

Review Essay

Unsettled and Free in the Here and Now

*Pablo Ouziel**

A multilogue on Alain-G Gagnon, *The Legitimacy Clash: Challenges to Democracy in Multinational States* (Toronto: University of Toronto Press, 2022).

Alain Gagnon's latest book, *The Legitimacy Clash: Challenges to Democracy in Multinational States*¹, is timely. It covers in depth a challenging terrain that I am confident constitutional experts, federalists, sub-state nationalists, democratization theorists and Indigenous scholars, Indigenous activists, their allies and accomplices will welcome as a helpful contribution to their ongoing multilogues regarding the past, present and future of co-habitation in deeply diverse societies. Gagnon's book is a gift that invites us to join hands to self-overcome or transvalue gridlock. I use "joining hands" here, as a *language of description* that tries to bring to light the dynamic processes through which communities of practice are able to relate democratically and nonviolently with supporters and adversaries.² I think of *The Legitimacy Clash* as an exemplary joining hands text that contributes to co-habitation in deeply diverse societies. It is because of this, that I welcome it with gratitude and attempt to reciprocate with this multilogical response.

My interest in this book stems from a deep relational interbeingness with place and with people contesting unjust relationships and enacting democratization practices in both Turtle Island and Catalonia; two places which Gagnon carefully studies in this important new text and in which there are many friends that I am confident will receive it with joy. As a Catalan, spending

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1 Alain-G Gagnon, *The Legitimacy Clash: Challenges to Democracy in Multinational States* (Toronto: University of Toronto Press, 2022). For the purpose of this review I am working from a draft version of the forthcoming book generously provided to me by the author.

2 For a more nuanced understanding of joining hands see Pablo Ouziel, *Democracy Here and Now: The exemplary case of Spain* (Toronto: University of Toronto Press, 2022) at xvii.

time between the valley of Hostoles in Catalonia and as an uninvited guest in the Songhees traditional territories on which the University of Victoria stands, I am drawn to the kind of treaty federalism that Gagnon is proposing.³ The challenges and opportunities that such a form of democratic plurinational federation phases in Canada are different to those in Spain. In fact, for Gagnon, Canada and Spain are “at opposite ends of the constitutional spectrum.”⁴ Yet, both of these imagined communities share a need to reconcile with the fact that their legitimacy rests on an open-to-revision agreement between all parties involved.⁵ Without such an agreement, co-existence is unlikely to be peaceful and will certainly not be democratic.

For this reason, and in the spirit of joining hands, I think through Gagnon’s inviting proposition by bringing it into multilogue with colleagues that complement what *The Legitimacy Clash* is trying to inspire. In doing so, I am particularly drawn to two books which contribute to broadening the federal imaginary Gagnon invites us to enact in the here and now. The first, is a co-edited volume by Gagnon and James Tully, published in 2001 and called *Multinational Democracies*.⁶ The second, is a co-edited volume by Tully with fellows and friends of the Cedar Trees Institute (CTI), out in 2022 called *Democratic Multiplicity: Perceiving, Enacting and Integrating Democratic Diversity*.⁷

With the kind of democratic integration that Gagnon contributes to co-creating in *The Legitimacy Clash*, dialogues of reciprocal learning within, be-

3 Although I am drawn to the mode of interrelation found within Gagnon’s kind of treaty federalism, I point here to an important distinction between his conception of such federalism and mine. In order to do so, I must point to two different ways of conceptualizing treaty federalism within the context of Turtle Island. The first, popular amongst many Canadians, understands treaty federalism taking place “within” Canada and “within” Quebec. The second, practices treaty federalism “with” Canada and “with” Quebec instead. This has been the case since 1645 — the first oral tradition, or two row wampum, treaty with Quebec. At the time (and ever since), the Mohawks are insisting that this is a treaty relationship with Quebecers, not within Quebec (i.e. New France). From this tradition, all hundreds of treaties that have followed with Canada and the First Nations and with Quebec and the First Nations, have done so rooted in this oral tradition and its meaning. Gagnon clearly supports the “within” view of treaties, yet, *The Legitimacy Clash* is an invitation to joining hands between traditions. Personally, I support the “with” view of treaties as I think it exemplifies the deeply diverse and lateral treaty federalism Gagnon invites us to co-create.

4 Gagnon, *supra* note 1 at 184.

5 Regarding Canada, I am thinking here of the relationship between the Canadian state and the more than 630 First Nation communities in Canada, as well as the relationship between Canada and Quebec. Regarding Spain, I am thinking about the relationship between the Spanish State and Catalonia, the Basque Country, Galicia and Andalucia amongst others.

6 Alain-G Gagnon & James Tully, eds, *Multinational Democracies* (Cambridge: Cambridge University Press, 2001).

7 James Tully et al, *Democratic Multiplicity: Perceiving, Enacting and Integrating Democratic Diversity* (Cambridge: Cambridge University Press, 2022).

tween and across democratic traditions are necessary. It is through these that “transformative cycles of democratic succession, transition and transformation” can occur.⁸ Perhaps through reciprocal elucidation we can reverse the dysfunctional gridlock diverse societies are currently experiencing. I hope this multilogue will contribute to existing and ongoing work of coordination and democratization in struggles for recognition and reconciliation, contesting existing constitutional arrangements in both Canada and Spain.

I approach this challenge as a tentative sketch of how both Canada and Spain can move forward virtuously and democratically at a time when democracies across the world are antagonistically self-destroying and hollowing out. In order to do this, I briefly place myself in relation with Gagnon’s text. I engage with Gagnon’s description of an unsettled Canada. I look into Gagnon’s understanding of an unfree Catalonia. And, I bring the multilogue to the fore by weaving together Gagnon’s work with the work of the CTI.

Recognition, reconciliation and transformation

I am reading Gagnon’s book at the old water mill of Can Poeti, located on the banks of the river Bruguent. Can Poeti is in the municipality of Les Planes d’Hostoles, a small town in the heart of the Valley of Hostoles, in the county of La Garrotxa. La Garrotxa is a mountainous area in the province of Girona, and Girona is part of the Autonomous Community of Catalonia in the Kingdom of Spain. Only eight kilometers down river from Can Poeti is Amer, the home town of exiled former president of Catalonia, Carles Puigdemont.

In the 15th Century, the valley of Hostoles was at the heart of the *Guerra de les Remences*, a prolonged uprising by the serfs of Old Catalonia against their masters. According to Paul Freedman, this struggle represents a rare example in both Catalonian and European history of “a sustained and ultimately successful peasant insurrection.”⁹

8 Pablo Ouziel, “Democracies Joining Hands in the Here and Now” in James Tully et al, eds, *Democratic Multiplicity* (Cambridge: Cambridge University Press, 2022) first page at 566. These transformative cycles animate the dialogical approach of the Cedar Trees Institute’s (CTI) exemplified in *Democratic Multiplicity*. For more information on the CTI visit online at: <https://www.cedartreesinstitute.org/>

9 As Freedman explains, the uprising happened in two prolonged phases. The first, from 1462 until 1472, in which no reforms were achieved, and a second from 1484 to 1486 which ended with the *Sentencia Arbitral de Guadalupe*. This was a royal decree issued by King Ferdinand II of Aragon abolishing the most oppressive seigneurial impositions. See Paul Freedman, “Peasant Servitude in Mediaeval Catalonia” (2013) 6 *Catalan Historical Review* 33.

Today, in Les Planes d'Hostoles, the inhabitants of the town and its visitors can see a large mural of the *Remences* greeting all newcomers.¹⁰ Yet, the spirit of the town is one of loss, fatigue, frustration, anger, and a sense of hopelessness; a far cry from the pride they feel towards their peasant ancestry and its heroic achievements of the 15th century.

The mobilizations that started for the right to decide and for Catalan Independence in 2015 are now predominantly silent. What gave a majority of the people in Les Planes d'Hostoles a sense of collective purpose, has vanished. At present, pardoned Catalan politicians and civil society leaders make public appearances across Catalonia, while exiled politicians continue their struggles in the courts. Yet, in the streets of this town, and in the rest of Catalonia, one can see that the imaginary of independence is rapidly fading.

In Les Planes d'Hostoles, few identify as Spanish. Nevertheless, after seeing the brutal police acts against unarmed Catalans wanting to vote in a referendum, and witnessing their political leaders being arrested and submitted to political trials and prison, most are weary about protesting. From the perspective of many neighbors in the town, Catalonia's fate has been sealed by their failed attempt at self-determination and the vicious response by the Spanish State. As Gagnon describes it, legitimacy and legality have been placed into opposition to each other. Without possibility for negotiation, the Spanish government has deliberately created a dead end that has weakened already fragile social bonds.

For Gagnon, while Canada presents a "demos-enabling" approach to diversity, Spain practices a form of "demos-constraining" politics.¹¹ Borrowing from James Tully, Gagnon suggests that Spain has arrived at this situation because of its "end-state" relation to democracy.¹² Under this formulation, democracy is understood "as some definitive ordering of the members of a political association" instead of an ongoing activity.¹³ Such a straitjacket approach, for Gagnon, leads to a magnification of conflict. He asks whether a point can be reached, after escalation, from which political leaders embrace both deep diversity and diverse political and legal traditions.

If this is achievable, Gagnon thinks that it can open up a virtuous way forward that reshapes political institutions turning them into "demos-enabling"

10 The mural was created by local artist Roc BlackBlock in 2021.

11 *Ibid.*

12 *Ibid* at 179. Here Gagnon is engaging James Tully's ideas on democracy in James Tully, "The Unattained Yet Attainable Democracy: Canada and Quebec Face the New Century" (Paper delivered at Les Grandes Conférences Desjardins, McGill University, 23 March 2000).

13 Gagnon, *supra* note 1 at 179.

entities that draw partners together rather than forcing them to be stuck together. This is at heart of the existential crisis plaguing Spain and Catalonia. Unless revisable agreements are reached by all sides and are promptly reflected in constitutional amendments, resentment, distancing and ongoing conflict will prevail over any form of reconciliation. For this reason, engaging with Gagnon's book is of tremendous value to those in Catalonia and Spain seeking a resolution to the conflict based on gift-gratitude-reciprocity relationships.

Regarding the Canadian context, *The Legitimacy Clash* comes at a time in which Wet'suwet'en people, under the governance of their hereditary Chiefs, are attempting to stop the largest fracking project in Canadian history.¹⁴ As Royal Canadian Mounted Police (RCMP) officers are removing Indigenous land defenders from their own lands, Coastal GasLink workers are being escorted onto them.¹⁵ In Canada, Gagnon states very clearly, the time has come to go back to the drawing board. With imagination and resilience, the federation needs to develop appropriate responses "to the legitimate claims of the First Peoples, the Acadian nation, and the Quebec nation."¹⁶ According to Gagnon, growing political and constitutional tensions in the federation over the last few decades have crystallised the need for more ambition and respect, as partners in this pluralist and plurinational state strive to reconcile. As Gagnon puts it, if indeed in Canada reconciliation is not dead, its peoples and nations need to be recognized and respected as being in a state of deep diversity. This means, empowering the efforts of different *demoi* to "strengthen and promote their own language, culture, traditions and institutions."¹⁷

14 Protestors on Wet'suwet'en territory claim to have the support of two hereditary chiefs and hundreds of academics including Glen Coulthard and Naomi Klein have signed an open letter in their support. Nevertheless, a lengthy letter published in the *National Post* and written by Wet'suwet'en citizens who both support and oppose pipelines, states that they do not support the protestors and asks them to stop protesting. The letter questions the legitimacy of the hereditary chief who claims to speak for all hereditary chiefs and points to the fact that protestors are not following Wet'suwet'en protocols. See "Opinion: We are Wet'suwet'en and the Coastal GasLink pipeline protestors do not represent us", *National Post* (7 December 2021), online: <nationalpost.com/opinion/opinion-we-are-wetsuweten-but-the-coastal-gaslink-pipeline-protestors-dont-represent-us> [https://perma.cc/H9UE-5BSD]. This is a classic case of a failure so far of joining hands in a mutually respectful way of each other's difference. It also crystalizes how Indigenous and non-Indigenous People are on both sides of this issue.

15 Gidimt'en Checkpoint Media Coordinator, Press Release, "Militarized RCMP Enforcement, Violent Arrests Continue on Gidimt'en Land Defenders" (20 November 2021), online: <static1.square-space.com/static/5c51ebf73e2d0957ca117eb5/t/61998d7941cd455c8f2bdec5/1637453178121/Gidimt%27en-Release-Nov-20.pdf> [https://perma.cc/7SRW-CC4M].

16 Gagnon, *supra* note 1 at 76-77.

17 *Ibid* at 80-81.

Unsettling Canada

Drawing from Peter Russell, Gagnon is looking at Canada as a potential space of active hope for the twenty-first century. Behaving more like a civilization than a nation-state, its unsettled alliance between diverse peoples could present a way forward out of empire and the nation-state and into a form of genuinely democratic multinational federalism. In order for this to happen, Gagnon argues, the Canadian federation needs to be able to affirm its principles of democracy, federalism and co-responsibility while deepening and enriching consensus-based, power-sharing practices. For Gagnon, if this can be achieved, fully-exercised democracy and a solid foundation for legitimacy will be one step closer.¹⁸

With his formulation of multinational federalism, Gagnon is focused on democratic principles and on the co-creation of a grammar of reconciliation that respects the thoughts, traditions, customs and vernacular of all peoples and communities involved and affected. For him, the biggest challenge arises with the realization that “constitutions may have to break away from sometimes centuries-old practices of domination.”¹⁹ Yet, from his perspective, only an agreed-upon-by-all constitutional process can facilitate the reconciliation needed for a political system to consolidate.

As Gagnon stresses, “coordination, non-subordination, and consent” are necessary prerequisites for deeply diverse and democratic societies to thrive.²⁰ Hence, the federalism he speaks of is egalitarian and non-domineering; each member of the community cohabits with equal rights and cooperates in the process of interbeing and interconnection.

When thinking of such a federalism in Canada, Gagnon is drawn to the spirit of Quebec’s 2002, *Approche commune* agreement. Albeit its shortcomings, he sees in its spirit and direction a way forward towards an authentically federal culture. Gagnon sees a similar spirit in the 2017 proclaimed (and later undelivered) intentions by the Liberal government of Philippe Couillard in Quebec: to “guarantee fair, respectful relations with the First Peoples and to establish nation-to-nation relations within the Canadian federation.”²¹ For Gagnon, without a virtuous weaving of the claims of Indigenous peoples with those of the representatives of the Quebec nation, there will be no consensus

18 Although Gagnon is working through these challenging questions within a Canadian context, the kinds of commitments and practices that he describes are a way forward for deeply diverse societies elsewhere seeking to further democratize their democracies.

19 *Ibid* at 152.

20 *Ibid* at 189-190.

21 *Ibid* at 83.

on the future of the different political communities. As he puts it, “concerted action, focused on shared sovereignty, is essential if any political progress is to be made, whether within the state of Quebec or within the Canadian federation.”²²

According to Gagnon, only by affirming its plurinational diversity can Canada counter its core structural political imbalances and thus become a space within which political communities are able to cohabit peacefully. The Canadian federation as “an association of sovereign peoples” must be relationally grounded in an ethos of respect and care with each of its partners.²³ This is why a multinational federation should be pactist in nature, Gagnon argues. In such an association, rather than imposed upon power-over relations, members of the federation relate to each other laterally through power-with negotiations and ongoing revisable resolutions. Such an approach provides the necessary conditions for all members to have the right to emancipation, fulfillment and choice. Procedural liberalism is in crisis and for Gagnon, deep diversity and its inter-relationality present a way forward.

Drawing on Charles Taylor, Gagnon suggests that the acknowledgment, acceptance and embrace of “a plurality of ways of belonging” is key to appeasing political tensions in Canada.²⁴ As a multiplicity of *demos* contest the legal straitjacket limiting their ability to act, political actors need to think outside the box. They can no longer afford to hide behind the law.²⁵ Unfortunately, Gagnon makes clear that the altruistic politicians needed, are absent from the sphere of institutional power. In addition, he sees the present conjuncture as one in which supranational identity politics and political demands are being cast aside as uniformity and integration are being attained. Yet, for Gagnon there is hope in the *glocal* pluriverse of social movements and *demos* struggling for the recognition of minority identities. Borrowing from Ernest Renan, for Gagnon, “nation” is a contested identity and an ongoing plebiscite.²⁶ Therefore, for him, this permaculture and its ongoing activity animates the intranational and international democratic spirit.

22 *Ibid* at 92. In this quote, we can appreciate Gagnon’s “within” view of treaties. See footnote 2 in this article for the distinction between a “with” and a “within” view of treaties.

23 *Ibid* at 96.

24 *Ibid* at 115.

25 Here Gagnon is suggesting that within the sphere of institutional power there is a urgent need for political actors who while acting within the law are able to avoid narrow interpretations of the law. Such actors Gagnon suggest, could contribute to Canada self-overcoming or transvaluing its current gridlock.

26 *Ibid* at 175.

For Gagnon, a multinational federation requires “historical continuity, political consent, hospitality, and reciprocity.”²⁷ Its mode of sovereignty must be “shared, relational and plural.”²⁸ It requires an open and activity-oriented conception of democracy that understands decisions made are always “open to negotiation or renegotiation on an ongoing basis.”²⁹ As Gagnon states, accommodation is necessary. The positions of partners are formed and transformed with changing social, political, and economic conditions. Without such an open conception of democracy, for Gagnon, there is little chance for the recognition and accommodation of a multicultural and multinational diversity.

Gagnon’s multinational federalism promotes the full emancipation of all its members, embraces plural loyalties, and seeks to slow down the homogenization of cultures and identities. Such a move, according to Gagnon, supports the federation’s goals of “harmonious cohabitation, political stability, and a reasoned balance between individual and collective rights.”³⁰ Gagnon’s federalism seeks a healthy balance between self-rule and shared rule, while respecting the principle of political autonomy. It aims to generate the “conditions conducive to the connexity of sovereignties.”³¹ Its pactist ethos seeks to establish a climate of “reciprocal and conditional trust” based on the good faith of all involved.³²

Freeing Catalonia

As mentioned before, for Gagnon, Spain and Canada are at opposite ends of the constitutional spectrum. In Canada, referendums on the future of Quebec in both 1980 and 1995 were approached democratically. In Spain in 2017, the Catalan referendum ended in a blind alley. The message from the Spanish government and the courts was clear: Catalan political leaders must unconditionally abide by “the rules set (once and for all)” in the Spanish constitution that, in 1978, brought about the end of the Franco regime.³³ For Gagnon, this “no legitimacy beyond legality” approach taken by the Spanish government was an expression of the most regressive kind of “constitutional fundamentalism”.³⁴

27 *Ibid* at 185.

28 *Ibid* at 94, 95.

29 *Ibid* at 106.

30 *Ibid* at 50.

31 *Ibid* at 85.

32 *Ibid* at 86.

33 *Ibid* at 30.

34 *Ibid* at 26. Here Gagnon is engaging with the work of Pau Bossacoma i Busquets. See Pau Bossacoma i Busquets, *Morality and Legality of Secession: A Theory of National Self-Determination* (London: Palgrave Macmillan, 2020) at 275.

For him, such an approach has curtailed all possibilities of finding ways out of the multiple political crises Spain is immersed in.

As has crystalized with Catalonia, this approach is unfree and undemocratic. To Catalonia's contestation of the territorial model imposed by the 1978 Spanish constitution, the Spanish authorities responded with an "intransigent position of non-negotiation."³⁵ This then shifted the political struggle into the sphere of the judicial authorities, the police and the army.³⁶ Hence, the clash of legitimacies between the Catalan government and the Spanish government reaching a tipping point that became a blind alley of monologue-over-monologue interaction.

As Gagnon highlights, outlooks for a resolution to this toxic impasse are dim. While Catalan political leaders seek ways to undermine the existing constitutional framework, Spanish political leaders and the Spanish courts negate Catalan people's fundamental right to free and democratic citizenship. This, for Gagnon, is indicative of the fact that although looking at an old state, Spain's democracy is one of remarkably low intensity. With its obsession on the unity of Spain, the Spanish government and courts invite all dissent to be potentially labelled as unpatriotic and/or rebellious.

Following this critique, if the kind of multinational federalism that Gagnon is speaking of is to have a chance in Spain, the first requirement is that civil and civic citizens contesting constitutional arrangements are treated as legitimate and equal partners in the consensus building process. A deeply diverse, free, and democratic society, welcomes negotiations from all co-constituent partners. In the case of Spain, this should mean embracing a fair hearing and fair treatment approach to all claims made by the governments of the autonomous communities. As Gagnon sees it, this is the time to think outside of the box, break the straitjacket of the present conjuncture, and resolve the conflict of Catalonia's fit within Spain through dialogue instead of coercion.

From Gagnon's picture of the Catalonia and Spain quagmire, we see, a Spanish executive weary of agreement with its opponents because of the negative effects this could have on its voter support; a Spanish constitutional court unable to demonstrate impartiality in the resolution of the conflict; a European Union unwilling to take political leadership, and, Catalan politicians striving to pry open the constitutional box while at times standing outside of it.³⁷ As

35 Gagnon, *supra* note 1 at 141-142.

36 *Ibid.*

37 *Ibid* at 188-189.

Gagnon, points out, too much emphasis by Catalan politicians on the right to decide, reduces “political claims founded on the principle of legitimacy to issues in the realm of legality.”³⁸ Yet, through this process, Spain’s constitutional democracy also loses its legitimacy as it fails to remain free, open, and responsive to contestation and change coming from Catalonia.

Regarding how to move forward, Gagnon highlights, as an example, *Gure Esku Dago* (In our own hands), a social movement working towards a reformulation of the relationship between the Basque country and Spain. Gagnon suggests this could be a point of departure to begin the process of recognition, reparation, and reconciliation between the Spanish state and all Autonomous Communities constituent of it. For Gagnon, encouraging results have been achieved through the movement’s commitment to the following self-and-other-determination. The first result is change through nonviolent and peaceful means; the second, a political transition through societal introspection and non-exclusionary political mobilization; third, consensus-based relationality between partners prior to political transformation; fourth, acknowledgment of the disconnect between the present political reality of the Basque country and the State of Autonomies and last, de-centering the central state’s definition of what it means to be a political community.³⁹

Ultimately, for Gagnon, Spain’s “end-state” relation to democracy leads the country down a rabbit hole within which historical rights are undermined by the country’s constitution of 1978. This leaves Spain’s multinational and multicultural democracy in perpetual gridlock as co-constituent partners struggle to rid themselves of the straitjacket that is the country’s constitution, while the government, the courts, and the security forces demand obedience.

Joining hands

As Tully highlights in the Introduction to *Multinational Democracies*, 21st Century struggles over recognition in multinational democracies are open-ended and ongoing. Questions are addressed and institutional responses follow. Yet, the process is part of the “long-term activity of politics.”⁴⁰ In this sense, a politics of recognition as a game of “disclosure and acknowledgement”, needs to be played with care.⁴¹ It also needs to be passed on with as little domination as possible to the generations that continue playing it.

38 *Ibid* at 180.

39 *Ibid* at 178.

40 James Tully, “Introduction” Alain-G Gagnon & James Tully, eds, *Multinational Democracies* (Cambridge: Cambridge University Press, 2001) 1 at 21.

41 *Ibid*.

According to Tully, when citizens engage in this intergenerational, multi-cultural and multinational game, their “activity is intersubjective, multilogical, continuous and agonic.”⁴² The only “definitive and permanent” feature of this game is that the rules “are open to dissent, fair consideration and amendment.”⁴³ As Tully puts it, any form of mutual recognition is an experiment in an ongoing process of negotiation. Yet, it is in these contests that the activity of being democratic and free happens. Through this process of mutual disclosure and acknowledgement, partners are struggling “over what form of acknowledgement will count as recognition.”⁴⁴

By disclosing a politics of recognition in this manner, Tully is encouraging us to look beyond consensus on forms of recognition as the way of measuring the health of multinational democracies. Instead, he invites us to examine the democratic ethos of the *demos* by paying attention to the permaculture of free and self-determining activity happening within ongoing struggles over recognition. This is an important move that facilitates a critical reading into how demands for recognition are being worked and addressed. For example, as Tully points out, it is often the case that in struggles over recognition, parties that present a claim often simplify and omit the effects that their proposed changes might have on other members. Yet, in failing to recognize the claims of those affected by their own struggle, they enact the same injustice they are contesting. In essence, for Tully, in a democratic politics of recognition, any unilateral position, whether in defense of the status quo, constitutional change or secession, is unjust as it violates the principles of reciprocity: mutual recognition and mutual acknowledgment.

I take Tully’s understanding of a politics of recognition to be at the core of the kind of treaty federalism Gagnon is proposing in *The Legitimacy Clash*. It is: equal democrats working together without “subordination, assimilation or recolonization” so that co-inhabitants in diverse societies can live freely and in peace.⁴⁵ When the relationships between all participants are democratic, members of the different *demoi* in a plurinational and pluricultural federation can be said to be joining hands.

As Tully points out in *Democratic Multiplicity*, when such joining hands relationships are being enacted, partners are able to advance together in a non-

42 *Ibid* at 35-36.

43 *Ibid* at 30-31.

44 *Ibid* at 39.

45 Pablo Ouziel, “Democracies Joining Hands in the Here and Now” in James Tully et al, eds, *Democratic Multiplicity* (Cambridge: Cambridge University Press, 2022) first page at 568.

hierarchical, non-homogenizing manner. While each participant foregrounds their own understanding of being democratic, partners are able to link efforts in order to contest and resolve injustices while co-constructing imagined alternatives.⁴⁶ Yet, in building these joining hands relationships, partners need to recognize that there are multiple of diversities making claims for recognition in contemporary societies like Canada and Spain. Hence, the open and ongoing nature of a politics of recognition. At the same time, it is important to acknowledge the real challenges these diverse societies face in order to be democratic in every step that they take.

As Joshua Nichols writes about Canada in *Democratic Multiplicity*, the future of democracy is “radically contested, deeply complicated and ultimately uncertain.”⁴⁷ As Nichols highlights, the fact that Indigenous peoples did not contract into the federation but were conscripted into it, has left settler states with an unquestionable self-constituting and self-authorized legal authority. As Nichols explains, all states deal with problems of membership, such as secession movements like the ones of Quebec and Catalonia. Yet in Canada, as a settler state, the entire “claim to territory rests on the legal exclusion and/or diminishment of Indigenous peoples.”⁴⁸ This presents an important challenge as, unfortunately, Indigenous peoples are making claims in regards to jurisdiction while the Canadian state is responding with the legal language of minority rights. As Nichols points out, this is a move Canada makes “because the vocabulary of rights is downstream of the question of sovereignty.”⁴⁹

In regards to Quebec, the Canadian state and courts have made steps towards a diverse federalism that embraces a plurality of legal orders. Yet, much work is still needed if Indigenous peoples are to be engaged as partners instead of being dealt with as conscripts. This is what Phil Henderson aims to contribute to in his *Democratic Multiplicity* chapter “Like a Brick through the Overton Window: Re-orienting Our Politics, From the House of Commons to the Tiny House”. According to him, systems of indigenous governance “exist both

46 When speaking of linking efforts I am doing so in dialogue with Keith Cherry. Discussing the multiplicity of joining hands initiatives practiced between civil and civic citizens within different contestatory conjunctures, Cherry invites us to explore the numerous ways in which actors maintain full commitment to their own forms of struggle while interlinking their efforts. As Cherry suggests, such ability to link efforts presents joining hands as a powerful method for engaging with each other in a non-instrumental manner. This insight from Cherry, I draw from an ongoing conversation (2019/2020) around the meaning of ‘joining hands’ with a group working within the CTI.

47 Joshua Nichols, “Democratic Futures and the Problem of Settler States: An Essay on the Conceptual Demands of Democracy and the Need for Political Histories of Membership” in James Tully et al, eds, *Democratic Multiplicity* (Cambridge: Cambridge University Press, 2022) first page at 327.

48 *Ibid* at 334.

49 *Ibid* at 345.

prior to and without any necessary reference to the processes of imperialism through which they persist.”⁵⁰ For Henderson it is important to acknowledge that Indigenous sovereignties are “fully constituted and extant orders of political authority in their own right.”⁵¹ As he suggests, they are neither below the sovereignties of empire nor do they necessarily have to be contesting empire.

The problem, however, as Val Napoleon explains in her contribution to the *Democratic Multiplicity* volume, is that in its very definition, colonial ideology denies other legitimacies. Unless an Indigenous arrangement is “recognizable and cognizant to state forms” it is viewed as “incommensurable”, “deficient” and “inferior.”⁵² Napoleon sees this clearly in the way in which provincial and federal negotiators fail to see the woven complex social and legal fabrics that structure Indigenous societies. Her response to this is a call to expand the “grid of intelligibility” of the Canadian state.⁵³ Doing so, she claims, will allow for a “radical co-presence” between Indigenous and non-Indigenous communities negotiating terms of recognition as contemporaries and as equals.⁵⁴ This seems to me like an important step towards the kind of unsettled and decolonizing democratic treaty federalism Gagnon’s *The Legitimacy Clash* invites us to co-create.

Complementary to Napoleon’s call to expand the “grid of intelligibility” of the Canadian state, Keith Cherry’s contribution in *Democratic Multiplicity*, invites us to incorporate “reciprocal condition setting” practices into the kind of treaty federalism that Gagnon points towards.⁵⁵ According to Cherry, such practices would contribute to democratizing relationships between overlapping authorities. Such an approach could entail future treaties subjecting First Nations to the Canadian Charter while also subjecting federal and provincial governments to standards set by independent Indigenous legal institutions. Under such an arrangement “[f]ederal, provincial, and Indigenous bodies would all be able to govern within their negotiated jurisdictions, but each would have to respect the fundamental standards of the others.”⁵⁶ This form of legal plural-

50 Phil Henderson, “Like a Brick through the Overton Window: Re-orienting Our Politics, From the House of Commons to the Tiny House” in James Tully et al, eds, *Democratic Multiplicity* (Cambridge: Cambridge University Press, 2022) first page at 418.

51 *Ibid* at 420.

52 Val Napoleon, “Gitxsan Democracy: On Its Own Terms” in James Tully et al, eds, *Democratic Multiplicity* (Cambridge: Cambridge University Press, 2022) first page at 303, 307.

53 *Ibid* at 324.

54 *Ibid* at 307-308. Note that Napoleon supports the “with” view of treaties. See footnote 2 in this article for the distinction between a “with” and a “within” view of treaties.

55 Keith Cherry, “Conditional Authority and Democratic Legitimacy in Pluralist Space” in James Tully et al, eds, *Democratic Multiplicity* (Cambridge: Cambridge University Press, 2022) first page at 525.

56 *Ibid*.

ism would help overlapping authorities interbeing in a democratic plurinational federation “attend to the relational components of their legitimacy.”⁵⁷

In dialogue with the contributions discussed above, John Borrows in his Foreword to *Democratic Multiplicity* points to important steps towards the realization of a treaty federation amongst equal partners.⁵⁸ In the text, he invites us to think democratically about and with our more-than-human relatives. For Borrows, unless we can reconcile with the living earth we will not be able to reconcile with others. Hence, he proposes “‘being democratic’ with all affected fellow citizens of the living earth here and now in self-and-other co-determining ways.”⁵⁹ As Borrows explains, human political communities never exist in isolation; therefore, what each community member determines, affects all others. This is why Tully, referencing Borrows in the Introduction, reminds us that overlapping and crisscrossing communities can only be genuinely democratic when different *demoi* learn to listen to and understand each other’s claims in their own vernaculars. This is how communities can begin to participate in genuinely transformative democratic coordination and cooperation. As Tully points out, these democratizing joining hands practices “bring to light, contest and decolonize the power-over relationships of race, Indigeneity, class, gender, sexual orientation, ableism, and global north and south inequality as they decolonize power-over relationships to the living earth.”⁶⁰

Treating each other as co-citizens and co-governors, interbeing in gift-gratitude-reciprocity joining hands relationships, is the nonviolent and democratic way forward. Agonistic contestation between legitimacies within diverse societies is an ongoing activity. As Gagnon states in *The Legitimacy Clash*, democratically generated legitimacies “must have an opportunity to seek, and in the most optimistic scenario, achieve a democratic and negotiated settlement.”⁶¹ In a global context that sees with growing unease the creation of new states, a treaty federalism of lateral relations between *demoi* seems worth considering in the contexts of both Canada and Spain. As Gagnon emphasizes, promoting

57 *Ibid* at 526.

58 Note that Borrows supports the “with” view of treaties. See footnote 2 in this article for the distinction between a “with” and a “within” view of treaties.

59 John Borrows, “Foreword: Democratic Self-and-Other-Determination and the More-than-Human World” in James Tully et al, eds, *Democratic Multiplicity* (Cambridge: Cambridge University Press, 2022) first page at 12.

60 James Tully, “Introduction: The Pluriverse of Democracies” in James Tully et al, eds, *Democratic Multiplicity* (Cambridge: Cambridge University Press, 2022) first page at 561.

61 Gagnon, *supra* note 1 at 29.

“the establishment... of models open to the recognition and empowerment of nations within plurinational states” is an urgent demand.⁶²

At present, as we have seen in Canada and Spain, majority nations continue to use their security forces and the courts, rather than political dialogue between equals, to respond to certain jurisdictional claims. Arrested Wet’suwet’en land defenders and exiled Catalan political leaders are a testament to this fact. Yet, as I have tried to show in this multilogue between Gagnon’s new book and the work of colleagues at the CTI, with commitment from all sides a deeply diverse and lateral treaty federalism of the kind proposed by Gagnon is possible. We can train ourselves in the art of listening to and understanding claims made by different *demoi*. We can take time to engage with their practices. If we do so, the mode of interbeing that Gagnon’s federalism requires, crystalizes for us in the multiplicity of ongoing lateral, nonviolent, power-with gift-gratitude-reciprocity relationships actually happening all around us.

62 *Ibid* at 21-22.

Unsettled and free in the here and now