

The Doctrine of Residual Power in Canadian Diplomacy

Written by Bruce Mabley

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<https://www.e-ir.info/2019/06/04/the-doctrine-of-residual-power-in-canadian-diplomacy/>

BRUCE MABLEY, JUN 4 2019

For the first five decades of its existence, Canada relied on Great Britain to represent its interests abroad, its colonial status mitigating any attempt to give itself an independent diplomatic function. The Great War of 1914-18 changed all that. The magnificent performance and key participation of Canadian troops on the Allied side during the First World War had a most salutary impact on the development of an independent Canadian diplomacy. In 1919, Canada obtained an independent seat at the Treaty of Versailles and signed the treaty as an independent state thereby culminating a series of historical steps leading to a much greater measure of diplomatic and constitutional emancipation from the British crown. By the 1930s, Canada had established a legation with a seat at the newly founded League of Nations, which was created by the Treaty of Versailles in 1919. In the years since, Canada has greatly expanded its network of diplomatic missions abroad to include not only nation-states but also multilateral organizations and offshoots of the United Nations, created after the Second World War to replace the ill-fated League of Nations. This prodigious expansion of the voice of Canada, and its influence abroad, have been accompanied by a parallel development of the doctrine of residual power.

The thesis of residual power in Canadian diplomacy can be summed up as the building of a repository of power beyond which the limits of the home government and its minority electoral position bestow upon it. In a word, the diplomat is not only an employee of the state. He or she is also a transmission belt for Canadian values, some of which may not be represented, or poorly represented, by the government of the day and its foreign policy. The doctrine of residual power is a recognition of the importance of 'people to people' links as the fabric of any sustainable bilateral relationship between two or more countries. For example, it does not separate the delivery of diplomatic notes to a foreign power from the day to day cultural activities that all diplomats necessarily engage in as representatives of a different nation, people, culture etc.

Moreover, diplomats are subject to covenants of international law specifically the Vienna Convention on Diplomatic Relations of 1961. Foreign diplomats are subject to international law covenants unlike domestic bureaucratic personnel. Other state employees located inside the borders of the sending state are not subsumed under such international law. This situation produces a gap in representation, which is filled by the residual power validating the independent actions of Canadian diplomats abroad. I will now enumerate a number of such situations below.

The League of Nations 1935

In February 1933, when the League attempted to assert itself against Japanese aggression in Manchuria, the Japanese delegation walked out. In October 1935, Benito Mussolini's Italy was emboldened by the League's ineffectiveness at opposing the Japanese and attacked the African nation of Abyssinia.

France and Britain had already voted sanctions but on items that would have had little effect on Mussolini's army. Their strategy appeared to be a pre-Munich dress rehearsal in order to placate the Italian fascists and prevent them from throwing in their lot with Adolf Hitler and the Nazis.

Walter Riddell, head of the Canadian legation to the League, sought to go further. After discussing with the other members of the legation including the young Lester B. Pearson, Riddell decided to move for full-fledged oil sanctions, without which he knew Italy could not be stopped from invading the African nation of Abyssinia, now known as

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Ethiopia. Without seeking permission from the newly elected government of William Lyon Mackenzie King, Riddell, an academic turned diplomat, created a storm at the League.

The King government ultimately refused to support Riddell's initiative and the legation's position on Italian sanctions was debunked. Without official support, the initiative dissolved and with it any reasonable thought of the League achieving its preventative mandate as per the Treaty of Versailles. Riddell's diplomatic career was at an end.

Despite being a state employee, Riddell voted for oil sanctions without asking permission from Ottawa. This first historical example of residual power in Canadian diplomacy lasted for all of a few days until newspapers could obtain messages via the telegraph. One would think that as modern methods of communication take hold, the range of residual power would be reduced. The exact opposite occurred.

The Tehran Caper 1979

A Hollywood movie entitled *Argo* was eventually made of the event, where Canadian diplomats opened their homes to fleeing American hostages during the 1979 attack on the US embassy in Tehran. Although the movie was not entirely factually correct, the events depicted were very real, as was the danger that the hostages and their Canadian caretakers ran.

One question, which has remained less than transparent, has been whether the British embassy, as the Americans' first choice, rejected the American appeal. There is evidence on both sides but, in the end, the Canadians said 'yes' before anyone else and the fate of the hostages was then placed in the hands of the Canadian embassy in Teheran.

Note that Canadian embassy personnel replied in the affirmative to the very first US calls for help without asking Ottawa for instructions. Later that night, Ambassador Taylor cabled Ottawa with a strong suggestion to proceed *per* the reality on the ground and the political authorities (Joe Clark's minority Progressive Conservative government) went along. There was no question of asking permission before taking in the fleeing Americans. It was simply an expression of Canadian values being helpful to those in danger. In the process, the Canadian diplomatic staff put themselves in harm's way. One can surmise that the Canadian staff were acting as Canadians first, and state employees second.

The Velvet Revolution, 1988

In 1988, the Communist party rule of the Soviet Union and its satellite states was under attack. In what was then known then as Czechoslovakia, the Canadian embassy played a key role in aiding and abetting Czech and Slovak dissidents to achieve their political objectives. During the Czech revolt against Soviet and Czech Communist party authoritarian rule, Canadian diplomatic staff played an instrumental role in spiriting across the border into West Germany messages and texts of key Charter 77 Czech dissident leaders. The dissemination of the writings of Vaclav Havel, the country's future president, and others were essential to the continued resistance of the Czech dissident movement.

Long after the revolution, in 2007, Canadian diplomat Peter Bakewell was awarded the *Gratias Agit* award for his work in support of the dissidents by the Czech Foreign Ministry. Later Bakewell would be one of the creators of the Global Security Reporting Program (GSRP) lodged inside Canada's foreign affairs department. Bakewell's story is only dimly known to a tiny minority of the Canadian public.

Afghan Detainee Scandal, 2007

A Canadian diplomat stationed in Kabul, Richard Colvin, became a whistleblower when he reported Canadian troops turning over Afghan prisoners to known torture units of the national Afghan army and security directorate. Under Article 12 of the Third Geneva Convention, of which Canada is a signatory, the detaining authority is ultimately responsible for the treatment of its prisoners.

The Doctrine of Residual Power in Canadian Diplomacy

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Under threat of internal Ministerial sanctions and denials by the Conservative government of the day, which refused to accept the truth, Richard Colvin remained forthright and appeared before a parliamentary committee to tell the true story. By defying the illegal and immoral practices of the military units on the ground in Afghanistan, the Canadian diplomat re-affirmed values of *habeas corpus* and fair treatment of detainees despite internal bureaucratic and political sanction. His actions demonstrated an integral respect for and knowledge of international humanitarian law. All subsequent requests for an investigation into the Afghan detainee scandal under both Liberal and Conservative governments have gone unheeded, despite the Liberals arguing for an inquiry while in opposition.

The Syrian Revolt, 2011-3

During the early years of the Syrian revolt, I was a Canadian diplomat based in Ankara and part of the Global Security Reporting Program (Colvin was in Afghanistan). Six months into my posting, the Arab Spring uprising spread to Syria where peaceful demonstrations were met with mass arrests, torture and often killings. In response to this wave of unprovoked state violence, I set up a systematic assistance network for dissidents seeking to overthrow the brutal Bashar al-Assad regime. This assistance ranged from running interference with the Turkish authorities on Syrian dissidents in Turkey and managing a cyber war on behalf of the opposition, to crossing over into Syria itself and reporting on the desperate refugee situation to apathetic Western powers. GSRP reports from Ankara succeeded in awakening the Five Eyes to the fact that Syrian refugee relief was being monopolized by Islamist groups.

Throughout these early years, Canadian diplomats were in the front of the bus with the Syrian democratic opposition and they possessed the most up to date information and strategic intelligence on the military and political situation inside Syria. Despite this, the Canadian foreign ministry attempted to impede and obstruct this precious assistance, which saved the lives of hundreds of mostly young peaceful Syrian activists. Once back in Ottawa, bureaucratic sanctions were levelled against me, similar to the treatment reserved for Colvin upon his return from Kabul.

The Huawei Affair

Are the actions of the former Canadian ambassador to China, John McCallum, another more recent example of the doctrine of residual power used in an effort to free Michael Kovrig (a former GSRP diplomat in China from 2004-16)? McCallum was removed from his position by stating the facts of Huawei executive Meng Wanzhou's extradition case in Vancouver and the weakness of the arrest warrant. Instead of lying about the American *coup de force* using Canada as a battering ram in their trade war with China, McCallum chose to focus on the freeing of Kovrig, who has been held in Beijing since December 2018. Rather than support the dubious official narrative of his superiors and its misuse of the double-edged rule of law concept, McCallum challenged Meng's arrest warrant based on a) extraterritoriality, b) Donald Trump's interference linking the Kovrig arrest to the trade war and c) the link to Iran sanctions that neither the United Nations or Canada supported.

McCallum was presumably fired for expressing an opinion based on the facts of the case and, in my view, supported by Canadian values rather than accepting the bullying of Donald Trump and the kowtowing of the Canadian government. Canadian diplomacy is, after all, made of sterner stuff.

Conclusions and Lessons Learned

Are these 'rogue' actions linked? Do they have anything in common?

In each of the above-noted cases, actions were taken by Canadian diplomats, on their own initiative. If diplomats are evaluated solely as state employees, then their refusal to ask permission to undertake such efforts even out of a moral conscience would be deemed 'rogue'. Yet, diplomats are not simple state employees – they must also abide by international laws specifically those pertaining to foreign diplomats. Diplomats abroad also serve at the pleasure of the host country, who can request their return home at any time. These special conditions of their appointment and position differentiate them from ordinary state employees who serve in a different legal jurisdiction, at home and subject to the dictates of national law. Diplomats live differently and their work entails much more than simply

The Doctrine of Residual Power in Canadian Diplomacy

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delivering a policy or two of the home state government.

The doctrine of residual power in Canadian diplomacy reveals a number of targeted measures, which could improve the efficiency and quality of the Canadian foreign service. Its ability to promote Canadian interests and values abroad has been hampered by a 'one size fits all' philosophy of recruitment, hiring and training that does not account for the specific conditions under which Canadian diplomacy functions.

1. The Canadian Foreign Ministry should a) return to an independent and specialized form of hiring (and testing) and reject the standardized tests imposed on the Department by the Public Service Commission. The present testing bears no resemblance to any of the required skills and aptitudes required for the practice of diplomacy both at home and abroad.
2. Lateral entry to the Canadian Foreign Service from other government departments should be reduced to a minimum. Other Government Department (OGD) lateral entries are a source of friction within the Foreign Service and they bring with them skills and experience that are cannot be merged into work abroad in other continents. Any business person understands the challenges of doing business abroad where cultural, linguistic and political differences can make the difference between success and failure.
3. The representational role in diplomacy is a key to any successful bilateral and multi-lateral relationship between Canada and other nations. This can complement the state employee status of the diplomat, which itself cannot adequately describe the 'people to people' nature of any bilateral relation. It is this representational role that allows diplomats to be a transmission belt for Canadian values and culture around the world. This concept is often forgotten in the tumult of trade deals, international treaties and diplomatic notes but it is the bedrock of successful bilateralism and can be a safety net when political relations become strained. The Huawei Affair is an excellent example. Canadian civil society is much closer to understanding China and the present imbroglio than any of our political actors.

In the case of Canada, and a number of other countries, there is a gap or epistemological break between diplomacy and the home government public service. The Canadian diplomats who undertook the 'rogue' actions can find the moral high ground in this epistemological break. This break can be further explained by the representation role, which is an important part of every diplomatic mission. In addition to representing the government of the day and its policies, diplomats are also supposed to represent the people. However, in many cases, and the Canadian case in point, the government of the day usually wins its power with only around 35 percent of the vote. Since there is no proportional representation in Canada, the other 65 percent of the public is disenfranchised. Abroad, a diplomat cannot just represent 35 percent of Canadians. Moreover, the ethical principles related to a diplomat residing abroad clearly underline the expectations of the host country.

What has transpired since the beginning of Canadian diplomatic history is the illustration of the doctrine of residual power. Canadian diplomats abroad bridged the gap and portrayed the existence of Canadian values such as the right to *habeas corpus* in the Afghan scenario, the fight against foreign aggression and fascism in Riddell's case, using the safety of a diplomatic mission to protect other foreign diplomats from a very uncertain destiny in Iran, and in Syria and Czechoslovakia assisting peaceful and democratic opposition elements to express freely their views over and against a corrupt and authoritarian state apparatus. In the more recent example of the Huawei Affair, Canadian diplomacy spoke truth to power by refusing the false and damaging governmental narrative concocted under external American pressure in order to choose freedom for a Canadian hostage and colleague unfairly jailed and deprived of his rights.

About the author:

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