
Representation and suspicion in Canada's appearance under the Universal Periodic Review

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Introduction

In an acerbic concluding comment on Canada's first appearance under the Universal Periodic Review (UPR), the Cuban delegation reflected on what it saw as the decline of Canada's dedication to the global good. Cuba indicated that it 'missed' Canada's former 'pro-third-world approach' and a national stance that was 'always on the side of the weakest'.¹ It also lamented that Canada no longer held its former commitment 'to the noblest causes'.² Given the circumstances in which they were made (as a reflection on the UPR and in the UN Human Rights Council), these comments read as an accusation by Cuba that Canada, presented as once having been a champion of social justice and human rights, no longer warrants such a characterisation.

The idea that Canada is (or *was*) a champion of rights has had broad circulation and considerable international currency in the past half-century, currency that has been given further value through Canada's early involvement in global peace-keeping and the award of the 1957 Nobel Peace Prize to former Canadian Secretary of State for External Affairs (and future Prime Minister) Lester B. Pearson. More recent examples of Canada's work in promoting human rights ideas can be seen in its sponsorship of the International Commission on Intervention and State Sovereignty, which produced *The Responsibility to Protect* report (2001),³ or its role in circulating 'non-papers' suggesting new

¹ Human Rights Council, *Report of the Human Rights Council on its Eleventh Session*, 11th sess., UN Doc. A/HRC/11/37 (16 October 2009) p. 96.

² *Ibid.*

³ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington DC: Brookings Institution Press, 2008) p. 4.

human rights reporting procedures for what ultimately became the Universal Periodic Review.⁴

Despite such accomplishments, Canada's actions in the field of international human rights have not always accorded with its reputation. Dominique Clément has written on Canada's initial resistance to the Universal Declaration of Human Rights and the lack of domestic political interest in international human rights, noting that it was not until the 1970 White Paper *Foreign Policy for Canadians* that human rights became a significant aspect of the state's external policy.⁵ Critics such as Sherene Razack and Massimo Rubboli have challenged the status of peace-keeping as a Canadian rights mythology.⁶ During its appearance under the UPR, criticisms were also made of Canada's record as a member of the Human Rights Council and its failure to sign up to a number of international rights instruments.⁷

This chapter engages with how Canada's rights record was presented in the UPR as an aspect of the Review's broader processes of representation and critique. Acts of representation are central to the UPR, which premises its peer review on states giving an account of their human rights protections in a national report and a self-description in the interactive dialogue. At the same time, the UPR also offers a space in which those representations might be challenged. Its dialogic and often adversarial form both enables and fosters a suspicion about how states articulate their relationship with rights, reading state self-descriptions through the challenges presented by parallel compilations of civil society

⁴ Felice D. Gaer, 'A Voice Not an Echo: Universal Periodic Review and the UN Treaty Body System' (2007) 7(1) *Human Rights Law Review* 109, 113–16.

⁵ Dominique Clément, 'Human Rights in Canadian Domestic and Foreign Politics: From "Niggardly Acceptance" to Enthusiastic Embrace' (2012) 34(3) *Human Rights Quarterly* 751, 769. The White Paper flagged that it was in Canada's interests to 'accept the obligation to participate actively in this important area of the UN's work . . . [and that] there is an expectation that Canada will participate in international efforts in the human rights field on a more extensive and meaningful scale than in the past' (quoted in Clément at 769).

⁶ Sherene Razack, *Dark Threats and White Knights: The Somalia Affair, Peacekeeping, and the New Imperialism* (University of Toronto Press, 2004); Massimo Rubboli, 'Canada, Peacekeeper to the World? Myths, Values, and Reality in Canadian Foreign Policy' in Cornelia Steenman-Marcusse and Aritha Van Herk (eds.), *Building Liberty: Canada and World Peace, 1945–2005* (Groningen: Barkhuis, 2005) pp. 145–62.

⁷ See, e.g., statements by Algeria, Austria, Bolivia, Denmark, Norway and Syria, amongst others, in Human Rights Council, *Universal Periodic Review: Report of the Working Group on the Universal Periodic Review – Canada*, 11th sess., UN Doc. A/HRC/11/17 (5 October 2009).

and treaty body reports and the questions and comments of other states during the interactive dialogue. Ultimately, the UPR offers multiple and frequently conflicting descriptions of each state that are composed of self-produced texts and interrogations of (and counter-assertions to) those texts by other actors. Through an examination of Canada's experience under the UPR in 2009, this chapter considers how the Review's processes of representation and suspicious interpretation generate these seemingly irreconcilable accounts, leaving its audiences with uncertainty, rather than clarity, about the 'truth' of a state's rights practices.

Writing and critiquing the state of human rights

A complex representational performance is undertaken by states appearing before the UPR. The Review is an attempt to articulate the domestic rights situation of a state for an international audience, a simultaneously internal and external act of self-representation wherein the domestic and international shape each other reciprocally. The 'Basis of the Review' laid out in the Human Rights Council's Resolution 5/1 (the institution-building documentation)⁸ emphasises this, underscoring the UPR's global nature by explicitly linking a state's national rights situation to its international obligations and agreements.⁹ The international nature of the Review is further emphasised by the global significance of where the interactive dialogues of the UPR take place – the Human Rights Council.

At the same time, the UPR is also presumptively concerned with domestic contexts. The three reports produced by and about the state under review have a focus that is primarily internal, and the bulk of recommendations made have directly domestic application. Moreover, in drafting their national reports states are encouraged to include a 'broad consultation process at the national level with all relevant stakeholders',¹⁰ a process that would presumably allow them to draw on a diversity of local perspectives in order to better depict their domestic rights situations. Even as the stage on which the UPR is performed is a

⁸ Human Rights Council, *Institution-building of the United Nations Human Rights Council*, HRC Res. 5/1, 5th sess., UN Doc. A/HRC/RES/5/1 (18 June 2007) Annex.

⁹ That is, the Charter of the United Nations, the Universal Declaration of Human Rights, international human rights instruments, voluntary pledges and commitments (the only such commitments identified so far are those made before the global community in seeking election to the Human Rights Council), and international humanitarian law.

¹⁰ Human Rights Council, Resolution 5/1, Annex, para. 15(a).

global one and the interlocutors interrogating a state are its sovereign peers, the Review's specific content reiterates the procedure's focus on the situation within states and the relationship between the state and its inhabitants.

The national report, as the initial, textual act of self-representation performed by a state under the UPR process, is a multiply-inflected moment that reflects, while also constituting, this interplay of the domestic and the international. Written through the discursive lens of human rights and speaking to a number of potential audiences, it must in some way articulate a national version of international rights while also demonstrating how domestic values manifest (and so are legitimated) in the global rights regime. Neither the international nor the domestic necessarily pre-empts the other; rather, they are co-mingled and co-dependent, and serve as a self-representation of the state for audiences in both fora.

The UPR does not, however, only give states the opportunity to tell a story about their rights performance and aspirations; it also creates an interpretive ritual in which other states read, evaluate and question those stories in certain ways. It is a reiterative process wherein dialogue, scrutiny and suspicion are presented as being of value and as central to ascertaining the state of rights in a country. The state under review must engage with this aspect of the UPR, just as it must the requirement for self-representation, and Canada explicitly proffers its report as something to be interrogated. The UPR also foregrounds suspicion, applied repeatedly to each state, as a vital aspect of its role as a form of public audit.¹¹ Suspicion can be understood here as an especially acute critical stance, one that reads the representations before it with an eye to, and indeed an expectation of, duplicity. Seemingly premised on the belief that any statement made by a country about its human rights record must necessarily obscure the 'actual' situation, suspicion, mediated through the questions and comments put repeatedly to countries under review, serves as an interpretive lens that aims to reveal that truth.

Suspicion can be difficult to disentangle from other ways of judging a state's human rights record. Rather than acting as a unitary ideal, suspicion functions in conjunction with concepts including

¹¹ See Jane Cowan, Chapter 2 for a discussion of the idea of the UPR as an auditorial project wherein states cannot reject the audit 'without being seen as having something to hide', and where other states are invited, in review, to assume roles of 'other-auditing sovereignty'.

accountability and transparency.¹² These latter interpretive frames can be read in the 'cooperative' and 'interactive' nature of the Review introduced in section 5(e) of the General Assembly's Resolution establishing the Human Rights Council.¹³ Vincent Chetail notes that while the Human Rights Council is not substantively different from the Commission on Human Rights in the means it has to pursue its aims, the Council's endeavour to replace 'confrontation with cooperation' does represent 'a change in method'.¹⁴ This attempt to create a new mode of inter-state rights discourse can be seen in various resolutions and decisions establishing the Human Rights Council, including the foundational recognition in the Preamble to Resolution 60/251 that 'the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings'.¹⁵

This novel approach to inter-state interaction is perhaps best symbolised by the UPR. The new (or at least revised)¹⁶ mechanism presents state human rights practices and contexts as knowable and capable of being discussed by and with other states. If to Chetail the degree of state control over the process renders it 'more like a forum of discussion than a true evaluation procedure',¹⁷ the increased value of dialogue might itself make states more accountable for not only their actions but also for their human rights promises. For example, by rendering the pledges a state makes when it seeks election to the Human Rights Council one of the areas of review, the UPR could act as a curative to certain forms of rights ritualism as it (at least ostensibly) holds those pledges up to scrutiny and the states making them to account.¹⁸

¹² See Human Rights Council, Resolution 5/1, Annex, paras. 3(m) and 15(a); see also, the 'broad consultation process' mentioned in Human Rights Council, *Follow-up to Human Rights Council Resolution 5/1*, HRC Dec. 6/102, 6th sess., UN Doc. A/HRC/DEC/6/102 (27 September 2007) para. I(A).

¹³ UN General Assembly, Human Rights Council GA Res. 60/251, 60th sess., UN Doc. A/RES/60/251 (15 March 2006).

¹⁴ Vincent Chetail, 'The Human Rights Council and the Challenges of the United Nations System on Human Rights: Towards a Cultural Revolution?' in Laurence Boisson de Chazournes and Marcelo Kohen (eds.), *International Law and the Quest for its Implementation* (Leiden: Brill, 2010) pp. 193–241 at 222.

¹⁵ UN General Assembly, Resolution 60/251.

¹⁶ Chetail, 'The Human Rights Council', n. 14 above, pp. 223–4. ¹⁷ *Ibid.* p. 229.

¹⁸ Human Rights Council, Resolution 5/1, Annex, para. 1(d).

Despite the emphasis on cooperative measures throughout the documentation establishing the Human Rights Council and the UPR, dialogue under the Review is rarely so amiable. Rather, its texts and dialogues seem to generate suspicious interrogations of states' self-representations more than they produce mutually-achieved resolutions to rights problems. Indeed, when suspicion fails to be explicit, the reader's own suspicion is aroused, presuming, perhaps, a partisan and positive stance by a friendly nation.¹⁹ Assuming duplicity is a reinscription of a broader discourse of state malfeasance around human rights issues: that no state willingly admits to violations as it is not in their interest to do so. The associated presumption to this is that a state's self-representations about rights need to be interpreted, and interpreted suspiciously. Through the interrogative nature of the interactive dialogue and the *de facto* adversariality created by putting national reports into contention with compilations and summaries from UN bodies and civil society, the UPR presents inter-state discussion about human rights as necessarily premised on suspicious critique rather than the acceptance of state assertions. This presumption of suspicion itself risks becoming ritualistic; presented as a presupposition and applied without distinction, suspicion may lose its critical potential and become instead an empty gesture, simply 'what one does' in the process of review. Doing so may also make the criticisms produced through the UPR seem less specific and nuanced – or more politicised – and so easier to dismiss by the state under review.

Canada's national report and presentation to the Working Group on 3 February 2009

Canada's national report for the 2009 UPR follows a national rhetorical tradition in which a pro-human rights stance is held out as being central to Canadian values. For example, the 2005 foreign policy document *Canada's International Policy Statement: A Role of Pride and Influence in the World* (the 'IPS') prefigures the national report in its assertion of the centrality of rights to Canadian domestic values and its argument for how those rights values are deployed in international actions.

¹⁹ Versions of this concern can be seen in Bertrand G. Ramcharan, *The UN Human Rights Council* (London: Routledge, 2011) pp. 64–5; Allehone Mulugeta Abebe, 'Of Shaming and Bargaining: African States and the Universal Periodic Review of the United Nations Human Rights Council' (2009) 9(1) *Human Rights Law Review* 1, 16.

A state's national report under the UPR is not a policy document in the same sense as the IPS. Nonetheless, instructive parallels can be read between the generic form of policy and the specific act of representation that the text of the national report calls for. Donna Palmateer Pennee has noted that state policy is often an act of national self-recognition, articulating a conception of the nation-state that identifies its uniqueness.²⁰ Representing itself through policy, the state identifies those aspects or characteristics it holds as definitional, as markers of its particularity. As Jennifer Welsh (who was involved in the drafting of the IPS) notes, policy can signify the nation-state's unity, 'forging cohesion across a huge territorial mass and diverse population, and mak[ing] collective action possible . . . [as] part of an ongoing process of nation-building'.²¹ Reflecting ideals asserted to be commonly held, statements of national policy can additionally function as statements about the values of the nation, giving them a coherence and knowability that can be captured textually. The state, personifying the values of the nation, is also justified to the domestic polity in its actions by its manifestation of those values in policy. Because these values are identifiable with the nation, they can be used to legitimate state actions.²²

What are the uses to which human rights are put in such representations? Broadly speaking, a relationship is constructed between domestic and international ideals in articulations of 'Canadian' human rights values in documents like the IPS. Domestic ideology and international policy are consequently intertwined, and in the rhetoric of the IPS at least, they shape each other in representing Canada to the world. Slipping between national and international registers, the IPS acknowledges that respect for human rights forms part of the beliefs of a number of nations. However, as the following extract demonstrates, their manifestation in Canada is unique, an exceptional instance that reflects Canadian history and culture:

²⁰ Donna Palmateer Pennee, 'Looking Elsewhere for Answers to the Postcolonial Question: From Literary Studies to State Policy in Canada' in Laura Moss (ed.), *Is Canada Postcolonial? Unsettling Canadian Literature* (Waterloo: Wilfred Laurier University Press, 2003) pp. 78–94 at 86.

²¹ Jennifer M. Welsh, 'The 2005 International Policy Statement: Leading with Identity?' (2006) 61(4) *International Journal* 909, 918.

²² Benjamin Authers, 'The Individual is International: Discourses of the Personal in Catherine Bush's *The Rules of Engagement and Canada's International Policy Statement*' (2009) 78(2) *University of Toronto Quarterly* 782.

Our shared commitment to peace, order and good government, combined with the dynamism of our communities and citizens, has produced a vibrant and prosperous political community. Our federation has become a diverse multicultural society capable of transcending the narrow politics of ethnic and cultural difference . . . Canada's continued success depends on the joint pursuit of democracy, human rights and the rule of law. Though many countries share these values, we have moulded them into a particular constellation that reflects our historical experience and our current aspirations.²³

The Canada of the IPS is thus presented as a reflection of a distinctive national ideology. The state's self-representation is justified by its particular manifestation of collectively-held human rights values, its 'role of pride and influence in the world' grounded in the domestic. Through foreign policy, these beliefs serve the nation-building function that Palmateer Pennee and Welsh identify by portraying the benevolent Canadian nation-state to itself. At the same time, as a statement of foreign policy the IPS also functions on an international register. When Prime Minister Paul Martin stated in his foreword to the IPS that 'foreign policy is how a nation best expresses itself to the world',²⁴ he was describing an act of self-representation that is simultaneously made to the world at large.

Canada's national report to the UPR mirrors the IPS in its attempt to represent textually the nation-state as some kind of coherent and uniform entity holding collective beliefs, although it largely lacks the same grand statements about national rights values. This is perhaps due to the different nature of the text: changes in Canadian government and policy in the intervening four years are no doubt also significant factors. And while, as a foreign policy document, the IPS is cognisant of an international audience, Canada's national report reads as more overtly aware of this, deploying detailed contextualisation to describe the Canadian domestic situation for a global readership. While the rights-respecting Canada of the national report certainly finds justification in the national esteem for human rights that the IPS invokes, because it speaks directly to Canada's international human rights obligations the sources and nature of those rights are far more globalised in the national report than the IPS.

²³ Government of Canada, *Canada's International Policy Statement: A Role of Pride and Influence in the World. Overview* (Ottawa: Department of Foreign Affairs and International Trade, 2005) p. 4.

²⁴ *Ibid.* (unpaged).

Canada introduces itself in its national report as a country whose institutions, including the common law, Canadian Charter of Rights and Freedoms and democratic systems, are cumulatively conducive to human rights. Rights are protected both by the courts and the various levels of government, Canadian federalism meaning that jurisdiction over rights issues is divided between Canada and its ten provinces and three territories and with limitations on the capacity of each.²⁵ The National Report also notes that while many rights are the subject of legislation, many others, 'in particular economic, social and cultural rights, are advanced and progressively realized through government policies and programmes'.²⁶ The 'many human rights and freedoms enjoyed by Canadians'²⁷ are thus dispersed across the state's various levels.

Nonetheless, the national report underscores that the protection of rights is an intrinsic aspect of the state's operation: 'the federal, provincial and territorial governments work collaboratively and in a complementary fashion to promote and protect human rights in Canada and enhance implementation of international human rights treaties to which Canada is a party'.²⁸ Domestic implementation arises from, and is tied to, what is held out as Canada's global commitment to international human rights processes, recognised in the state's ratification of 'many of the human rights treaties of the United Nations' and its 'long tradition of participation in the drafting of UN human rights instruments and co-operating with relevant monitoring mechanisms'.²⁹

²⁵ It is worth noting that a cooperative body, the Continuing Committee of Officials on Human Rights, provides an intergovernmental forum through which international rights obligations are to be incorporated into provincial and federal law and policy. The failures of this Committee, including its lack of a mandate to consult with civil society or to inform the public of its work, was a point of critique in a government report produced in the wake of Canada's appearance under the UPR: Standing Committee on Foreign Affairs and International Development, Subcommittee on International Human Rights, *Canada's Universal Periodic Review and Beyond: Upholding Canada's International Reputation as a Global Leader in the Field of Human Rights* (Ottawa: Library of Parliament, 2010) p. 5.

²⁶ Human Rights Council, *National Report Submitted in accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1: Canada*, 4th sess., UN Doc. A/HRC/WG.6/4/CAN/1 (5 January 2009) p. 3.

²⁷ *Ibid.* p. 3. ²⁸ *Ibid.* p. 5.

²⁹ *Ibid.* p. 4. The image of Canada set out in its national report is, of course, only one space in which Canada's national imagery is read through the lens of international human rights discourse. For example, the Standing Committee on Foreign Affairs and International Development, in *Canada's Universal Periodic Review and Beyond*, n. 25 above, offers a critical, domestic retelling of Canada's relationship with the international

In his introduction to the UPR Working Group, Deputy Minister of Justice, John Sims, continued this process of representing rights as integral to the nature of Canada. 'In Canada,' he opined:

respect for human rights has become very much a part of our national discourse and this public discussion of human rights is ongoing. It takes place within government as new laws and policies are reviewed for consistency with domestic and international human rights standards. It also takes place in the courts and the administrative tribunals of Canada and in public commissions of inquiry. It is a prominent theme in civil society initiatives and a focal point in the press and in the arts. Canadians from all sectors of society actively engage and help shape Canadian public opinion and Canadian approaches to the advancement of human rights.³⁰

None of this is to suggest that Canada's self-representation at the UPR is of a nation without flaws. The national report is largely composed of descriptions of how current laws and policies, at both a national and provincial level, protect human rights and aid in their dissemination and normalisation. But, while certainly not as bluntly critical as the opinions in the NGO compilation, the national report recognises a number of the state's failings even as it emphasises policies in place to alleviate them. Canada's human rights challenges, including jurisdictional limitations and deficiencies around housing, poverty, racism, violence against women, and especially the disadvantaged position of Aboriginal peoples, are all foregrounded and depicted as problems to be addressed.

This self-critical as well as self-congratulatory positioning echoes the recommendation, made by the Commonwealth Secretariat in its guide to best practice in the UPR, that states focus on 'evaluat[ing] achievements and challenges'.³¹ However, Canada's national report does not – indeed, it cannot – follow the Secretariat's further recommendation to 'forego a

human rights regime. Warning of systemic problems in how Canada implements, monitors and enforces its international human rights obligations, the Subcommittee stresses that Canada, 'a champion in the effort to establish' the UPR, must 'set the best possible example for the international community on how to approach the review process, both during the UPR and afterwards' (p. 2, see also p. 3). The implication here is that Canada has so far failed to do so, affecting its international standing (p. 20).

³⁰ Human Rights Council, *Archived Video: Human Rights Council Fourth Universal Periodic Review*, Tuesday 3 February 2009, 10:00–13:00, www.un.org/webcast/unhrc/archive.asp?go=090203#am. This represents a somewhat different, expanded version of Sims' statement to that reported in Human Rights Council, *Report of the Working Group* (2009), n. 7 above, pp. 3–4.

³¹ Purna Sen (ed.) and Monica Vincent (research), *Universal Periodic Review of Human Rights: Towards Best Practice* (London: Commonwealth Secretariat, 2009) p. 55.

narrative style of reporting',³² nor does such an approach seem entirely plausible for any country seeking to explain how rights deficiencies and challenges will be addressed. Narratives should be an aspect of any coherent and contextualised depiction of the national state of rights.³³ While the UPR preparation guidelines do not dictate how a country's information is to be delivered, they do direct states to give a full account of their rights situation in their reports. Thus, the guidelines suggest that states should provide a background to how human rights operate domestically, 'particularly [their] normative and institutional framework'.³⁴ This suggestion that states provide context is further emphasised by later recommendations to describe how human rights are promoted, protected and implemented,³⁵ 'achievements, best practices, challenges and constraints',³⁶ and 'key national priorities, initiatives and commitments'.³⁷ The UPR's form, at least as conceived of by the Human Rights Council in the institution-building documentation and follow-up, is an explicitly narrative one; a holistic, contextualised story that states present and that can then be read by the international and domestic community more generally. It is this model, rather than the Commonwealth Secretariat's de-narrativised one, that Canada's national report follows in its historicised and socio-legally framed depiction of the country's rights situation.

Peer review's suspicious dialogues

As I noted above, the UPR not only calls for a particular kind of narrative, it also proffers itself as a forum in which narratives are interrogated, and wherein the process of interpretive scrutiny is valuable. Canada makes explicit reference to the value of this critique in its review, presenting it as a human rights good, including when it is applied to Canada itself. Thus, during the interactive dialogue, Deputy Minister of Justice Sims asserts that 'Canada has a long tradition of promotion and protection of freedom, democracy, human rights, and the rule of law in Canada and abroad'.³⁸ At the same time, he presents Canada's willingness to undergo critique as proof of its commitment to human rights:

³² *Ibid.*

³³ Narratives also seem a formal necessity in meeting the holistic ideal that the Human Rights Council envisages for the UPR: that it 'promote the universality, interdependence, indivisibility, and interrelatedness of all human rights' (UN Human Rights Council, Resolution 5/1, Annex, para. 3(a)).

³⁴ Human Rights Council, Decision 6/102, para. 1(B). ³⁵ *Ibid.* para. 1(C).

³⁶ *Ibid.* para. 1(D). ³⁷ *Ibid.* para. 1(E).

³⁸ Human Rights Council, *Archived Video*, n. 30 above.

We recognise that no country, including Canada, has a perfect human rights record. That is why it's important that every country open their human rights records to scrutiny, both domestically and internationally . . . The value of this forum [the UPR] is that it brings us together for thoughtful discussion of what are sometimes difficult issues. We welcome the opportunity to share with you today some of our successes and some of our challenges.³⁹

Canada concludes the interactive dialogue similarly by positioning interrogation and debate as central to Canadian ideals, thereby situating participation in the UPR as consistent with its belief in rights:

The delegation noted that the review was an opportunity for Canada to examine its own record and benefit from the views of many states. Canada perceives its diversity as among its greatest strengths, as well as its democratic system, the strength and independence of its judicial institutions, commitment to the public education of children and the national pre-disposition to dialogue as the best means to resolve differences of opinion. The importance placed on freedom of opinion and expression is crucial for the protection of all human rights. It said a defining aspect of Canada's approach to human rights is its open society, including its openness to international scrutiny.⁴⁰

Here, the values of the UPR synchronise with Canadian values more generally. The second sentence establishes Canada as a fertile space for fostering difference, and notes its robust democratic and judicial institutions, its educational system (which presumably produces critical citizens) and the national value placed on dialogic interaction. The nation-state's receptiveness to discussion and dissent is then equated with the interrogative methodology of the UPR as well as with the human rights system more generally. The Canadian delegation asserts here that Canada sees the UPR as an opportunity to benefit from diverse views. It recognises that the protection of expression and opinion are necessary for the protection of rights more generally. Further, the statement also affirms Canada's 'approach to human rights' as facilitating the operation of its 'open society' in a simultaneously domestic and global register. Thus, Canada declares that it welcomes the UPR as an opportunity for self-examination while framing itself as already receptive to scrutiny because dissent and openness are among its foundational values. Because those ideals are already intrinsic to Canada, the UPR

³⁹ *Ibid.* ⁴⁰ Human Rights Council, *Report of the Working Group* (2009), n. 7 above, p. 16.

becomes the logical extrapolation of Canadian national discourse into the international realm.

Canada's comments to the Human Rights Council after the interactive dialogue further emphasise how these putatively Canadian values of dialogue and scrutiny pre-date and inform the UPR system. Emphasising how it 'had been an early and committed proponent of the universal periodic review as one of the most important innovations of the Council', Canada argued that it 'remained committed to working to strengthen this dynamic new mechanism [the UPR] as it developed and to improving the protection of human rights for all people across Canada'.⁴¹ Once again, the opening up of the state to scrutiny signals not simply a willingness to comply with UN procedure (although this is undoubtedly important), but also the reproduction of Canadian beliefs within the UPR through its championing of the process. Statements like these denote some of the ideals of the UPR: that nations are expected to speak to their rights challenges, to open themselves up to criticism and to make themselves accountable because they are good human rights subjects. Canada's domestic values are thus represented as being consistent with international rights processes.

A different form of this hermeneutic suspicion can be found in the compilation and summary prepared by the Office of the High Commissioner for Human Rights (OHCHR) about Canada. Taken from an array of UN agency and civil society reports and submissions, these texts present a broad list of state failings (and, less often, state successes) that necessarily challenge the national claim to protect rights.⁴² For Joanna Harrington, the discussion that arose during the interactive dialogue about the absence of a specific criminal offence of domestic violence in Canada provides an example of how these documents allow for an unmediated and at times erroneous interpretation and, 'for states so motivated, ... provides fodder for campaigns to embarrass Canada'.⁴³ Harrington sees such failings as suggesting the

⁴¹ Human Rights Council, *Report of the Human Rights Council on its Eleventh Session* (2009), n. 1 above, p. 100.

⁴² See Julie Billaud, Chapter 3, for a discussion of how the OHCHR employees charged with the production of these texts seek to do so in a manner that avoids partiality. The appearance of neutrality in the compilation and summary, I would argue, is a rhetorically effective way of inscribing these texts' legitimacy to counter the perhaps presumed partiality of the state reports.

⁴³ Joanna Harrington, 'Canada, the United Nations Human Rights Council, and Universal Periodic Review' (2009) 18(2) *Constitutional Forum* 79, 84.

'need for context and independent verification to ensure credibility',⁴⁴ something she views as absent from the current system.

Unlike Harrington, I view this as less of a problem with regard to the legitimacy of the process than as an example of precisely the kind of interrogative counter-text that the UPR seems to envision as part of a comprehensive human rights review. The representation of Canada's human rights situation in the compilation and summary operates in parallel with the state's own report (which is similarly presented without evidentiary support, although with the expectation for consultation with civil society). The readers of all of these texts are invited to interpret them in concert with each other. Even before the interactive dialogue, then, a state's rights narrative is presented alongside other, often conflicting, narratives. The process democratises the UPR, seeking to avoid a state-centric hierarchy through a dialogic, intertextual reading wherein the assertions of a state in its national report are always subject to challenge by civil society and UN bodies.

The interactive dialogue constitutes a further space in which national self-representations are to be read suspiciously. While a number of states commented positively on Canada's engagement with international human rights while asking critical questions about domestic protection, others took the interactive dialogue as an opportunity to question Canada's reputation as a country whose values are purportedly aligned with rights. So while Switzerland 'highlighted Canada's role in implementing international human rights standards'⁴⁵ and India 'noted that Canada is known for its commitment to upholding human rights',⁴⁶ Cuba (prefacing the comment with which I began) said 'it hoped that Canada would, at the end of its time as a Council member, reflect deeply on its previous role as an advocate for the third world'.⁴⁷ Pakistan referred to an apparent disconnect wherein 'Canada has developed constitutional and legislative safeguards for human rights and Canadians have been in the forefront of human rights promotion and protection. Yet Canadian policy in the [Human Rights] Council often contradicts these high values and requires review'.⁴⁸ Algeria was similarly critical, associating itself 'with the hope expressed by Cuba for Canada to return to its traditional role as a promoter of dialogue'.⁴⁹ Commenting on the Review outcome, Algeria would later note that 'the

⁴⁴ *Ibid.*

⁴⁵ Human Rights Council, *Report of the Working Group* (2009), n. 7 above, p. 5.

⁴⁶ *Ibid.* p. 9. ⁴⁷ *Ibid.* p. 6. ⁴⁸ *Ibid.* p. 7. ⁴⁹ *Ibid.*

refusal of Canada to adhere to various international human rights instruments while it had made similar recommendations in the context of the universal periodic review to other countries' suggests that for some countries, at least, Canada's rights reputation is to be viewed with suspicion.⁵⁰

Assertions like Cuba's and Algeria's establish Canada as having once been an exemplary human rights actor. But, of course, Cuba and Algeria are also questioning that characterisation, pointing out its disjunct with contemporary Canadian practice. The Pakistani critique frames this as a contradiction in Canadian actions while on the Human Rights Council, both suggesting the strength of Canada's approach to rights and highlighting its failure to bring them to the Council. All three assessments posit the truth, historical or contemporary, of an alignment of the Canadian nation-state with human rights, but they do so in order to underscore the distance of this from the Canada that they are critiquing.

Interrogating suspicion: Canadian responses to critique in the UPR

There is a further suspicion in the UPR, one directed defensively towards other countries. The UPR, in proffering an intertextual and dialogic interpretive methodology riven with suspicion of the state under review, also directs that suspicion towards those states asking questions and making comments. Engaged in critique, the intentions of interrogating states are themselves read with distrust and attributed with political motives that are counter to the supposedly cooperative ethos of the UPR. Approaching the state under review suspiciously thus becomes, in the back and forth of the interactive dialogue and the responses that follow it, a proliferation of suspicion, a characterisation of all national statements as being potentially untrustworthy.

Throughout its appearance in the first cycle of the UPR, Canada was repeatedly taken to task over its refusal to endorse the Declaration on the Rights of Indigenous Peoples,⁵¹ or to be involved in forums such as the 2001 and 2009 World Conferences against Racism (the Durban

⁵⁰ Human Rights Council, *Report of the Human Rights Council on its Eleventh Session* (2009), n. 1 above, p. 96.

⁵¹ See recommendations from Cuba, Denmark, Norway, Pakistan, Austria and Bolivia (Human Rights Council, *Report of the Working Group* (2009), n. 7 above, p. 21), in addition to a number of recommendations to improve the situation of Canada's Indigenous Peoples independent of the Declaration.

Conferences).⁵² Canada's responses, however, indicate that it is not Canadian values that are in conflict with the best possible human rights approaches to these issues, but rather that there is a problem in the recommendations made by the interrogating countries. Canada's 'concerns with respect to the wording' of the Declaration on the Rights of Indigenous Peoples, for example, inform its refusal to accept this recommendation.⁵³ Instead, Canadian approaches to the issue of Indigenous Rights are presented by the delegation as providing a preferable alternative. Thus, 'the rights of Aboriginal people in Canada are protected by the Canadian Constitution and other domestic laws', with the state asserting that it is 'strongly committed' to those rights, as well as to 'making progress on issues of particular concern to Aboriginal people in Canada'.⁵⁴ The specificity of the Canadian approach to rights, in this instance, provides a more effective and appropriate solution than the international system.

There is a similar certainty in Canadian responses to recommendations that it engage with the Durban processes. Here, Canada's failure to participate is cast by it as evidence of its accurate appraisal of the flaws in the Durban Conferences. Canada's refusal to attend, the delegation claims, was based on a 'concern' that the 2009 Durban Review Conference 'would manifest intolerance and anti-Semitism in a manner similar to what transpired at the first Durban Conference. In the end, that concern was well-founded.'⁵⁵ A confidence about the correctness of the Canadian approach, concomitant with a suspicion about the validity of claims being made by recommending states, also informs Canada's response to a suggestion to incorporate more economic, social and cultural rights into domestic legislation. Here, while 'Canada agrees that all human rights are universal, indivisible, interdependent and interrelated and strives to give the same importance to all rights', the state defends its approach to how that protection comes about by arguing that it 'does not accept that all aspects of economic, social and cultural rights are amenable to judicial review or that its international human rights treaty obligations require it to protect rights only through

⁵² See comments made by Brazil, Egypt and the Russian Federation (Human Rights Council, *Report of the Working Group* (2009), n. 7 above, pp. 9, 13 and 14).

⁵³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Canada, Addendum: Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies presented by the State under Review*, 11th sess., UN Doc. A/HRC/11/17/Add.1 (8 June 2009) p. 2.

⁵⁴ *Ibid.* p. 3. ⁵⁵ *Ibid.* p. 6.

legislation'.⁵⁶ The Canadian approach may differ from that put forward by the interrogating states, but the presumption here is that Canadian protections are ultimately more effective.

Canada's answers to the recommendations of Iran, Syria and Algeria⁵⁷ are likewise indicative of the unstable and profligate nature of both representational and hermeneutic practice under the UPR. Iran, for example, recommended that Canada 'respect its human rights obligations and commitment without exception or ulterior consideration and take steps to address double standard and politicization in its human rights policies'.⁵⁸ Recommendations from Algeria and Syria both contained critiques of Canada's time on the Human Rights Council, with Algeria admonishing Canada to '[s]ee to it that its action within and outside the Council was based on the commitments it has undertaken and on principles of objectivity, impartiality and non-selectivity'.⁵⁹ Syria similarly recommended that Canada 'implement the voluntary pledges it presented as it applied to the Human Rights Council'.⁶⁰

Canada's response to Iran, Syria and Algeria was to assert that it accepted and 'has implemented' their recommendations, noting that 'while Canada's term at the HRC is ending, Canada sincerely hoped that the Human Rights Council's founding principles are upheld, including impartiality, objectivity, non-selectivity, and the elimination of double standards and politicization. The defence of these principles has underpinned Canada's inaugural term on the Council'.⁶¹ Canada's answer reiterates the centrality to the UPR of states reading each other suspiciously and so resisting how others represent them. Rather than acknowledging these criticisms of its time on the Human Rights Council, Canada instead noted their mooted-ness, diffusing them as past concerns (it 'has implemented' the recommendations) and turning instead to the Council's future. It refused to accept Iran, Syria and Algeria's recommendations as issues that needed to be addressed, and in its dismissal of them instead implied that the recommendations mask ulterior motives. Canada's answer assumes a suspicious rejection of these critiques (presumably prompted, at least in part, by Canada's sustained resistance to a standing item on the Council's agenda about

⁵⁶ *Ibid.* p. 3.

⁵⁷ Human Rights Council, *Report of the Working Group* (2009), n. 7 above, p. 22, recommendations 66–68.

⁵⁸ *Ibid.* ⁵⁹ *Ibid.* ⁶⁰ *Ibid.*

⁶¹ Human Rights Council, *Report of the Working Group: Addendum*, n. 53 above, p. 2.

the Israel-Palestine conflict and its voting against resolutions on the conflict), as well as a comment by all parties on the 'politicisation' of the Council (and so an allusion to the politicisation said to have undermined the legitimacy of the Commission on Human Rights). The Canadian response also renders interchangeable the aims of the Council and Canada's voting record while on it: interpreting Canada's actions as having defended principles such as impartiality and objectivity, and aligning those principles with the Council's, the Council's promotion of rights is, rhetorically, also Canada's. By way of a suspicious reading of recommendations 66–68, Canada resists Iran, Algeria and Syria's characterisation of it, and reaffirms its place as a nation whose values align with human rights.

Conclusion: the UPR's manifold states

The UPR's forms and procedures and its status as a space for state self-representations to be interrogated, and for those interrogations to themselves be interrogated, suggest that, despite the cooperative and non-confrontational spirit of its institutional origins, critique and suspicion are integral to the mechanism. In this proliferation the UPR risks becoming ritualised, its critical efficacy diluted through a seemingly endless repetition of suspicion that challenges representations, but that rarely offers more than suspicion as a consequence. It is a process which suggests that the representation and suspicious interpretation of a state cannot be readily disentangled. The national report, compilation, summary and the varied accounts produced in the interactive dialogue all propose slightly different versions of the state under review. Rather than reconciling them, the UPR instead becomes a forum in which multiple and often dissonant accounts circulate, co-existing uneasily alongside each other. Fractured in its review, a manifold state is constructed and reconstructed, as the appearance of Canada under the process's first cycle demonstrates. The Canada of the UPR is both a model global citizen and one that has forfeited that reputation, a state that is simultaneously entrenched in rights and that fails to give their protections to many of its citizens. The UPR does not offer a unitary account of Canada's state of rights; indeed, it does not offer such an account of any of the states before it. Rather, given representations of how a state sees itself and how it is seen by others, how it is and how it ought to be, in reading states under the UPR our own suspicion is similarly enjoined, leaving us not with clarity about a state's rights record but uncertainty.