Moral contract as enabling mechanism

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“Well-functioning societies make it possible for people to achieve agreement when agreement is necessary, and unnecessary to achieve agreement when agreement is impossible”

Cass R. Sunstein (2005: 2)

Introduction

The term “diversity” is a complex and essentially contested concept. It can also be a taboo topic. While most modern societies are becoming more “diverse” in a “factual” sense, i.e., heterogeneous, polyphonic, multiethnic, etc., it is clear that all are not embracing an objective of maintaining or enhancing “diversity” as an ideal per se (Dahrendorf 1988; Paquet 1989a; Scott 2003).

Indeed, a whole range of countries make no secret of their objective of either assimilating and dissolving “diversity” into the host culture or succeeding in developing a “new homogeneity” around some new values as a result of cultural competition and demographic blending – so as to eliminate diversity. Other countries are more tempted by some form of “consensual” apartheid or oligopolies as a basis of new social equilibria.

The fact remains that, in any democratic society open to massive demographic shuffle that has become more diverse, the formation of identity groups is inevitable. They are also legitimate since they represent the voice of “shared identity” and echo something that goes beyond the pursuit of self-interest. But such groups also carry “social expectations”. So it is useful to probe the alternative views about the relationships between “diversity” and “identity”, and about the ways in which identity groups relate to democracy.

To do so, I suggest first a simple taxonomy to help fix ideas about different stylized models. Then, I propose a sketch of the dynamics of inter-cultural relations to help identify what challenges have to be met if a viable modus operandi is to emerge. Third, I argue that such a viable arrangement must be built on implicit and explicit moral contract Fourth, I hint at the directions in which it would appear to lead democratic societies.

1. A simple taxonomy

The different strategies experimented with in North America suggest a taxonomy.

The patterns of relations defined by values, sociality and governance in a pluralistic society might be represented in a stylized way by a sort of dial where NORTH is at noon, EAST is at three o’clock, SOUTH is at six o’clock, and WEST is at nine o’clock.

The Eastern model is assimilationist. It is the world of long term acculturation. It is the model that has inspired the early development of the American colonies until late in the 19th century It has a certain utopian flavour these days. The Southern model is apartheid. It is a society split in two and well demarcated. It echoes the realities of the southern part of the United States a century ago. The Northern model is a competitive model of cultural relations. The fragmentation is such that differences are left to be more or less pulverized over time as porous boundaries and fluid and always temporary differences gain or lose ground in the definition of the weighted-average cultural identity. The Western model is a balkanized and multicultural view of society: as fragmentation proceeds, the multiplication of groups with special rights and increasing social distance anchors a mosaic of diverse identities that is somewhat permanent and underpins the congealing of a differentiated social order (Paquet 1989b).
Models of cultural gouvernance

Source: adapté de Paquet, 1989f, p.88.
If it can be said that the pure Eastern assimilationist and Southern apartheid models have been undermined in the recent decades – few believe that pure assimilation and pure apartheid are effective long term arrangements – the extent to which Northern and Western forces will prevail (an evolving métissage or a certain balkanization) is still unclear in most countries, but it is not unreasonable to predict that a North-Western flavour may become the new de facto reality.

2. The dynamics of cultural relations

The big “shuffling process” (Geertz 1986) that has generated a heightened degree of deep cultural diversity, some métissage, and some cultural balkanization has not been analyzed very well.

One way to tackle this nexus of issues at the core of the dynamics of inter-cultural relations is a stylization built on three mechanisms: (a) the Myrdal mechanism of cumulative causation that suggests that fragmentation leads to cultural differences, increasing inter-community transaction costs, and to an accumulation of social capital that reinforces cultural differences and multiplex relationships; (b) the Tocqueville mechanism of search for equality as an ideal that suggests that, as deep diversity gets established, such an egalitarian ideology produces a heightened degree of tension, frustration and envy in the face of effective inequality; (c) the Girard mechanism suggesting that such ressentiment can only trigger violence in the absence of mechanisms to tame envy (Laurent & Paquet 1994).

A fourth mechanism catalyzes this dynamics. It has to do with the laws of fear (Sunstein 2005). Fear and anxiety of the citizenry in the face of unbounded possibilities of erosion of their identity and power bases lead people to treat risks as much greater as they are in fact and to develop risk-reduction strategies based on the precautionary principle. Such strategies may generate more harm than good, be cruel and unjust, and make precautions worse than blunders.

The different inquiries into the nature of inter-cultural dynamics have confirmed that cultural diversity is on the rise, that it is likely to generate an increasing degree of friction, that this segmentation of the social space along cultural lines is developing at a time when egalitarianism comes to be a dominant ideology, and that, without new mechanisms to deal with it, the presence of resilient differences can only lead to increasing envy, ressentiment and violence – some war among cultural groups.

A number of alternative scenarios of what might ensue as a result of this big shuffle have been proposed (Paquet 1994).

Scenario I: a rapprochement, integration and inclusion with preservation of some national integrity, but nothing clear about how this is supposed to come about.

Scenario II: a negotiated moral contract of mutual inter-adjustment of old citizens and newcomers with a considerable shift of the burden of adjustment onto the newcomers by comparison with the rules of the game in place now.

Scenario III: interculturalism as an asymmetric moral contract that highlights the necessity of a common public culture alongside a vibrant territorial nationalism – both constraints taking precedence over other dimensions and imposing a further burden of adjustment on newcomers – and therefore the need for newcomers to accept certain values as non-negotiable.

Scenario IV: transculturalism and the cultural métissage that ensues.
In Canada, it is unclear which scenario or mix of scenarios will prevail. But it is likely that the crucible where it will be determined is the terrain of citizenship. Yet this terrain is a minefield since (1) there is little agreement on the very notion of citizenship and (2) it is difficult to see how any moral contract could escape (given the ideological climate) from embodying generalized egalitarianism and succeed in fully legitimizing almost any hierarchy of values.

No resolution of these tensions is possible except through the use of mechanisms that reduce envy and violence. Some have suggested mechanisms to stall this violence-generating dynamic. The most popular are based on containment (encapsulation, insulation, segregation, separateness, apartheid, etc.) and redistribution (Foster 1972).

Yet the sole use of a mix of segregation (as a way to obscure differences) and redistribution-generating schemes (to reduce the differences in economic status) – soft apartheid + wealth transfers – is quite naïve and unlikely to work. If anything, both processes might even, in certain circumstances, fuel even more resentment. One could characterize it as a mix of deception and bribery that is unlikely to satisfy anyone. Such stratagems are also likely to be opposed violently by egalitarians who will see in it the emergence of some sort of “wet liberalism” which “abandons the great gains of a common floor of civil rights and entitlements for all in order to accommodate the separatism of minorities” (Dahrendorf 1988).

3. Betting on moral contracts

The challenge of implementing a “different but equal” strategy and the need to head off this dynamic of resentment create a prisoner’s dilemma type of problem: a problem of mutual distrust. Native-born citizens have legitimate expectations that some of the trust and social capital that have been built over generations will not and should not be dissipated; newcomers have legitimate expectations that there will some accommodation to take into account their needs and preferences since they make a contribution to value-adding. As the assumptions on which the host community is based are challenged (sometime seemingly without any sense that there may be any limit to such external displacement of the internal core values and institutions) there may be a reflex of closing of the mind to the demands of the new groups; as the demands of the new citizens are denied, a growing sense of alienation and exclusion is bound to ensue. As a result the two groups become mutually antagonistic, and collaboration becomes more and more difficult. We know that the economic, social and political costs of such antagonism are large.

Dealing with this conundrum requires that the problem of moral distrust be engaged directly. This is most of the time not resolvable through the orthopaedic interventions of the law but requires negotiated soft arrangements like conventions and moral contracts that establish the basis for parallel mutual expectations. This is the way in which prisoner’s dilemma are usually resolved (Paquet 1999: ch. 12) and it is the general thrust of the argument that one may detect behind the protracted discussions that have led to the emergence of interculturalisme (Paquet 1994).

(i) The challenge of negotiating moral contracts is daunting for many reasons.

First, such negotiation entails a loose clarification of expectations on both side that may not appear at first as unduly constraining (one can imagine a wide range of moral contracts, more or less binding on both established and new citizens), but, to the extent that culture means anything, it means a capacity to establish differences, to accomplish some integration of these differences, and to succeed in determining some hierarchy in this more or less diversified and more or less integrated complex of values (Lussato 1989). This is quite an arduous task.
Second, the very informality of these “contractual” arrangements leaves it open not only to genuine misinterpretation but also to sabotage by those intent on using this very vagueness to pursue other political or electoral objectives. Indeed, deception is the Achille’s heel of moral contracts. The systematic misuse of the languages of the Charter and of human rights to camouflage one’s own preferences or desires into entitlements imperatives has provided much evidence of the profuse usage of deception in aid of ideological pursuits in high places in Canada and elsewhere (O’Neill 2002; Paquet 2004, 2005abc)

Moral contracts, to be of any use, need to establish hierarchy among values. Hierarchy and differentiation are mortal sins for the egalitarians. Therefore one major epistemological blockage to be overcome is the recognition that legitimate differences and hierarchies need to be debated and negotiated.

One cannot and should not seek refuge in some transcendent political sphere where supposedly everything and everyone would become undifferentiated and decisions would be taken by disembodied citizens. Culture and identity entail differentiation and hierarchy.

Immunization from sabotage and deception is never complete, but open critical forums may help expose such destructive initiatives, and fail-safe mechanisms may deter miscreants from wanting to stall the debates for fear that a worse outcome might automatically ensue.

Moral contracts are not only for establishing guidelines on what the newcomers may expect but also to set limits to diversity accommodation since certain basic tenets of the host society could not withstand the anomy-generating pressures emerging from a no-limit diversity (Paquet & Reed 2003). Both constraints and limits would be determined through some principle of precedence: some constraints being regarded as taking precedence over others in the definition of viable arrangements. Deep diversity cannot be managed otherwise.

Donaldson and Dunfee’s integrative social contracts theory (1994) has defined different layers of moral contracts that are developed from shared goals, beliefs, and attitudes, of groups of people or communities. These social contracts serve as a tool to measure the moral performance of organizations and illustrate what is meant by the principle of precedence.

The moral contracts they propose are at three levels: hyper-norms (basic human rights, obligation to respect the dignity of each human person, etc.— at the core of constitutional arrangements) that would apply generally to all concerns; macro social contracts, providing conditions under which the different communities can develop their activities at the micro level – contracts that best serve the different communities and are congruent or at least not in contradiction with the broader level of collective choice; and micro social contracts that guide action at the operational level. Fritzsche (1997) has sketched the different layers of moral contracts pertaining to different relationships, and illustrates somewhat the sort of guiding norms, values and rules pertaining to them.

Discussions at these three levels cannot be conducted in isolation.

We are faced with three-level games in which negotiations are carried out by somewhat different stakeholders at each level, in ways that have to ensure not only a basic coherence of the overall game, but also compatibility between the different levels, and an adherence/conformance by lower order arrangements to the norms of the higher order conventions.
These different moral contracts are like Russian dolls: the lower order ones must fit with/in the higher order ones. And they all must be debated and negotiated. For instance, hiring preference for native-born may be contentious but may be a reality that must be confronted, in the same manner that immigrant networks sometimes act as self-selection machines in certain types of occupations or organizations. The important aspects of these contracts are: optimal (not maximal) clarity, relative stability, and realism. These are basic parameters for the definition of mutual expectations. It must be ensured that they cannot be modified whimsically or mischievously interpreted. But they also must correspond to reality: there is no point in proclaiming that X can be expected by newcomers when blatantly X cannot.

In that context, one might regard interculturalisme as a three-level game: basic human rights as hyper-norms; macro order norms taking precedence in the name of “the integrity of the host society needing to be protected” (language), and micro order norms pertaining to the rest of the inter-cultural operations.

**Integrative moral contracts**

**Hyper-norms**
- Primum non nocere
- Personal freedom
- Physical security and well-being
- Informed consent
- Political participation

**Macro moral contract**
- Moral free space
- Free consent and right to exit
- Compatible with hypernorms
- Respect of international agreements
- Priority rules

**Micro moral contracts**
- Don’t lie in negotiations
- Honour all contracts
- Give hiring preferences to native born
- Give contract preference to local suppliers
- Provide a safe workplace

Adapted from Fritzsche 1997 (p.44)
(ii) The fundamental stewardship function of defining moral contracts requires certain design principles in institutional architecture being agreed on and certain ranking priorities being respected.

On the design front, Ostrom (1990: 90) has identified a few of the elements that would appear to account for the success of some governance arrangements. They provide some guidance about the sort of mechanisms likely to be effective:

- clearly defined boundaries
- congruence between rules and local conditions
- wide participation of those affected by operational rules
- monitoring
- graduated sanctions when rules are violated
- rapid and low cost conflict resolution mechanisms
- right of appropriators to devise their own institutions for implementation

On the priorities in decision-making, Donaldson and Dunfee (1995) have proposed a set of priority rules within the context of their integrated social contracts framework:

1. transactions within a community when it is agreed that there are no adverse external effects should be governed by the community norms

2. community norms should be applied as long as they have no external adverse effects on other individuals and communities

3. the more extensive the community which is the source of the norm, the greater the priority which should be given to the norm

4. norms essential to the maintenance of the socio-economic environment should be given priority over those potentially damaging to that environment

5. when multiple conflicting norms exist, patterns of consistency among the alternative norms provide a basis for prioritization

These design principles and priority rules are provided only as examples of the kinds of general guideposts that might be required to ensure the appropriate stewardship of an otherwise self-governed world (as much as possible), steered by the principles of participation, subsidiarity, multistability and the safeguard of a stewardship of continuous organizational learning through relational leadership. The central question has to do with the ways in which one might set out to engineer such a governance-cum-stewardship.

Diversity is another name for the cohabitation of identity groups that have important differences in their norms. Centuries of human experience have shown that neither abolishing these groups nor elevating them to a dominant position is a solution hold promise for sustainable and constructive coexistence. What has to be accomplished is the development of a modus vivendi among such groups that recognizes their legitimacy but also the legitimacy of host societies’ concerns about the preservation of their own values, and the legitimacy of some basic values inherent in a democracy.
4. New directions

The proposed pyramid of moral contracts entails a hierarchy of values: micro-contracts must honour macro contracts and both micro and macro contracts respect hyper-norms. This hierarchy is obviously subject to constant deliberation and negotiation. But there is no reason to believe that optimal arrangements will evolve organically, and there is no reason to believe that relinquishing final authority on such matters to the courts will work. Indeed, the courts often have taken decisions that violate the precedence of hyper-norms in inter-cultural issues – the Julia Martinez case (Gutmann 2003: 44ff).

So there may be a need for conventions to ensure a reasonable modus vivendi. Such interventions will take the form of moral contracts intent on defining mutual expectations and incentive reward systems likely to be promote peaceful and creative coexistence while preserving the integrity of the social entity. This in turn entails both a hierarchy of norms and certain limits to diversity accommodation.

(i) Technologies of collaboration

To be the architects and stewards of collaborative regimes, one must count on processes that move stakeholders past defensive and adversarial postures and nurture collaboration. Common obstacles to collaboration are the historical and ideological barriers of stakeholders: power disparities, cultural norms, different perceptions of risk, the technical complexity of issues, institutional incentives, etc. (Gray 1989). Technologies of collaboration are the ground level processes and incentive reward structures are meant to overcome these barriers and nurture social learning. The word “technology” in this sense refers to techniques and social processes that help increase knowledge exchange, generate trust and commitment, and ensure a more effective coordination.

They provide guideposts that shape the expectations, incentives and reward systems that induce cooperation, as well as the conventions, moral contracts, and regimes of accountability that are necessary for cooperation to prevail and survive. The most useful technologies of collaboration include: forums and public spaces, loci for dialogue and multilogue, capacity and competency building, and exchange of information schemes. These are all mechanisms capable of generating “reframing” of issues, and frame reconciliation is the key to social learning. The points of view of the different stakeholders are informed by what Schon and Rein (1994) call “frames” (i.e., underlying structures of beliefs, perceptions and appreciations) which are different from group to group. These frames are usually tacit and exempt from attention and immune from appeals to facts and reasoned arguments. Without frame reconciliation, little progress can be anticipated in the collaborative debates, but this entails also much blurring and blending of perspectives (Tacher & Rein 2004).

(ii) Social imaginaries

The social imaginary defines the moral order: what is and is not acceptable.

Such reframing entails nothing less than a paradigm shift in mindset on the part of all those involved to recognize the new drivers that are likely to be useable as lever points. This requires challenging a number of deeply rooted but “unreasonable” assumptions buried in the social imaginary that often one is not aware one is making. A few examples.
The first one is the false sense of the all-pervasiveness of culture as DNA. In the context of today’s diversity, we all are hybrids composed of a basket of limited identities and no longer the simple expression and consequence of a single cultural imprint. To allow the myth of one cultural identity to prevail is quite dangerous and can lead to an erosion or attenuation of individual rights.

The second is the sacralization of consensus. It is not because there is an agreement that such agreement makes sense. False consciousness and poor judgment may lead to agreements that can only generate unacceptable outcomes. For instance the consensual apartheid of aboriginal groups and the rest of the population in many countries has led to disastrous outcomes despite the high-minded speeches about the right to cultural survival that is purported to inspire such arrangements.

The third is the thwarted notion that civic equality must guarantee egalitarianism of outcome. This has led to all sorts of equalization-inspired interventions that have squelched the dynamism of the targeted.

The fourth one is the false dichotomy between symbolic recognition and material entitlements: in fact, entitlements are entitlements and they end up always being entitlements to real resources. The quest for symbolic recognition is only a stratagem to get access to real resources.

The fifth one is the idolatry and lionization of the language of human rights as a stratagem to inhibit the democratic conversation and to claim absolute priority for one’s particular wishes and desires. As Michael Ignatieff puts is “the tendency to define anything desirable as a right ends up eroding the legitimacy of a defensible core of rights,.. We need to stop thinking of human rights as trumps and begin thinking of them as a language that creates the basis for deliberation” (Ignatieff 2001:90,95).

All these assumptions (and there are many others) are part of our “social imaginary” – this process of intermediation through which a society sees its collective life and makes sense of its practices (Taylor 2004). This common understanding defines common practice and the shared sense of legitimacy. Shaping it (i.e., negotiating what shape it will have) defines the repertory of collective action at the disposal of a given group in society.

This intermediation machine shapes the legitimate expectations of the different groups and the sort of moral contracts that might be regarded as acceptable. It defines the horizon we are not able to think beyond. To be able to construct new moral contracts capable of generating new forms and technologies of cohabitation, one may need to transform the social imaginary, i.e., to define a new terrain of mutual expectations.

In the case of Canada, a “révolution dans les esprits” is necessary if the social imaginary is to be modified.

It is not far in the past that recruitment agencies for new immigrants could say without being challenged that immigrants could bring their own culture with them as they came to Canada because Canada had no culture of its own. On the basis of such bizarre expectations generated by the false advertising of governmental agents, it is not surprising that newcomers have come to expect that they could impose all their mores on the old communities, and that the very idea of a moral contract with immigrants came to be regarded by the federal bureaucrats (when it was proposed by Quebec in 1990) as an unacceptable fascist contraption.
The social imaginary has to redefine citizenship as a privilege that calls for shared and agreed limitations and asserts very firmly that unless the appropriate conditions are met, the privilege will not be granted. Otherwise no moral contract is possible. The whole debate about the 1990 proposal of a moral contract with immigrant put forward by Mme Gagnon-Tremblay turned sour because the very idea was not considered as permissible.

So before one can suggest new mechanisms to promote “diversity within bounds”, it will have to be established that the very notion of “bounds” is legitimate.

As it stands, the Canadian social imaginary rooted in egalitarianism and an idolatry of human rights is incapable of accepting the idea of designing mechanisms to limit diversity accommodation within certain bounds. Indeed, the very idea that the absence of garde-fous is neither fully understood nor regarded as a legitimate thought may be the major source of anxiety of native-born citizens about diversity and multiculturalism, and therefore the cause of the reluctance to pursue the experiment of increasing the degree of diversity (Paquet and Reed 2003).

**Conclusion**

It was not the purpose of this paper to spell out the contours of a new citizenship capable of shaping a viable road to “governable diversity”. Our only objective was to propose an arena for engaging public discussion of such a prospect.

We have provided four major conceptual tools to help along: a taxonomy of models of governance of diversity, a sense of the dynamics of inter-cultural relations, a framework to look at integrative moral contracts, and a recognition that one may only be able to develop the requisite mechanisms if one is also able in parallel to modify the social imaginary.

It should be clear that only a major epistemological coup will succeed in transforming the social imaginary. Such a coup is unlikely. Natura non fecit saltum. Consequently, the only hope is to use the oblique ways of bricolage: putting in place innocuous mechanisms likely to generate incrementally the cumulative causation one is looking for. Tipping point leadership is the only way.

GP.
References


