactment of Bill 101, a large portion of the Anglophone community relocated to Toronto due to a persistent question as to the rights of English speakers at work, accessing public services, maintaining denominationally-based education, and receiving other services that the community had grown accustomed to in its own language. After the failure of the 1995 referendum, the Parti Quebecois provincial government chose to focus on municipal reorganization and devolution to municipalities after winning a second term in office in 1998. Beginning in 2000, all municipalities with over one hundred thousand inhabitants were to be reorganized into megacities with common councils, police, fire and emergency services, tax collection, county equivalent responsibilities, municipal courts, etc.

The provisions in Bill 101 that restricted the use of English in accessing public services on signage available to the public and in education remained a driving force of anxiety for the Anglophone community, notwithstanding Section 9 of the Charter of Rights and Freedoms, which guarantees separate schools for denominational and linguistic minorities. Even after Bill 89, which amended Bill 101 to allow for signage in English along with French, the sense of alienation among the Anglophone community never completely dissipated.

Municipalities that a contained a majority of English speakers sought to and successfully demerged from the megacity in 2006. However, these new municipal corporations continued to rely on the city of Montreal for emergency services, planning, waste collection, and some other county-equivalent responsibilities. This poses the question as to whether or not these new municipal structures are simply legal fictions to placate the Anglophone community. Major

issues that continues to go unresolved are both the fact that the City of the Montreal controls 83% of the voting power on the Montreal Regional Council and the inability of demerged municipalities to organize emergency services for themselves. This leaves them dependent on the City of Montreal for services municipalities would normally provide themselves.

As the 21st century dawned, Montreal found itself dealing with urban sprawl, the amalgamation deadline of January 1, 2002, the Expos' ever-present need for a new stadium specifically designed for baseball, housing, transport, and environmental issues. However, the issue that would come to define the first decade in this century with regard to Montreal would be the rights of people on the margins of life, including religious minorities. How would the city of 1.4 million people adapt, change, and grow with the demands of those who had previously been in the shadows of life and those new communities seeking to gain a foothold in the new place they called home, along with those established communities seeking their place at the table under the Constitution? How would Quebec as a whole react to and attempt to assimilate religious minorities who were not Christian? Were all religious and ethnic minorities to be treated equally?

In 2004, the Northcrest Condo Board sought to restrict Orthodox Jews living in Montreal from erecting Sukkahs on their properties during the festival of Sukkot. The Condo Board declared that the structures violated the Home Owner's Association by-laws. The Orthodox claimants countered with a freedom of religion argument that building the Sukkahs was a minimal requirement under Jewish law. These temporary structures would only be erected for seven days at a time and have always been designed to be dismantled with relative ease, with explicit instruction coming from Leviticus, Chapter 23: v. 42 to 43. Justice Iacobucci, joined by Fish, Arbour, and Chief Justice McLachlin, held that "defined broadly, religion typically

involves a particular and comprehensive system of faith and worship. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to his or her self-definition and spiritual fulfillment…. This understanding is consistent with a personal or subjective understanding of freedom of religion. As such, the claimant need not show some sort of objective, religious obligation, requirement or precept to invoke freedom of religion. It is the religious or spiritual nature of an action, not a mandatory or perceived as mandatory nature of its observance that attracts protection." (2004) 2.S.C.R.551 2004, SCC47) In summary, the majority held that the religious nature of the Sukkah and its importance to the Orthodox community qualified the temporary structures for protection under Section II or Charter of Rights and Freedoms. Due to the religious nature of the objects and the sincerity of the appellants, Judaic observance qualified for protection under the Charter of Rights and Freedoms.

In the decision rendered in Multani v. Marguerite-Bourgeoys School Board in 2006, a unanimous bench found that the prohibition of Kirpans by non-violent pupils in public schools was unconstitutional, as it restricted the religion of Sikh pupils for whom the wearing of the ceremonial sword is a requirement. "The Charter applies to the decision of the school board despite the decisions individual nature. Any infringement of a guaranteed right that results as an action of a decision maker acting pursuant to its enabling statute is at issue here…The Court does not at the outset have to reconcile two constitutional rights. Only freedom of religion is at issue here…. The school board's decision prohibiting appellant from wearing his Kirpan to school infringes his freedom of religion. Appellant genuinely believes that he would not be complying with the requirements of his religion were he to wear a plastic or wooden Kirpan, and none of the parties have contested the sincerity of his belief. The interference of his freedom of religion is

neither trivial nor insignificant as it has deprived him of the right to attend public school." (1S.C.R. 256, 2006, SCC6)

The finding in the above decision is significant because it protects all religious expression in the context of public school, provided that said expression is peaceful and non-disruptive. The decision was groundbreaking in that unlike the 2004 Sukkah decision, Multani focused on normal, everyday activity.

In 2007, the Government of Quebec called a Commission of Inquiry on the reasonable accommodation of religious minorities with regard to services provided by the province. The final report was delivered by Co-Chairs Gerard Bouchard and Charles Taylor. The commission looked at a variety of aspects of public life in Quebec, including the desire for segregation by Orthodox Jews, multi-faith chapels at public universities, the rights of Jehovah's Witnesses in the healthcare system, and other issues involving religious minorities and their interaction with the State, along with simultaneous questions about maintaining the secular and "neutral" nature of the State. The first general conclusion of the report was that the integration and full employment of immigrants in all fields and specialties should be of the highest priority. The Co-Chairs also put forward a proposal for Quebec-specific interculturalism. The most controversial recommendations in the report included paid leave for non-statutory religious holidays (in particular Jewish and Muslim holy days), State support for interculturalism through grants, and a further Royal Commission on ethnic and racial discrimination. However, the most contentious proposal was Sub-Recommendation G2. "With regard to the wearing by Government employees of religious signs, judges, crown prosecutors, police officers, prison guards, and the President and Vice President (Speaker and Deputy Speaker) be prohibited from doing so. Teachers, public servants, health professionals, and all Government employees should be authorized to do so." (p.

272) The Commissioners further recommended that the crucifix above the Speaker's chair in the National Assembly be removed and be relocated to a place more in keeping with the cultural heritage of the Provence and that municipal councils abandon prayers at the opening sessions.

Since the publication of the final report in 2008, successive governments of all political stripes have attempted to bring forward legislation defining the secular nature of the State and regulating the use of religious symbols by members of the public service. The two examples highlighted here are Bill 60, an Act to promote the secular nature of the State and Bill 21, an Act confirming the secularity of the State. The Bill sought to regulate the conduct of public servants by restricting their expression of religion their ability to wear or display religious symbols at work.

The current Government of 2019, led by the Coalition for Quebec's Future and Premier Francois Legault, has introduced Bill 21, an Act respecting the secularity of the State. In sum, Bill 21 seeks to prohibit all public employees from wearing religious symbols at work and "personnel members of any government body must exercise their functions with their face uncovered." The bill requires people seeking public services to similarly keep their face uncovered.

Bill 21 was granted Royal Ascent in June 2019. The Supreme Court has agreed to hear a challenge from Jewish and Muslim groups as it relates to the public sector employment and public service acquisition sections of the law in June 2020. The case of R.V. Wilson Colony, (2SCR567, 2009, SCC37) was restricted to forcing residents to be photographed for the purposes of driver's licenses, not the potential targeting of specific religious groups such as Orthodox Jews and Muslims, who are easily identifiable as religious minorities. The Wilson precedent may not apply due to the voluntary nature of public sector employment and the almost universal,

individual, and peaceful nature of obtaining Government services, along with the potential for the bill to infringe on the wearing of crucifixes and crosses by public employees, as well as the wearing of pre-Vatican II headgear by women who identify as practicing Roman Catholics.

Quebec nationalism finds a home in almost all political persuasions from the left to the center to the right. The distinct nature of Quebec, within North America, makes nationalist and autonomist political parties a uniquely powerful force across the electorate, as well as class, religious, and ethnic lines. The rallying cry of this movement is not necessarily independence for Quebec, but a better deal within the Confederation for Quebec, and a recognition of the distinct nature of Quebec. While this has been and remains an overwhelmingly positive forward-looking and welcoming philosophy, in recent years more extremists and potentially bigoted viewpoints have taken root within this movement, distracting it and obscuring its ultimate goal. Quebec will always be distinct because of the predominance of the French language and of Roman Catholicism. The challenge for Quebec in this century will be to maintain that distinctiveness while welcoming new ideas of what it means to be a Quebecer and what it means to be a Canadian and North American. In a globalized world where more people than ever before can live, travel, and experience new places, ideas, perspectives and opportunities, the question is will Quebec remain open or slam the door shut to the world beyond?

A Constellation of Rights – A Study of Abortion Rights and the Right to Die

Individual rights are among the most sacred freedoms known to humankind, and they began to develop rapidly starting in the late eighteenth century. They allow the individual to stand on their own and play a unique role in the community, standing on their own merits without regard to any component of their background.

When I speak of a constellation of rights in the title of this work, I am referring to the interconnected system of rights on which my two main subjects depend. Among these are the right to conceive, the right to fertility control, the right to make informed decisions about pregnancy and childbirth, the right of the expectant mother and her partner to have absolute dominion as to when, how, and where she will give birth, the right to refuse unnecessary medical interventions during pregnancy or delivery, the right to save oneself, the right to experimental treatment, the right to refuse treatment, the right to fire and to demand consultation with another medical practitioner, the choice as to whether to employ life-saving measures for the continuation or preservation of involuntary functions needed to sustain life, and the right to terminate and to die.

Regardless of legality, methods of terminating pregnancy have been available and frequently tolerated for most of human civilization. Every major religious movement and most legal codes since Hammurabi have commented on the legality of intentionally terminating pregnancy. Christianity, Islam, Judaism, and most sects of Buddhism have issued official pronouncements on circumstances under which abortion should be made legal and when it should be restricted or otherwise outlawed.

The United States and Canada have had a long evolution of abortion law. Both nations originally being British colonial possessions. The various Offenses Against the Person Acts[1] governed the legality of termination of pregnancy up until 1848 in the United States and up until Confederation on July 1, 1967 in the Dominion of Canada. These two nations have enough cultural, legal, and political similarities to warrant a comparative case study. It is critical to know that the Offenses Against the Person Act never made any determination as to the personhood of the fetus and regulated abortion as an offense stemming from the medical practitioner completing the procedure, not the woman seeking it. In the United States after the revolution, abortion was mostly devolved to the states, and those states that did attempt to ban termination on request before 1850 used the same model as the Offenses Against The Person Act, seeking to criminalize medical practitioners whether regulated or not instead of declaring the fetus a separate being worthy of protection under the law.

In the Canadian context, Section 92 of the Constitution Act 1867[2] delegates the regulation of the practice of medicine to the Provinces, explicitly denying the Federal Government in regulating medicine per se. From the foundation of English settlement in North America in 1607 to the 1820s, the legality of termination of pregnancy was ambiguous, as Parliament had made no law on the question, and Colonial legislatures did not see fit to take up the question. Under the Common Law termination was for all intents and purposes legal up to the sixteenth week of pregnancy or when fetal movement could be detected. However, the application of this Common Law standard meant that there was no framework in the criminal

[1] The Offenses Against the Person Act 1861, 24 & 25 Vict, C100 (1861) (Can.).
[2] "Exclusive Powers of Provincial Legislatures," Constitution Act, 1867, Chapter 3, Section 92.

law to prosecute an unlawful abortion, because a bill passed by Parliament assembled had not dictated what that meant.

In the North American English colonies, with the Act of Union 1707[3], the Union Parliament made no significant amendments to the understanding on abortion, which extended to the Colonies until the conclusion of the Revolutionary War in 1783. After Independence, in 1789 the Constitution, through the Ninth and Tenth Amendments, appeared to reserve abortion and family law to the several states with no direct role for the federal government. From 1783 to 1821, abortion was legal with no restrictions in every state. In this twenty-eight-year period, terminating a pregnancy for any reason was not a criminal offense, owing to the incorporation of the Common Law into the laws of the several states. During this time, most abortions were performed by midwives. The desire to push irregular practitioners out of medicine and leave it dominated by men reignited the criminalization movement. In 1821, the Connecticut General Assembly criminalized abortion in every stage of pregnancy except to preserve the life and health of the mother.[4] Maine, Massachusetts, Missouri, Illinois, New Jersey, and New York would pass identical legislation between 1822 and 1830, with an exemption for the life and the health of the mother. The federal government did not seek to regulate abortion in the Territories, leaving the passage of legislation through the various state legislatures, as they acceded to the Union. (The situation in Canada would continue to be governed by Parliament in London until Confederation on July 1, 1867.)

In 1803, the Canadian Parliament brought in legislation to effectively criminalize abortion in Sections I and II of the Malicious Shooting and Stabbing Act 1803[5]. The act banned

[3] Acts of Union, 1707, Anne V, c. 7 and 11.
[4] Revised Connecticut Statutes, 1821 (Void as of January 22, 1973).
[5] Malicious Shooting or Stabbing Act, 1803, 43 Geo III, c. 58.

abortion with no exceptions and also criminalized attempting to terminate a pregnancy after the seventeenth week of gestation. As Canada would not gain its own parliament until 1837, or the ability to legislate the criminal law until Confederation, the act governed upper and lower Canada, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland, and Rupertsland, and the penalties for violation of the act also extended into the Colonies. The act was significant in that it was the first time Parliament had brought forward any regulation on the termination of pregnancy. Although the act mandated prison terms for the performing physician, it did not explicitly mandate incarceration for the women seeking to terminate, nor did it seek to grant the fetus a unique status in the Common Law—i.e., it did not recognize the fetus as a person. This is a critically important dimension for the current discussions surrounding abortion rights in North America, as a separate status for the fetus is a legal fiction at best that would necessitate upending at least four hundred and twenty-five years of precedent, creating a new body of law where none previously existed. Such a finding would be wildly inconsistent with a Common Law system for a variety of reasons, including the legality of one person/one vote, representation based on population, the potential criminal liability of pregnant women and their partners, and representation based on enumeration.

Abortion for all intents and purposes would remain illegal until 1869, when Dr. Emily Stowe challenged the abortion law. She did not seek to invalidate the law by having it found unconstitutional; instead, she sought to extend the therapeutic exemption that she and her patients would enjoy in the United States to the Dominion of Canada. Dr. Stowe contended that

as her patient Sarah Ann Lowell was less than seventeen and was pregnant there could be no liability under The Offenses Against the Person Act 1869.[6]

In 1873, the federal government of the United States enacted the first federal legislation relating to abortion, abortifacients, and birth control with the passage of an act for the suppression of trade in and circulation of obscene literature and articles of immoral use.[7] For the first time in the history of the republic, the Congress saw fit to regulate products deemed obscene through the Interstate Commerce Clause. The Congress intruded on what had been the domain of the several states by exercising its power to regulate the post office and shipping across state lines. While abortion was already illegal except for therapeutic reasons, excluding Kentucky, the act sought to severely restrict commercial literature on abortion, and surgical instruments and medications or chemicals used by doctors to perform terminations, or that could be purchased by private individuals.

Up until 1950, there was very little movement on the reform of the abortion law in the United States. Beginning in 1955, The American Psychiatric Association began to officially advocate for expansion of the therapeutic exemption to include psychosis, extreme emotional disturbance, spousal abuse, and coercion.[8] The courts began to confront the abortion question from a new angle: whether there were certain extenuating circumstances that would allow a particular termination of pregnancy, even if it was illegal, with or without a change in the underlying law. Between 1930 and 1960, most abortion exemptions committees in major cities handled on average 800 referrals a year. From 1940 to 1960, the referral rate in most hospitals

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[6] 22 Vict, C2 (1869) (Can.).

[7] Chapter 258, Section II, Title 17, The United States Code, Public Law 599-41.

[8] Reagan, Leslie J., *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867–1973* (London: The Regents of The University of California, 1997), 206–240.

accelerated due to the inclusion of psychiatric illnesses and socioeconomic circumstances as grounds for consideration for therapeutic termination requests.[9]

While Griswold v. Connecticut ostensibly dealt with access to contraception, in a wide context the decision dealt with questions of privacy, bodily integrity, and the choice to engage in sexual conduct. The right to engage in sexual activity with or without contraception in a cornerstone of the right to privacy. Other social changes besides the Griswold decision that influenced and gave energy to the pro-choice movement in the 1960s arguably began with President John F. Kennedy's Commission on the Status of Women, chaired by former first lady Eleanor Roosevelt, the Equal Pay Act of 1963[10], Title VII of the Civil Rights Act of 1964 (which explicitly bars discrimination on the basis of gender), protests for the Nuclear Test Ban Treaty (which was disproportionately led by women), the formation of The National Organization for Women in 1966, and the publication of *The Feminine Mystique* by Berry Feridan and *Our Bodies Ourselves* by The Boston Women's Health Collective. The formation of the Association of Intercollegiate Athletics for Women in 1972 along with Title IX puts the drive for abortion liberalization and repeal into a broader social context.

Starting in the 1960s, a zero-population growth movement with questions on sustainability and the availability of food and other scarce resources gave the pro-choice a separate foundation. Even as the Green Revolution alleviated concerns food shortages, concerns surrounding climate change and energy security continued to underpin part of the pro-choice argument for limiting the number of children and spacing births optimally.

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[9] Solinger, Rickie, *Pregnancy and Power: A History of Reproductive Politics in the United States* (New York: New York University Press, 2019), 110–169.
[10] Equal Pay Act of 1963, Pub. L. No. 88-38 (1963).

Beginning in 1967, California and Colorado amended their respective abortion laws to make the procedure legal on request and California and Colorado subsequently amended the law to allow for abortion "in the cases of danger to the life or health of the mother, rape, incest, or a severely damaged or handicapped fetus"[11] States that liberalized their abortion laws before 1973 included Alaska, Arkansas, Delaware, Florida, Georgia, Hawaii, Kansas, Maryland, New York, (Legal on request), North Carolina, Oregon, New Mexico, South Carolina, Virginia, and Washington State (legal on request). New York, Hawaii, Washington State, and Alaska legalized abortions with no restrictions between 1966 and 1970. The other thirteen states followed the Colorado model with restrictions and a three-physician panel required to scrutinize and approve all termination requests regardless of whether or not they were carried out in public or private hospitals.

Roe v. Wade and Doe v. Bolton were first argued in 1971 and re-argued in 1972. State-level amendments to the abortion law continued in South Dakota, Wyoming, Nevada, and Montana, but none of these proposals became law before they were both decided on January 22, 1973. The state-level movement to liberalize abortion law allows us to better understand both cases as logical conclusions that may have been reached on an accelerated timescale. The fact that the Justices decided to hear the cases in 1972 is something of a historical accident. Had they waited until 1976 or 1977, a handful of states may have liberalized their laws even further; however, whether the challenge had been heard in 1973 or later in the decade, a challenge from one of the states where abortion was completely illegal was inevitable.

[11] *Colorado Revised Statutes*, 1967.

The expansion of therapeutic termination along with the Supreme Court's right to privacy and a constitutional right to contraceptives finding in Griswold v. Connecticut[12] helps us understand and contextualize the environment and societal currents that made the majority in Roe v. Wade[13] foreseeable and even probable. The majority opinion, written by Justice William Douglas, found that a right to privacy and individual autonomy could be found in the Constitution, and that it was not the prerogative of the several states or the federal government to interfere with the peaceable, private, and individualized conduct of persons in the home as it related to contraceptives.

Beginning in 1976, with the Hyde Amendment[14] Congress sought to restrict the use of Federal funds for abortion by Medicaid recipients except in cases of rape, incest, and life endangerment. Various further amendments have restricted abortion services in the armed services, the VA Health System, Federal prisons, the Peace Corps, and the Indian Health Service. Of particular interest here, however, is the principle that the several states may, if they wish, fund abortion services through state monies. States that fund abortion through Medicaid and the Children's Health Insurance Program include Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington State. Additionally, Iowa, Virginia, Mississippi, and Utah allow Medicaid funding of abortion services in cases of severe abnormality or likely fetal death. Any attempt to restrict state funding through Federal transfers or any other action taken by Congress would be extremely problematic, as those actions would infringe on the rights of the several states to dispense of their own monies as they see fit. For example, the Partial Birth

[12] Griswold v. Connecticut, 381 U.S. 479 (1965).
[13] Roe v. Wade. 410 U.S. 113 (1973) and Doe v. Bolton. 410 U.S. 179 (1973).
[14] "Hyde Amendment," Health and Human Resources Appropriation Bill 1976, 94th Cong. (1976).

Abortion Ban Act of 2003[15] banned intact dilation and extraction, an exceedingly rare operation utilized after the twentieth week of gestation that accounts for no more than 0.3 percent of abortions annually. This and related legislation attempting to criminalize crossing state lines for the purposes of terminating a pregnancy represent a gross infringement of individual rights and the rights of the several states. The Federal government attempting to regulate the practice of medicine is not in keeping with federalism as outlined in the Constitution.

Meanwhile, beginning in 1962 in Canada, the Canadian Medical Association began to consider its official opinion on the reform of the abortion law.[16] As a result of these internal discussions, the association would forward a recommendation to the attorney general as to whether the abortion law should be reformed.[17]

In 1966, Ian Whan, the member of Parliament for St. Paul's, brought forward legislation to legalize the termination of pregnancy on the basis of rape, incest, fetal abnormality, the life and health of the mother, and socioeconomic conditions.[18] The second Pearson Administration referred the bill to a special committee but took no action on it before the end of the parliamentary session. At the time, the liberal government did not want to move on the question to avoid alienating Roman Catholic support and social conservatives within the parliamentary party.

In 1967, the Pearson Ministry allowed two identical pieces of private members' legislation to be attached to its omnibus bill to reform The Criminal Code, effectively turning

[15] Partial Birth Abortion Act of 2003, Pub. L. No. 108–105, 117 Stat. 1201 (2003).
[16] McLaren, Angus and Arlene T. McLaren, *The Bedroom and The State: The Changing Practices and Policies of Contraception and Abortion in Canada, 1880-1996* (Ontario: Oxford University Press, 1997), 124–156.
[17] Halfmann, Drew, *Doctors and Demonstrators: How Political Institutions Shape Abortion Law in the United States, Britain, and Canada* (Chicago: University of Chicago Press, 2011), 48.
[18] Halfmann, *Doctors and Demonstrators*, 127.

both pieces of liberal abortion legislation, which allowed for terminations in the cases of rape, incest, or the life and health of the mother, into government legislation. The resulting Criminal Code amendments only legalized abortion with the consent of two physicians and the abortion committee of a local hospital, where the physicians enjoyed medical privileges. The legislation did not specify explicit circumstances under which abortion committees were to accept or reject petitions for terminations. Furthermore, the legislation did not provide direction to provincial Medicare plans as to whether or not termination was covered under Medicare.[19] By also banning termination outside of the provincially regulated hospital system, the bill would lay the groundwork for Dr. Henry Morgentaler's repeated challenges to Section 241 of The Criminal Code.[20] Morgentaler was a Montreal OBGYN who had achieved notoriety for performing illegal abortions before 1969 and would later push for the removal of all federal restrictions on abortion as well as the right to perform abortions in standalone clinics.

Morgentaler's first challenge in 1975 fell primarily because the majority on the Supreme Court held that regulating abortion was a lawful exercise of the Criminal Law Power under Section 91 of the Constitution.[21] His 1988 challenge would incorporate Sections 7 and 15 of the Charter of Rights and Freedoms – Section 7 guaranteeing the right of the person and Section 15 guaranteeing equality among natural persons and non-discrimination.[22] Morgentaler II, like Roe before it, said nothing about the stage of pregnancy after which the fetus could legally be considered a person, leaving that up to Parliament in the drafting of the new abortion law.[23]

[19] Halfmann, *Doctors and Demonstrators*, 35–101.
[20] Criminal Code, RSC 1985, c C-46, s 241 (Can.).
[21] Morgentaler v. The Queen, [1976] 1 S.C.R. 616 (Can.).
[22] "Canadian Charter of Rights and Freedoms," Constitution Act, 1982, Part I, Section 7.
[23] R v. Morgentaler, [1988] 1 SCR 30 (Can.).

The right to abortion and the right to die are connected, as they both involve the integrity of the body. Both issues put the fully informed, autonomous patient at the center of the discussion. While the state does have a compelling interest in restricting the right to die in extremely limited circumstances, the state cannot force the patient to continue to live, deny the patient experimental treatment, or interfere in the patient's right to make decisions involving terminal illness or end of life care. Therefore both rights depend on and nurture each other, and are appropriate to discuss in concert.

The right to die, that is the right of the terminally ill to end their lives through a variety of means, or the right of families and medical professionals to end life support, and the interconnected right of the patient to explicitly request no extraordinary measures or life support began to arise in the 1960s with the coming of modern life support mechanisms (i.e., ventilation systems, tube feeding, iv antibiotics, defibrillation machines, kidney dialysis machines, transplants, and artificial means of resuscitation).

The law regarding patient autonomy and the role of the family physician evolved far slower than technology. Beginning in 1975, the courts began to grapple with the question of medical aid in dying and the autonomy of the patient. The matter of In Re Quinlan[24] came before the New Jersey Supreme Court. The parents of Karen Ann Quinlan sought to remove a respirator from their daughter who was deemed to be in a persistent vegetative state (PVS). Her attending neurologist Dr. Morse refused to comply with the family's wishes and brought the matter before the Circuit Court on October 30, 1975, before Justice Robert Muir. Justice Muir ruled in favor of Dr. Morse and the Quinlan family sought leave to appeal to the Supreme Court of New Jersey.[25]

[24] In re Quinlan. 70 N.J. 10, 355 A.2d 647 (1976).
[25] Ball, Howard, *At Liberty to Die: The Battle for Death with Dignity in America* (New York: Liberty Press, 2012), 32–37.

The court found unanimously that Karen Ann Quinlan's right to privacy outweighed the interest of her doctor in maintaining her PVS. The hospital refused to comply with the decision and Ms. Quinlan would remain alive with no brain function until June 11, 1985. Morris County Hospital was instructed by the court as to how to end Ms. Quinlan's PVS, and instructed them to form a consulting group of physicians, administrators, social workers, and nurses to determine how best to disconnect Ms. Quinlan from her life support equipment. The hospital for all intents and purposes refused to comply with the order at the direction of Dr. Morse. As the Quinlan family and the courts did not pursue enforcement of the order, Ms. Quinlan remained in her PVS until the disconnection of all life support equipment on May 15, 1985, which culminated with her death on June 11, 1985.[26]

A critical distinction that must be made is that at the time, no state, province, or territory had inaugurated a legal framework for the right to die, to be disconnected from life support, to refuse or demand treatment, or to save oneself. However, with the trigger of the Quinlan proceedings, the several states began to consider the legal ramifications of persistent comas and vegetative states. Beginning in 1983 in Missouri, the several states began to enact living will legislation along with advance directives to enable patients to lay out their wishes in the event of incapacitation and the right for extraordinary treatment to be initiated or ended at the request of the patient. Living will legislation did not establish the right to die, the right to treatment, the right to withdraw treatment, or the right to save oneself.

Dr. Jack Kevorkian began administering passive euthanasia to terminally ill patients in 1989. At the time the practice was not strictly illegal in the state of Michigan, as the state legislature had not explicitly incorporated language into the Criminal Code to ban medically

[26] Ball, *At Liberty to Die*, 32–37.

assisted death. Therefore from 1989 to 1995 Kevorkian's practice of passive euthanasia was not strictly illegal. Because medically assisted death is primarily a state issue due to medical licensing and the Tenth Amendment, this is a question primarily left to the several states.[27]

Beginning in 1990, through the initiative and referendum process, Washington state put the first medically assisted death initiative to the voters. Due to intense lobbying from the Catholic Church, disability groups, and The Washington Medical Association, the initiative failed 58 to 42%. In 1994, Oregon passed the first medically assisted death initiative 51 to 48%, Measure XVI, which allowed for terminally ill adults to request medically assisted death if they had less than six months to live after a physical and psychiatric evaluation and certification by two physicians.[28]

In 1997, the Supreme Court heard two appeals on the question of medically assisted death. In Washington v. Glucskberg, 521 US702 (1997), the court held that the Fourteenth Amendment did not protect the right to die. In Vacco v. Quill, 521 US793 (1997), the court held in a narrower sense that while committing suicide was not illegal or unconstitutional, it was not protected by the Fourteenth Amendment or by the Fourth Amendment guarantee of security of the person. Justice O'Connor, while concurring in the judgement and in the result, wrote for herself, Justice Ginsburg, and Justice Bryer that the issue ought to be handled on a case-by-case basis and that a request for a lethal dose of medication, if the patient was terminally ill, was not unconstitutional per se. Justice Stevens also noted that the democratic process ought to work its will in the several states before the court took up the question again. When it did so in Gonzales v. Oregon, 546 US243 (2006), Justice Kennedy, writing for the majority, held that the federal

[27] Cesare, Michael D., *Death on Demand: Jack Kevorkian and the Right-to-Die Movement* (Lanham: Rowman & Littlefield, 2015), 1–75.
[28] Oregon Secretary of State, Oregon General Election Results, 1994.

government could not interfere with the right of doctors to write prescriptions authorizing lethal doses of medication nor could patients be found in violation of the Controlled Substances Act for dispensing and fulfilling the prescription.

Gonzales v. Oregon represents a turning point in that the decision explicitly returns the question of medical aid in dying to the several states. Since 2006, California, Montana, Colorado, New Mexico, Vermont, New Jersey, Maine, and the District of Columbia have all legalized medically assisted death. The federal government has not brought suit against any of those states and seems inclined to allow the legislatures of the several states to decide the question on their own. By leaving it to the states, the federal government is respecting that the regulation of the practice of medicine falls to the states, and that direct democracy through referendum initiatives and petitions seems to be the best way for American society to resolve this question. This is a healthy development in that it respects the contours of the Federation and allows for direct democracy and respect for the Ninth and Tenth Amendments.[29]

In 1993, Sue Rodriguez challenged Section 241 of the Criminal Code and asserted her right to die due to her ALS diagnosis. The Supreme Court heard the case on May 20, 1993.[30] On September 30, 1993, the Supreme Court rendered its 5-4 judgement. Justice Sopinka, writing for the majority, held that Section 241 was valid insofar as that it upheld the primacy and sanctity of life, therefore the criminalization of suicide assistance was in the view of the majority consistent with peace, order, and good government clause of the Charter of Rights and Freedoms.[31] Writing in dissent, Justice McLachlin held that the prohibition against suicide assistance and the prohibition against the terminally ill ending their lives by their own hand infringed on the

[29] U.S. Const. amend IX and X.
[30] Rodriguez v. British Columbia (AG), [1993] 3 SCR 519, 107 DLR (Can.).
[31] LaForest, Gonthier, Iacobucci, and Major concurred in the judgement and the result, 1993.

security of the person and, in her view, Section 241 should be dispensed with and Parliament be given the opportunity to revisit the law on this question. The crux of the dissent was based on the autonomy of the patient, the agency of the patient, and the principle of informed and prior consent between the patient and their doctor.[32] Rodriguez would be overturned by Carter v. R unanimously on February 26, 2015.[33]

The most likely resolution on the question of medically assisted death will occur with a Roe-like challenge from a state that prohibits the practice. Depending on the number of states that have legalized the practice, the Supreme Court will be making a decision after the people have worked their will, which did not necessarily happen in Roe or Bolton[34], but was inevitable even if the Roe and Bolton petitions had been refused, because the lower federal courts were already invalidating non-ALI abortion statutes as early as 1969.

Beginning in 1975, Dr. Henry Morgentaler began his thirteen-year crusade to have Section 251 of The Criminal Code overturned. The first Supreme Court decision, Morgentaler v. The Queen[35], held unanimously that the abortion provisions of the 1968-69 Criminal Code amendments were constitutional in so far as they did not infringe on Provincial jurisdiction.

In 1988, Morgentaler brought suit again, this time under the Charter of Rights and Freedoms. By a 5 to 2 majority the court held that Section 251 violated the Security of the Person clause of Section 7 of the Charter[36] and threw out the abortion provisions of the Criminal Code amendments of 1968. Subsequent decisions in 1989 and 1990 invalidated presumptions of fetal personhood and spousal consent. Morgentaler also brought suit in 1993[37] over the right of

[32] L'Heureux-Dube, Lamer and Cory also wrote in dissent, 1993.
[33] Carter v. Canada (AG), [2015] 1 SCR 331, 2015 SCC 5.
[34] Roe v. Wade and Doe v. Bolton, 1973.
[35] Morgentaler v. The Queen, 1976.
[36] Canadian Charter of Rights and Freedoms, Section 7, 1982.
[37] R v. Morgentaler, [1993] 3 SCR 463.

Provincial governments to voluntarily not fund termination services. While finding for Morgentaler, the Supreme Court also declared that the underlying question was moot as there was no criminal law on abortion.

Ancient Homelands and New Frontiers: The Question of the Appalachians and the Ohio Valley

The land between the Atlantic fall line and the Mississippi River has been contested for thousands of years. Rich woodlands, navigable rivers, a temperate climate, and beyond the Appalachians, flat and arable land, make the region ideal for development, agriculture, industry, and science. In the eighteenth century most of the land west of the fall line remained in Aboriginal hands. The question of Aboriginal title to lands east of the Mississippi, Indian removal, and in the twentieth and twenty-first centuries the evolving concept of Federal recognition east of the Mississippi and the ambiguous concept of State recognition with its questionable validity under the Constitution will form the basis of this thesis.

While Bourbon France nominally ruled the area which it referred to as "The Ohio Country" during the fifteenth and sixteenth centuries, New France did not dispatch a governor, nor did it seek to encourage sustained white settlement. Missionaries and traders, particularly in fur, found lucrative markets with the native peoples throughout the Blue Ridge, Appalachians, and the Ohio Valley.

Beginning in the 1730s, population pressures began to push British America onto its western frontier. Colonial governments responded by taking previously unorganized territory, mostly in the Piedmont area, and shireing it. Examples include Frederick County, Maryland, shired in 1745, Westmoreland County, Pennsylvania, shired in 1754, and Orange County, Virginia, shired in 1734.[38]

[38]Scott, William Wallace, *History of Orange County, Virginia: From Its Formation in 1734 (O.S.) to the End of Reconstruction in 1870* (Richmond: Clearfield Company, 1907). Kessel, Elizabeth Augusta, *Germans on the Maryland Frontier: A Social History of Frederick County, Maryland, 1730–1800 Volumes I and II* (Houston: Rice University, 1981). Albert, George Dallas, *History of the County of Westmoreland, Pennsylvania* (Philadelphia: L. H. Everts & Company, 1882).

During the French and Indian War, the Appalachians and the valleys beyond saw some of the most fiercely contested battlefields of the war. Both the French and the British constructed a network of forts along the frontier which would constitute the northern and western theaters of battle. Early features of the war included a series of British defeats at Fort Necessity near Pittsburgh, Fort Oswego on Lake Ontario, and Fort William Henry along the Hudson River. Both sides in the northern and western theater relied heavily on Native scouts and various alignments with tribes on the field of battle, with the British forging an alliance with Iroquois Confederacy and New France relying on its pre-existing trade links with the Wabanaki Confederacy.

With British successes along the Canadian front in Lewisburg, Sackville, and Quebec, a victory for the British was in sight by 1760. At the conclusion of hostilities with the First Treaty of Paris in 1763[39], France ceded Quebec, The Maritimes, Newfoundland, and The Ohio Country to Britain, along with East and West Florida.

The purpose of the Proclamation of 1763, which restricted white settlement beyond the Piedmont fault line, was to both reward those Native bands and tribes that had been allied with the British during the war by retaining Aboriginal title and the usage of hunting and fishing grounds in perpetuity. Exemptions were made for those officers in the regular Army and Royal Navy and Marines that had distinguished themselves on the American front with allotments between 5,000 and 50 acres depending on their rank at the conclusion of the war and whether they were permanently stationed in North America. The allotment process created a unique situation in that it allowed permanent white settlement while restricting the movement of yeoman, farmers, and merchants into the Appalachian frontier. Discontent among working-class and middle-class whites laid the sociological and political foundation for removal two

[39] Treaty of Paris, U.K.-France-Spain, Feb. 10, 1763.

generations later. Indian removal did not occur in a vacuum, and it must be contextualized within the wider context of economic strain and the desire of the emerging middle class to gain an economic foothold after the creation of the Republic in 1789. Andrew Jackson's ability to gain political support among newly enfranchised white men with the abolition of property qualifications has its historical antecedent in the restrictions within the proclamation.[40] It is extremely important to note that the proclamation forms the basis of Native title and land claims to the present day. The legal framework envisioned by the proclamation saw Aboriginal title as a permanent fixture of the new lands conquered by Great Britain existing before and after the conquest.[41]

On Monday, October 24, 1768, the colonial governor of New York, William Johnson, along with representatives for New Jersey and Pennsylvania, reset the northern boundary of the proclamation line at Fort Stanwix in upstate New York. The goal of the negotiations was to permanently affix the Northern Indian Reserve in the upper Hudson Valley and the Adirondack Mountains. Fort Stanwix is important chronologically and geographically because it reaffirms Aboriginal title in those lands adjacent to and beyond the boundary line and because it sought to create a permanent area for the Six Nation's habitation and settlement without the cession of any land to white settlement.[42]

After Confederation and the installation of the Federal Government in 1789, the lands, subject to the proclamation line, became the Northwest Territory created by the Congress of the Confederation of 1787. Beginning in 1783, the Congress began to concern itself with both how to govern the Northwest Territory and relations with Native tribes and bands within it. The question

[40] Bines, Terri and Quinn Mulroy, *The Rise and Decline of Presidential Populism* (New York: Cambridge Press, 2004).
[41] "Proclamation of 1763," issued on October 7, 1763, Avalon Project, New Haven: Yale University, accessed June 15, 2019. https://www.avalon.law.yale.edu
[42] Treaty of Fort Stanwix, 1768 and Treaty of Fort Stanwix, 1784. NPS Public Database, last modified July 2015.

of forced removal and expulsion was of particular interest to the Committee on Indian Affairs, even though forced resettlement was deemed to be impractical. "That while such temporary expulsions could only be effected at a great charge, they could not be improved to the smallest advantage but by maintaining numerous garrisons and an expensive peace establishment."[43]

The question as to the position of the five civilized tribes of the upper south and southern interior confronted the Federal Government almost since its inception. In 1790, the Federal Government entered the Treaty of New York with the Creek Nation. Of interest here are Articles IV, VI, VII, VIII, IX, and X. Article IV set the boundary of the Creek Nation along the Savanah River and its tributaries across the fall line into the Blue Ridge Mountains. Articles VI and VII expressly prohibited white settlement within the boundary proscribed by Article IV. "If any citizen of the United States, or any other person not being Indian, shall attempt to settle on any of the Creek's lands, such person shall forfeit the protection of the United States and the Creeks may punish him or not as they please."[44] Articles VII and VIII go further in enshrining Aboriginal title by restricting white hunting and fishing in the portion of the Indian Reserve governed by the Treaty.

The Treaty of New York was a notable development because upon its entering into force with the advice and consent of the Senate, the Federal Government was acknowledging Aboriginal title and the continuation of the Proclamation of 1763[45], by restricting white settlement and commerce in the Indian Reserve. Under the common law, as understood by both parties to the treaty, the proclamation never expired. The Federal Government of the United

[43] "Draft Report on Indian Affairs 1783." Federal Register (1783).
[44] Treaty of New York, Federal Register, 1790.
[45] Proclamation of 1763, Yale University Avalon Project.

States became the custodian of the proclamation in the Indian Reserve ceded by Great Britain after the revolution.

Between 1800 and 1845, the five civilized tribes, Cherokee, Creek, Chickasaw, Choctaw, and Seminole, entered into a series of treaties with the Federal Government of the United States, all of which required the advice and consent of the Senate, and various portions of the Indian Reserve were opened to white settlement and exploration. In exchange those unseated portions were to remain under Aboriginal title until such time as negotiations resumed. The purpose of these negotiations, beginning with the First Treaty of Indian Springs in 1821, and continued with the second treaty transmitted to the Senate by President James Monroe on February 28, 1825, was to guarantee adequate compensation for any voluntary cession, at the rate of eight dollars per acre, without the use of coercion or force, to dispossess and resettle the Creeks.[46] The concept of adequate compensation along with delayed removal for certain families throughout 1826, 1827, and 1828 was expressly violated by The Indian Removal Act of 1830.[47]

In Cherokee Nation v. Georgia[48] and Worcester v. Georgia[49], Chief Justice John Marshall asserted that for the purposes of Federal law, Aboriginal title and the inherent right of Aboriginal peoples to continue to exist as a community on their traditional lands, pursuant to treaties made with the Federal Government of the United States, was an inviolate principle under the common law. "The Indians are acknowledged to have an unquestionable right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government."[50] The majority

[46] Treaty of Indian Springs, concluded January 8, 1821, Congressional Record, 17th Congress, December 3,1821 to May 8, 1822. The Second Treaty of Indian Springs, Congressional Record, 19th Congress, 1st Session, December 5, 1825 to May 22, 1826.
[47] Indian Removal Act of 1830, S. 102, 25th Congress, 1830.
[48] Cherokee Nation v. Georgia, 30 U.S. 1 (1831).
[49] Worcester v. Georgia, 31 U.S. 515 (1832). Yale University Avalon Project.
[50] Cherokee Nation v. Georgia.

opinion clearly established that Aboriginal title was extent and that as long as it continued the Cherokee and by extension all other tribes and bands held title to their land until such time as it was voluntarily ceded to the Federal Government of the United States. The involuntary and coerced nature of Indian removal from 1830 to 1845 was explicitly violative and remains unconstitutional. The Federal Government of the United States violated both the Constitution and all previous treaties made with the five civilized tribes.

Opening Native territory to white settlement and partitioning it into Oklahoma was an express violation of treaty rights that impacted both the five tribes and those other tribes and bands resident in Oklahoma. The 1899 Land Run is particularly impactful because the opening of Oklahoma assumes that the Aboriginal title never existed and that acreage in Oklahoma could simply be assumed by whites as if there had been no previous owners thereof.

The Dawes Severalty Act of 1887[51] (also known as the General Allotment Act) and its successor legislation sought to change both the reservation system and the structure of Aboriginal life by ending communal land practices and dividing reservations into allotments. It sought to into to turn Aboriginal families into tenant farmers, in conjunction with the residential school system, which sought to eliminate Aboriginal languages, religion, culture, and family structure. The 1906 amendment to the General Allotment Act expressly prohibited Native citizenship until such time as "the Indians could be deemed competent to manage their own affairs."[52]

Debates among whites as to how to deal with what could be termed "The Aboriginal Question or Aboriginal Problem" flourished between 1910 and 1960. The competing Native

[51] Public Law 49-105
[52] Public Law 59-149

rights organizations (The National Conference of American Indians and The Association on American Indian Affairs) both sought to impose their vision for Aboriginal policy largely without the consent of Aboriginal people themselves.

The Indian Reorganization Act of 1934 (Public Law 73-383)[53] sought the reorientation of Aboriginal tribes and bands recognized by the federal government in a manner consistent with the wishes and desires of the Bureau of Indian Affairs (BIA). The act mandated that federally recognized tribes and bands organize an elected government on the reservations, draw up constitutions to guide the new governments, and for tribes and bands to maintain an electoral role for the purposes of administering tribal elections. While the act did restore mineral rights and other land use privileges to tribes and bands, the constitutional system envisioned by the act sought to excoriate traditional Aboriginal understandings of how they were to govern themselves. BIA administrator John Collier and Interior Secretary Harold Ickes sought to forceable assimilate federally recognized tribes and bands into white society mainly by tying New Deal money to full participation in the IRA system. While participation did fully guarantee the right of Tribal and Band participation in New Deal programs, per capita spending per Native person declined from $38,000,000 in 1927 to $25,000,000 in 1936.[54]

After WWII, Aboriginal policy pivoted from reorganization to termination of any federal role in Aboriginal programs, with the stated goal of ending the reservation system and forcing the Aboriginal people to assimilate into the dominate monoculture. To this end, Senator Arthur Watkins of Utah introduced House Concurrent Resolution 108[55], which sought to abolish the BIA, extend all federal laws to Aboriginal peoples that did not already apply to them, abolish the

[53] The Indian Reorganization Act of 1934, Pub. L. No. 73-383 (1934).
[54] Statistical Abstract of the United States 1951
[55] House Concurrent Resolution 108 (1953).

Indian Register, and to end federal guardianship and trusteeship of Reservations and the natural resources contained therein, thereby repealing any federal legislation that guaranteed federal trusteeship for Aboriginal people. Most tribes and bands reacted to the Watkins Resolution vociferously, as they felt its spirit and meaning was to disintegrate the distinctive meaning of Aboriginal life, destroy self-control for tribes and bands, and attack the Aboriginal family as conceived through tribal or band custom. The underlying purpose of the Watkins Resolution along with Public Law 83-280[56] was to seek to eliminate the reservation system along with the distinctive nature of Aboriginal life. This was motivated in part by the drive for conformity after the war, but also by fears that Eastern Block propaganda and other Communist activity would be attractive to Aboriginal people due to their economic privation, relative isolation, and tendency toward communal understandings of community life in the Aboriginal tradition.

Aboriginal resistance to the Watkins Act and Termination Policy began with the Native American Chicago Conference of 1961[57], where Native leadership began to formalize their demands for self-determination, land claims, an end to the residential school system, the reassertion of the federal criminal law power on reservations, and a collaborative relationship with the federal government. Beginning with The Civil Rights Act of 1968 (Public Law 90-284)[58], which reasserted the federal criminal law power on all lands held in trust for Aboriginal people by the federal government, the Chicago Conference began to meet its goals.

In 1969, twelve Native American bands took over Alcatraz Prison to protest oil extraction and anchors after the Santa Barbara oil spill. Between this and the burgeoning environmental movement, Native people began to find their voice and thrust in post-war America. The

[56] Public Law 83-208
[57] The Native American Chicago Conference of 1961.
[58] Civil Rights Act of 1968, Pub. L. No. 90–284, 82 Stat. 73 (1968).

environment and energy enjoy a complex relationship with Native people. Some tribes, particularly the Navaho of the southwest and various Sioux bands, have been adamant in their opposition to power plants, oil pipelines, mining, and nuclear energy, whereas other tribes enthusiastically embrace petro carbon production, nuclear energy, mining, and logging industries. That being said, there is a strong connection, at least in the popular imagination, between Native people and environmentalism popularized by the Crying Indian anti-pollution and solid waste reduction campaigns run by the EPA, DOI, the National Environmental Defense Council, and the Sierra Club.

The debate over the Keystone XL and Trans-Mountain pipeline crystalizes the debate among Aboriginal people over whether and to what extent they should participate in resource extraction. The massive protest by the Standing Rock Sioux over Keystone XL obscures the extreme amount of investment, job creation, and royalty extraction that Native tribes enjoy through resource extraction, particularly in Oklahoma, Colorado, Montana, New Mexico, Saskatchewan, and Alberta. In the context of the Trans Mountain dispute, it must be stated that Aboriginal bands have taken a substantial ownership stake in the pipeline.

Beginning with the Native Claims Settlement Act, a variety of federal legislation addressing Native issues advanced through the Congress between 1970 and 2000. The most prominent pieces of legislation include the Indian Child Welfare Act of 1978 (Public Law 98605)[59], the Indian Education Act of 1975 (Public Law 93638)[60], the Indian Gaming Act of 1988 (Public Law 100497)[61], the Indian Arts and Crafts Act of 1990 (Public Law 101-644)[62],

[59] Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069 (1978).
[60] Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203 (1975).
[61] Indian Gaming Regulatory Act. Pub. L. No. 100-497, 102 Stat. 2467 (1988).
[62] Indian Arts and Crafts Act of 1990, Pub. L. No. 101-644, 104 Stat. 4662 (1990).

The Native American Graves Protection and Repatriation Act of 1990 (Public Law 101-601)[63], and The Native American Housing and Self-Determination Act of 1996 (Public Law 101-330)[64]. All of these pieces of legislation are interconnected, as they seek to make Aboriginal self-determination a reality. By devolving power and revenue generation to tribes and bands on issues that concern them, while also seeking to allow individual communities to make their own decisions, the federal government sought to decentralized from the Bureau of Indian Affairs to individual tribes, bands, and villages.

Native activism post-1960 has not been monolithic, and the Native Rights Movement is not chiefly of the left or the right. Native rights and self-determination have never primarily been about living apart from the rest of America. Native people have simply sought integration with America on their own terms, while demanding respect of their cultural and religious institutions, traditional practices, and the Native concept of the family.

Moving into the twenty-first century, for tribes and bands east of the Mississippi, pressing issues included the ambiguity of state recognition, potential revocation of Federal recognition, and the allocation of Federal resources to those tribes recognized by a state but not by the Federal Government. Under the Constitution, relations with Aboriginal peoples are at least theoretically a head reserved to the Federal Government alone, there being no mention of the several states in those portions of the Constitution dealing with Aboriginal peoples. If the Constitution is to be interpreted literally, then the Federal Government alone can recognize tribes and bands, interact with them, allocate Federal resources to them, and grant them official standing, there being no mention of a role for the several states in the Constitution. The Tenth

[63] Native American Graves Protection and Repatriation Act, Pub. L. No. 101-601, 104 Stat. 3048 (1990).
[64] Native American Housing Assistance and Self-Determination Act of 1996, Pub. L. No. 101-330, 110 Stat. 4016 (1996).

Amendment adds another layer of complexity to this issue, because if the amendment is interpreted literally, all powers not enumerated to the Federal Government are returned to the several states, which can then dispense of them as they see fit. To that end, twelve states—Alabama, Connecticut, Georgia, Louisiana, Maryland, Massachusetts, New Jersey, New York, North Carolina, South Carolina, Vermont, and Washington—formally recognize forty-one tribes and/or bands living within their boundaries and allocate certain health, education, social welfare, and economic developments funds as part of the recognition process.[65]

The allocation of Federal resources to tribes recognized by a state, but not the Federal Government, are in the hundreds of millions of dollars. The latest available estimate reported to Congress in the Boren Report of 2012 indicated that state-recognized tribes were eligible for and receiving Federal funding for education, social services, economic development, and housing and community development in the amount of $103,588,000.[66]

The questions raised by this report revolved around the ambiguous situation of state-recognized tribes. Even without Federal recognition, these incorporated groups were still qualifying for Federal funding, without Federal acknowledgement of tribal sovereignty, the ability to make treaties with the Federal Government of the United States, or the ability to interface with the Federal Government of the United States as a people. The situation of the Eastern Pequot Tribal Nation, the Golden Hill Paugussett Indian Nation, and the Schaghticoke Tribal Nation, all of Connecticut, along with the currently evolving situation with the Mashpee Wampanoag of Massachusetts, illustrates the complexities of the revocation of Federal recognition and the administrative powers of The Bureau of Indian Affairs (the Bureau) to act

[65] National Conference of State Legislatures 2015, Alphabetized Registry of State Recognized Tribes, accessed June 10, 2019. https//www.ncsl.org.
[66] U.S. Government Accountability Office, *Month in Review, April 2012*, 2012. https://www.gao.gov/mir/2012/april

independently of the Congress and the President of the United States in determining the status and recognition of Aboriginal peoples.[67]

All three Connecticut tribes had Federal recognition revoked by a unilateral review of the Bureau in 2005. The revocation process mostly centered on gaining revenue and other fiscal issues with the state of Connecticut, and Federal revocation preempted a bill filed in the 109th Congress by Representative Nancy Johnson of Connecticut.[68] Revocation of Federal recognition returned all three tribes to their previous ambiguous state. The Mashpee Wampanoag are currently in a dispute with the Bureau as to whether their tribal status and their ability to hold land in trust for the tribe is valid and therefore permanent vis-a-vis their relationship with the Federal Government. Effective September 1, 2018, the Bureau revoked the three-hundred-and-twenty-one-acre Mashpee reservation and sought to begin the process of revoking Federal recognition so they could not build a proposed casino on reservation land under the Indian Gaming Regulatory Act of 1988.[69] The unilateral nature of the revocation of tribal status by the Bureau appears anomalous due to the fact that the treaties with Aboriginal peoples and recognition is a power normally held by the Congress of the United States. The Bureau appears to be acting outside of its mandate, which appears to require deference to Congress on questions of Federal recognition and land trusteeship. The imbalance of power between the Executive and the Congress, particularly regarding Aboriginal peoples east of the Mississippi River, places Aboriginal tribes and bands at a distinct disadvantage due to the unilateral ability of the Bureau

[67] Mashpee Wampanoag Tribe Reservation Reaffirmation Act, H.R. 312, 116th Cong., First Session (2019).
[68] U.S. Senate Committee on Indian Affairs, May 11, 2005.
[69] Public Law 100-497, 1988.

to revoke recognition without authorization of the Congress. It is important to note that the Congress voted to recognize all eight Virginia tribes and said recognition is now Federal law.[70]

Also of note is Article 1 Section 8 of the United States Constitution, whereby "The Congress shall have power to regulate commerce with the Indian tribes."[71] Taken literally, only the Congress can recognize or revoke recognition of a tribe or band. While state recognition remains a grey area, revocation of recognition by the Bureau appears to be both unconstitutional and a violation of the common law as understood from the Proclamation of 1763. The rights of Aboriginal people east of the Mississippi River to continue as peoples and to be recognized by the Federal Government of the United States continues from the proclamation, and any attempt to undermine the ability to do so appears to be an egregious violation of both common law and the United States Constitution.

The ability of the Bureau to exercise its power through administrative fiat, without prior consultation with Congress, allows for an imbalance of power which greatly disadvantages smaller and scattered state-recognized tribes and bands east of the Mississippi. The revocation power of the Bureau is in direct conflict of stated Federal policy of Native self-determination after 1970, as the Bureau is able to unilaterally undercut and halt efforts at self-determination and recognition, which are counterintuitive to state and Federal policy and operative Federal law since 1970.

The lack of Federal recognition and the comparative scarcity of reservations east of the Mississippi has allowed Native self-determination, particularly on the East Coast, to be an evolving mechanism. The continued existence of Native populations and the drive for self-

[70] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Pub. L. No. 115-121 (2017).
[71] U.S. Const. art. I, § 8, cl. 3.

determination is an underrecognized issue for most states on the Eastern Seaboard. With popular opinion and the wider cultural imagination both assuming that Native peoples east of the Mississippi have been exterminated, the concept of Native issues east of the Mississippi is relatively new for non-Native populations.[72]

Native peoples east of the Mississippi never entirely disappeared. Those tribes and bands that were able to resist forced relocation or were never subjected to it continue to attempt to carve out a place through the wider society of the eastern United States. They desire recognition as peoples, linguistic and cultural preservation, educational opportunities, the ability to make treaties with the Federal Government of the United States to resolve land claims, and to enjoy those services afforded to other Aboriginal peoples. The continuing quest for Federal recognition and land claims adjudication has allowed Native issues to remain truly national in character, not simply the regional abstraction created by the dominant culture. The idea of recognition is a fundamentally human one which is to be counted as unique, unalienable, and distinct within the human family. Unrecognized Native peoples simply seek recognition and a place at the table and after the horrors of Indian removal and the residential school system, and they should no longer be denied their place in the American story.

[72] Jentz, Paul, *Seven Myths of Native American History* (Indianapolis: Hackett Publishing Company, Inc., 2018), 68.

A Study of the Republican Party and Civil Rights 1948 to 1972

The central focus of this piece will be to examine the Republican Party's position on Civil Rights from 1948 to 1972. It is difficult to discuss post-war American history without discussing the Civil Rights Movement, as well as the movements that were created in concert with and because of the Civil Rights Movement (the Women's Movement, LGBT Rights, Disability Rights, etc.). These social movements were akin to a second American Revolution, seeking change through Congress, Constitutional Amendments, and the courts, going beyond the push for suffrage. These movements were both an extension and a deviation from the progressive era, going beyond economic security to political participation and the rule of discriminatory intent and practice. Rather than simply acting as a guarantor of economic rights, the Civil Rights Movement and those movements that followed it sought to make the federal government a guarantor of human rights and equality of opportunity. In order to gain the fullest picture possible, I will be presenting as many close readings as possible in order to examine nuanced shifts in policy across the period, particularly from 1964 to 1972.

The great social eruptions of the post-war era cannot be discussed or properly understood in historical context without a full-throated examination of the positions of both major political parties on Civil Rights issues beginning with the end of World War II in 1945. The end of the war and the return to a peacetime economy, along with the integration of the millions of people returning from active service, spurred a new energy and activism within the African-American community. The glaring inconsistency that existed in 1946, that an African-American could be drafted into the Armed Forces, serve honorably and defeat totalitarianism, fascism, and anti-Semitism abroad, and yet still be subjected to rigid segregation, economic marginalization, a legal code that blatantly discriminated against non-whites, and severely restricted social and

educational opportunities, became increasingly blatant, necessitating a two-pronged strategy for the non-white community. The first prong was victory over the Axis powers and an end to the war. The second was to seize the opportunity to achieve political and social equality for African-Americans that had been squandered at the end of World War I in 1918.

A confluence of social and political forces, beginning almost immediately after the war, began to force both political parties into declaring a position for civil and human rights for all citizens for the first time in modern history. With decisive victories in the 1946 mid-term elections, Republicans won back both chambers of Congress for the first time since 1929. On the opening day of the 80th Congress in 1947, the chairs of both judiciary committees introduced The Civil Rights Act of 1947. Politically this was done to preempt any attempt by President Truman to make civil rights a political issue on which Democrats could campaign on to win African-American votes in the north. However, southern Democrats still commanded enough seats in both houses to filibuster and file guillotine motions killing both bills at the committee stage in both 1947 and 1948.

In 1948, the Republican National Convention adopted in the platform a policy statement that affirmed the party's support of Civil Rights legislation to the effect of banning discrimination on the basis of race, religion, color, or national origin. The policy statement read as follows:

> "One of the basic principles of this republic is the equality of all individuals in their right to life, liberty and the pursuit of happiness. This principle is enunciated in the Declaration of Independence and embodied in the Constitution of the United States. It was vindicated on the field of battle and became the cornerstone of this Republic. The right of equal opportunity and to advance in life should never be limited in any individual because of

> race, religion, color or origin. We favor the enactment and just enforcement of such Federal legislation as may be necessary to maintain this right at all times in every part of this Republic." (1948 GOP Platform)

The platform also called for a Federal statute making lynching a Federal crime, the submission of a Constitutional amendment to the several states abolishing the poll tax, and the speedy completion of the integration of the Armed Forces that had begun earlier in 1948. As the Republican Party did not hold the presidency, it convened its convention in Philadelphia before the Democrats. Thus, this was the first convention to be broadcast on television that included a policy plank, debated on the floor and approved in the platform, calling for an end to racial segregation. Although the Dewey/Warren ticket was defeated, Civil Rights was now firmly on the national political agenda.

Outside forces both social and political in nature were beginning to shape the national discussion. Jackie Robinson successfully integrated baseball in the 1947 season. The National Hockey League began partial integration in the 1947-48 season. At the Supreme Court, the second prong of the desegregation and equalization strategy began to be applied. Three Supreme Court decisions delivered between 1948 and 1951, began to invalidate state-sanctioned segregation in nuanced areas of public life. Beginning with the Sipuel Decision in 1948, the Supreme Court began to lay the groundwork for overturning segregation by finding first in the area of admission to higher education that separate but equal was unconstitutional because no commensurate African-American institutions of higher learning had been chartered in southern states to provide equivalent, graduate legal or medical education to African-American students.

In 1952, the Republican National Convention adopted a virtually identical policy plank to the 1948 platform. The only significant changes in the 1952 platform were a direct condemnation

of bigotry and the addition of a clause mandating non-discrimination in the Federal Civil Service, saying that "appointing qualified persons without distinction of race, religion or national origin to responsible positions in the Federal Government." (GOP Platform, 1952)

The platform also called for "appropriate action to end segregation in the District of Columbia" and the enactment of Federal legislation prohibiting discrimination of employment regardless of whether or not the industry was federally regulated. (GOP Platform, 1952)

In 1954, six school desegregation cases were consolidated into one docket for the purpose of all six being heard on appeal. In 1953, President Dwight D. Eisenhower nominated California Governor and 1948 Vice Presidential Candidate Earl Warren to fill a vacancy on the Supreme Court, left by the death of Chief Justice Frederick Vinson. Warren firmly believed that segregation in public accommodations violated the 14th Amendment so he ordered that the Brown Docket be reargued in front of the full bench, including him, in December 1953. Warren was especially cognizant that any decision overruling Plessey v. Fergusson would have to be delivered unanimously to avoid mass violence or other widespread exhibitions of anti-social behavior across the South. On May 17, 1954, Warren issued the Court's unanimous decision. Writing for the Court, he wrote,

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of the child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of negro children and to deprive them of some of the benefits

they would receive in a racially integrated school system." (Brown v. Board of Education, 1954)

In 1956, the GOP Platform went beyond the commitments made in 1948 and 1952 and began to move in the direction of policy meant to achieve desegregation by the force of law. The Platform noted that "Segregation has ended in the District of Columbia government and in all public accommodations within the District of Columbia." The Platform also noted that the Eisenhower administration had eliminated "discrimination in all Federal employment." The Platform also made note of desegregation in VA facilities and on military bases. The Platform also restated that the National Committee had resolved in the affirmative that the Civil Rights Act and the Voting Rights Act, which were both pending in the 84th Congress, should be presented to President Eisenhower for his signature.

In 1957, Senator Estes Kefauver of Tennessee introduced the Civil Rights Act of 1957. This limited legislation sought to create the Civil Rights Commission and included amendments to the criminal code vis a vis voter intimidation, coercion, and interference with the rights of persons to vote in Federal elections. The act, as amended, also mandated the creation of the Office of the Assistant Attorney General for Civil Rights.

Senator Strom Thurmond of South Carolina mounted a filibuster lasting twenty-four hours and eighteen minutes in order to attempt to block passage of the bill. The final bill, House Resolution 6127, was put before the Senate on August 7, 1957. Fourteen of the eighteen Southern Democrats, along with Senator Wayne Morse of Oregon, voted against. All forty-three Republicans voted in favor, with one answering present and two Senators from each caucus absent and pairing, with the consent of their respective Whips. Without Republican support, the

Thurmond filibuster would have been successful as the standing rules at the time necessitated sixty-seven votes in the affirmative to break a filibuster. (www.govtrak.us)

In 1960, a nearly identical bill was introduced in the House of Representatives by the now father of the House, Emmanuel Celler of New York, which sought to expand the 1957 Act and to enforce the right to vote much more aggressively than the 1957 Act. The 1960 Act included, for the first time, express provision against discrimination in public accommodations and sought to direct the Attorney General to intervene as a Law Officer, as a party, in Civil Rights litigation.

Voting Statistics for the 1960 House: Republican Yea – 123, Democratic Yay – 165, Republican Nay – 12, Democratic Nay – 83.

Those members answering present – 25. No vote – 22.

Voting Statistics for the 1960 Senate: Democratic Yea – 42, Republican Yea – 29

Democratic Nay – 18. Those members answering present or not voting – 11.

(Notable votes: Barry Goldwater (R-AZ) – paired; Prescott Bush (R-CT) – Aye; Joseph Frear (D-DE) – Aye; J. G. Beall (R-MD) and John Butler (R-MD) – Aye; and J. S. Cooper and Thurston Morton, (R-KY) – Aye.)

In 1961, Kefauver introduced a Constitutional Amendment that as originally constructed would have abolished the poll tax along with other property qualifications, and would have empowered the governors of the several states to fill vacancies in the House should more than half of the House become vacant before an intervening general election. The 70–18 margin in the

Senate indicated unanimous Republican support, which was enough to overcome any attempted Dixicrat filibuster.

Upon receiving the bill in the House, Chairman Celler set aside the poll tax and vacancy sections of the amendment to focus strictly on voting rights for the District of Columbia. It cleared the House with the requisite supermajority and was sent to the states for full ratification.

In 1964, two critical components of the legislative agenda of the Civil Rights Movement would finally be realized: the abolition of the poll tax and a comprehensive Civil Rights Act banning discrimination on the basis of race, color, religion, national origin, or sex. Its passage through Congress would prove to be eventful. In an attempt to torpedo the bill in the House, Rules Committee Chairman Howard W. Smith amended the bill by including the title prohibiting discrimination on the basis of sex. However, opposition Whip Leslie Arends and Leader of the Opposition Gerald Ford concocted a plan where no Republican member would be allowed to be absent unless that member was ill or traveling. On final passage, the numerical result was as follows: 152 Democratic – Yea, 138 Republican – Yea, 96 Democratic – Nay, and 34 Republican – Nay, with 5 members answering present and Speaker John McCormick not voting by tradition.

Passage in the Senate would be much more difficult to achieve because the standing orders, as they existed in 1964, required 67 votes to break any filibuster. All Southern Democrats, with the added support of arch conservative Republicans Norris Cotton of New Hampshire and John Tower of Texas, along with Milward Simpson of Wyoming, appeared to have enough votes to sustain a filibuster. Upon receiving the bill from the House, Majority Leader Mike Mansfield concocted a very interesting procedural trick. Rather than allowing the bill to be referred to Committee, where Senator James Eastland of Mississippi, as Chairman of

the Committee on the Judiciary, would have certainly blocked it, Mansfield bypassed the committee stage and brought the bill to the floor.

In order to circumvent Dixiecrat opposition, Mansfield, knowing that Republican support was mathematically essential to break the filibuster and achieve final passage, counted on Republican Chief Whip, Thomas Kuchel, to round up the necessary Republican votes by strong-arming northern and border state Republicans with a three-line Whip instruction that members could not be absent nor could they vote present

> The final tally in the Senate was 46 Democratic – Yea, 27 Republican – Yea, 21 Democratic – Nay, and 6 Republican – Nay.
>
> Statistically Notable Votes: Barry Goldwater (R-AZ) – Nay, Edwin Meachem (R-NM) – Nay, John Tower (R-TX) – Nay, Albert Gore, Sr. (D-TN) – Nay, Strom Thurmond (D-SC – Nay), Robert Byrd (D-WV) – Nay, James Edmondson (D-OK) – Yea, and Almer Moroney (D-OK) – Yea.

In 1965, after the Selma to Montgomery Marches and the nationally televised violence of Bloody Sunday, President Lyndon Johnson, in an emergency State of the Union message, presented the Voting Rights Act of 1965 to Congress. The voting tabulation was as follows:

> 96th Legislature, May 26, 1965 Yeas – 77, Nays – 19 Final Passage S-1564 (National Archives, May 26, 1965)
>
> Statistically Notable Votes: Norris Cotton (R-NH) – Yea, Millward Simpson (R-WY) – Yea, Strom Thurmond (R-SC) – Nay, John Tower (R-TX) – paired, Albert Gore, Sr. (D-TN) – Yea, and Robert Byrd (D-WV) – Nay.

The major missing link in the Civil Rights bills of the 1960s was outlawing discrimination in housing, home ownership, subletting, and renting. The first Fair Housing Act passed the House in 1966 but was defeated in the Senate. In 1968, after substantial Republican gains in the 1966 mid-term elections, the Fair Housing Act was reintroduced, sponsored by Senator Edward Brooke (R-MA), the first African-American to win election to the Senate.

On August 16, 1967, the House passed HR 2516 by a vote of 327 Yeas to 93 Nays, with one member answering present and Speaker McCormick not voting by tradition.

While a majority of Democrats supported the legislation, without majority Republican support, Dixiecrat opposition would have been enough to defeat the legislation had Republicans voted as a block. On March 11, 1968, the Senate adopted the Fair Housing Act by a vote of 71 to 20 with 9 Senators pairing. All Southern Democrats, with the exception of Senator Ralph Yarborough, voting against and all Northern Republicans voting in favor.

Statistically notable votes: Paul Fannin (R-AZ) – Nay, John Williams (R-DE) – Nay, Ralph Yarborough (D-TX) – Yea, Albert Gore, Sr. (D-TN) – Yea, Howard Baker (R-TN) – Yea, and Robert Byrd (D-WV) – Yea.

In 1970, it became incumbent upon the Congress and the Nixon Administration to reauthorize Sections III and IV of the Voting Rights Act of 1965. Conservatives in both parties were displeased that the pre-clearance and Federal monitoring provisions in the general election of 1964 applied only to states where turnout was less than fifty percent, rather than all states regardless of turnout.

The compromise bill extended the pre-clearance requirements nationwide and banned “all literacy tests and devices” in both state and Federal elections. Expanding the scope of the

legislation to a nationwide remit was seen as a way of appeasing Southern Democrats and Conservative Republicans that the Voting Rights Act was not merely a punitive device targeting the states of the former Confederacy for their treatment of African Americans.

The other contentious provision in the legislation was a companion bill introduced by Senator Edward Kennedy (D-MA) and Senator Birch Bayh (D-IN), which sought to lower the voting age for both Federal and state elections to the age of eighteen, which was the age of mandatory age of registration for conscription. The amendment passed both chambers with a relatively comfortable margin, and as the line-item-veto did not exist, President Nixon signed it into law in its entirety, including the provision lowering the voting age, while noting his concerns about the provision in his signing statement that he submitted to the Congress.

In August of 1970, Oregon v. Mitchell, suit was brought against the Federal Government challenging the provision of the VRA reauthorization that lowered the voting age. In the law suit, Oregon asserted that as elections and their administration typically fell under the purview of the several states, the Federal government had exceeded its authority in lowering the voting age without the consent of the several states.

On December 21, 1970, the Supreme Court, by a five to four margin, found in favor of Oregon. Justice Black, writing for the majority, found that the Federal Government only had the power to regulate Federal elections. Thus, the reauthorization overstepped its authority by mandating that the states lower the voting age for state elections. Writing in dissent, Justice Douglas held that any assertion of Tenth Amendment supremacy by the state of Oregon was superseded by the equal protection clause of the Fourteenth Amendment. Justice Douglas, along with Justice Brennan and Justice Harlan, grounded their finding in the one person, one vote

rulings of 1962 and 1964, and the 1966 decision, in South Carolina v. Katzenbach, which upheld the constitutionality of the Voting Rights Act.

In order to rectify the anomaly created by the Mitchell decision, it appeared that a constitutional amendment would be required. On March 10, 1971, the Senate passed the Twenty-Sixth Amendment by a vote of 94–0, with six senators not voting or pairing. On March 23, 1971, the House adopted the amendment by a vote of 401–19, with fourteen members abstaining or pairing and Speaker Albert not voting by tradition. The amendment was ratified by the requisite supermajority of the states, on July 1, 1971. The administrator of General Services certified the ratification on July 5, 1971.

With the exception of the Americans with Disabilities Act in 1990, which passed 400–35 in the House and 91–8 in the Senate, bipartisan consensus on expanding the Civil Rights Act to include the other inherent and immutable characteristics such as sexual orientation and gender identity has been absent. Proposals to expand the Civil Rights Act to include these traits passed in either the House or the Senate in 1996, with the Employment Nondiscrimination Act failing in the Senate 49–50 (Senator John Kerry was absent and did not pair).

The Republican Party has shifted away from outright support for Human Rights Legislation since 1996. The current administration appears to be pandering to anti-Semitic, racist, homophobic, xenophobic, and ableist segments of society.

The Republican Party was founded in 1854. The impetus for the founding centered around the abolition of slavery, expanding educational and economic opportunity, and expanding individual liberty to the greatest extent possible. In his first annual message to Congress, delivered on December 20, 1861, President Lincoln declared the Civil War a “peoples’ contest”

whose “leading object is to elevate the condition of men – to lift artificial weights from all shoulders. To clear the paths of laudable pursuit for all. To afford all, an unfettered start and a fair chance in the race of life.”

The great challenge in President Lincoln’s time was abolition. That great social question of how to clear the path of laudable pursuit and how to create an unfettered start has changed over time. From universal suffrage to making the world safe for democracy, the defeat of fascism, and the ending of the Cold War and the collapse of the Soviet Union.

This thesis is using archived historical data to demonstrate and articulate that the conservative movement has historically worked towards expanding individual rights rather than restricting them, and that the true conservative response to discrimination is to expand liberty to guarantee equality of opportunity. It is my foremost intention that this thesis be used as an educational and historical artifact to demonstrate that the Republican Party has a history of supporting and expanding human rights without regard to race, color, religion, national origin, sex, disability, genetic information, and sexual orientation and gender identity.

Bibliography

Albert, George Dallas. *History of the County of Westmoreland, Pennsylvania*. Philadelphia: L. H. Everts & Company, 1882.

Alberta v. Hutterian Brethren of Wilson Colony, [2009] 2 S.C.R. 567, 2009 SCC 37.

Ball, Howard. *At Liberty to Die: The Battle for Death with Dignity in America*. New York: Liberty Press, 2012.

Bines, Terri and Quinn Mulroy. *The Rise and Decline of Presidential Populism*. New York: Cambridge Press, 2004.

Bouchard-Taylor Commission. *Final Report*. 2008.

Brown v. Board of Education of Topeka. 347 U.S. 483 (1954).

Canada. *1976 Census*. 1976.

———. *1987 Constitutional Accord*. 1987. (Meech Lake Accord.)

Carter v. Canada (AG), [2015] 1 SCR 331, 2015 SCC 5.

Cesare, Michael D. *Death on Demand: Jack Kevorkian and the Right-to-Die Movement*. Lanham: Rowman & Littlefield, 2015.

Cherokee Nation v. Georgia. 30 U.S. 1 (1831).

Colorado General Assembly. *Colorado Revised Statutes, 1967*. 1967.

Connecticut. Revised Connecticut Statutes, 1821. (Void as of January 22, 1973.)

The Conscription Plebiscite of 1942, 1942 (Can.).

Criminal Code, RSC 1985, c C-46, s 241 (Can.).

Doe v. Bolton. 410 U.S. 179 (1973).

Fischler, Raphael and Jeanne M. Wolfe. "Regional Restructuring in Montreal: An Historical Analysis." *Canadian Journal of Regional Science*, XXIII:1 (Spring 2000): 89-114.

Friedan, Betty. *The Feminine Mystique*. New York: W. W. Norton & Company, 1963.

Griswold v. Connecticut. 381 U.S. 479 (1965).

Halfmann, Drew. *Doctors and Demonstrators: How Political Institutions Shape Abortion Law in the United States, Britain, and Canada*. Chicago: University of Chicago Press, 2011.

Harmon, Alexandra, Colleen O'Neill, and Paul C. Rosier. "Interwoven Economic Histories: American Indians in a Capitalist America." *The Journal of American History* 98, no. 3 (2011): 698–722. Accessed February 9, 2020. www.jstor.org/stable/41510115.

Harris, Richard. "The politics of municipal mergers (and demergers) in Montreal." *Metropolitics* (2013), Center for Urban Research New York, New York, 1-27.

In re Quinlan. 70 N.J. 10, 355 A.2d 647 (1976).

Jentz, Paul. *Seven Myths of Native American History*. Indianapolis: Hackett Publishing Company, Inc., 2018.

Kessel, Elizabeth Augusta. *Germans on the Maryland Frontier: A Social History of Frederick County, Maryland, 1730–1800 Volumes I and II*. Houston: Rice University, 1981.

Lurie, Nancy Oestreich. "The Voice of the American Indian: Report on the American Indian Chicago Conference." *Current Anthropology* 2, no. 5 (1961): 478–500. Accessed February 9, 2020. www.jstor.org/stable/2739788.

McLaren, Angus and Arlene T. *McLaren. The Bedroom and The State: The Changing Practices and Policies of Contraception and Abortion in Canada, 1880-1996*. Ontario: Oxford University Press, 1997.

McLaurin v. Oklahoma State Regents. 339 U.S. 637 (1950).

Miljan, Lydia and Zachary Spicer. "De-amalgamation in Canada: Breaking Up Is Hard to Do." Vancouver: Fraser Institute, 2015.
Montreal Gazette. *History Through Our Eyes*. Montreal Gazette: 2019. https://montrealgazette.com/category/news/local-news/history-through-our-eyes/
Morgentaler v. The Queen, [1976] 1 S.C.R. 616 (Can.).
Multani v. Marguerite-Bourgeoys School Board, [2006] 1 S.C.R. 256, 2006 SCC 6 (Can.).
National Assembly of Quebec. Bill No. 16, 1st sess., 29th Parliament, 1970.
———. Bill No. 101, 2nd sess., 31st Parliament, 1977.
———. Bill No. 89, 2nd sess., 33rd Parliament, 1989.
———. Bill No. 170, *Municipal Reorganization Bill*, 1st sess., 36th Parliament, 2000.
———. Bill No. 60, 1st sess., 40th Parliament, 2013. Queen's Printer for Quebec, 2013: 6.
———. Bill No. 21, 1st sess., 42nd Parliament, 2019. Queen's Printer for Quebec, 2019: 7.
National Conference of State Legislatures 2015. *Alphabetized Registry of State Recognized Tribes*. Accessed June 10, 2019. https//www.ncsl.org.
Oregon Secretary of State. *Oregon General Election Results, 1994*. 1994.
Oregon v. Mitchell. 400 U.S. 112 (1970).
Parliament of Canada. *Military Service Act, 1917*, George V, Chapter 7, 1917.
———. *National Resources Mobilization Act*. 4 George VI, Chapter 13, 1940.
———. *Official Languages Act of 1969*. R.S.C., c. O-2, 1970.
———. *War Measures Act*. 5 George V, Chapter 2, 1914.
Parliament of England. *Acts of Union*. Anne V, Chapters 7 and 11, 1707.
Parliament of the United Kingdom. "Canadian Charter of Rights and Freedoms." *Constitution Act, 1982*. 1982, Part I, Section 7. 1982.
———. "Exclusive Powers of Provincial Legislatures." *Constitution Act, 1867*. 1867, Chapter 3, Section 92. 1867.
———. *Malicious Shooting or Stabbing Act 1803*. 43 Geo III, C58, 1803.
———. *The Offenses Against the Person Act 1861*. 24 & 25 Vict, C100, 1861.
"Past Elections," *Elections Canada*. https://www.elections.ca/content.aspx?section=ele&dir=pas&document=index&lang=e
"Proclamation of 1763," issued on October 7, 1763. *Avalon Project*. New Haven: Yale University, accessed June 15, 2019. https://www.avalon.law.yale.edu
The Prohibition Plebiscite of 1898, 1898 (Can.).
Quesnel, Louise. "Municipal Reorganisation in Quebec." Canadian Journal of Regional Science, XXIII:1 (Spring 2000): 115-134.
R v. Morgentaler, [1988] 1 SCR 30 (Can.).
———. [1993] 3 SCR 463.
Reagan, Leslie J. *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867–1973*. London: The Regents of The University of California, 1997.
Record of Votes, U.S. Senate Committee on Indian Affairs, May 11, 2005. National Archives, 2005.
"Referendums," *Elections Quebec*. https://www.electionsquebec.qc.ca/english/provincial/election-results/referendums.php
Republican Party Platform, 1948. Adopted at Republican National Convention, Philadelphia, Pennsylvania, June 21, 1948.
Republican Party Platform, 1952. Adopted at Republican National Convention, Chicago, Illinois, July 7, 1952.

Republican Party Platform, 1956. Adopted at Republican National Convention, San Francisco, California, August 20, 1956.
Rodriguez v. British Columbia (AG), [1993] 3 SCR 519, 107 DLR (Can.).
Roe v. Wade. 410 U.S. 113 (1973).
Rosier, Paul C. "The Association on American Indian Affairs and the Struggle for Native American Rights, 1948–1955." *The Princeton University Library Chronicle* 67, no. 2 (2006): 366–91. Accessed February 9, 2020. www.jstor.org/stable/10.25290/prinunivlibrchro.67.2.0366.
———. "Modern America Desperately Needs to Listen: The Emerging Indian in an Age of Environmental Crisis." *The Journal of American History* 100, no. 3 (2013): 711–35. Accessed February 9, 2020. www.jstor.org/stable/44308760.
———. "They Are Ancestral Homelands: Race, Place, and Politics in Cold War Native America, 1945-1961." *The Journal of American History* 92, no. 4 (2006): 1300–26. Accessed February 9, 2020. doi:10.2307/4485893.
Sancton, Andrew. "Why Municipal Amalgamations? Halifax, Toronto, Montreal." University of Western Ontario prepared for a conference on "Municipal-Provincial-Federal Relations in Canada", Institute of Intergovernmental Relations, Queen's University, May 9-10, 2003. Kingston, Ontario, 1-27.
Scott, William Wallace. *History of Orange County, Virginia: From Its Formation in 1734 (O.S.) to the End of Reconstruction in 1870*. Richmond: Clearfield Company, 1907.
Sipuel v. Board of Regents of the University of Oklahoma. 332 U.S. 631 (1948).
Solinger, Rickie. *Pregnancy and Power: A History of Reproductive Politics in the United States*. New York: New York University Press, 2019.
Sweatt v. Painter. 339 U.S. 629 (1950).
Syndicat Northcrest v. Amselem, [2004] 2 S.C.R. 551, 2004 SCC47 (Can.).
Treaty of Fort Stanwix, 1768 and *Treaty of Fort Stanwix, 1784*. NPS Public Database, last modified July 2015.
Treaty of Indian Springs. Concluded January 8, 1821, Congressional Record, 17th Congress, December 3,1821 to May 8, 1822. *The Second Treaty of Indian Springs*. Congressional Record, 19th Congress, 1st Session, December 5, 1825 to May 22, 1826.
Treaty of New York. Federal Register, 1790.
Treaty of Paris. U.K.-France-Spain, Feb. 10, 1763.
U.S. Congress. "Draft Report on Indian Affairs 1783." Federal Register (1783).
———. "Fair Housing Act." *Civil Rights Act of 1968*. Pub. L. No. 90–284, 82 Stat. 73 (1968).
———. "Hyde Amendment." *Health and Human Resources Appropriation Bill 1976*. 94th Cong. (1976).
———. *Indian Gaming Regulatory Act*. Pub. L. No. 100-497, 102 Stat. 2467 (1988).
———. *Indian Removal Act of 1830*. S. 102, 25th Congress, 1830.
———. *Mashpee Wampanoag Tribe Reservation Reaffirmation Act*. H.R. 312, 116th Cong., First Session (2019).
———. *Partial Birth Abortion Act of 2003*. Pub. L. No. 108–105, 117 Stat. 1201 (2003).
———. *Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017*. Pub. L. No. 115-121 (2017).
———. *Voting Rights Act of 1965*. Pub. L. No. 89-110, 79 Stat. 437 (1965).
———. *Voting Rights Act, Amendments of 1970*. Pub. L. No. 91-825, 84 Stat. 314 (1970).
U.S. Constitution. Amend. IX.

———. Amend. X.
———. Amend. XXIII.
———. Amend. XXIV.
———. Amend. XXVI.
———. Art. I, § 8, cl. 3.
U.S. Government Accountability Office. *Month in Review, April 2012*. 2012. https://www.gao.gov/mir/2012/april
"Voter Turnout at Federal Elections and Referendums," *Elections Canada*. https://www.elections.ca/content.aspx?section=ele&dir=turn&document=index&lang=e
"Voting Records," *GovTrack.us*. https://www.govtrack.us/congress/votes
Worcester v. Georgia. 31 U.S. 515 (1832). Yale University Avalon Project.