JUSTICE AND OFFICIAL LANGUAGES IN CANADA

by

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Abstract

This is a study of the politics of language in Canada from the perspective of francophone minority communities – the close to one million French-speakers living in provinces and territories outside Québec. The analysis proceeds in two main parts. The first part examines and engages with the literature in political theory on the respect and recognition of ethnocultural minorities in liberal democracies. It reconstructs Will Kymlicka's approach to normative theorizing on ethnocultural justice and defends it against recent important works emphasizing the deliberative resolution of issues of ethnocultural diversity. It shows how the Kymlickan approach to multiculturalism and minority rights requires uncovering and articulating the normative logic that underpins both group claims and state measures. The second part of the thesis carries out the Kymlickan approach with respect to the status and treatment of francophone minorities outside Québec. It begins by showing how Kymlicka and his main critics have failed to fully apply, as it were, the Kymlickan approach to the status and treatment of Canada's Francophone minority communities. It then analyzes these communities' political claims for justice and equality as well as the rights and accommodations put in place by the state in an effort to come to terms with their claims. It finds that the failure of the federal language regime to respond adequately to their claims for a combination of participation and autonomy lies with its given administrative application of legislative commitments not within commitments themselves. In summary, weaving the political theory of multiculturalism together with l'étude des minorités francophones hors Québec, this thesis incorporates Canada's Francophone minority communities into a scholarship that has ignored or rendered them invisible and it also shows how the federal government could go about ensuring their just recognition and equal treatment.

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Chapter 1

Introduction

> *"Put simply, the main goal of any language policy should be to promote linguistic justice" (Green and Réaume 1991, 10).*

Since the 1960s, federal and provincial governments, at times compelled by courts, have profoundly reformed their approaches to the French language and those that speak it. Of particular political and intellectual interest have been tensions and contradictions between federal language policy and Québec language policy. The federal government embraced official bilingualism, which entailed rendering all federal departments and agencies functionally bilingual, and enshrined minority language educational rights where numbers warrant. Conversely, the Québec government made French the official language of its own institutions and of society and compelled all children, except those whose parents received their instruction in Canada in English, to attend French-language schools. Major works on the politics of language in Canada, such as Kenneth McRoberts' *Misconceiving Canada* (1997), Graham Fraser's *Sorry, I Don't Speak French* (2006) or Marcel Martel and Martin Pâquet's *Langue et politique au Canada et au Québec* (2010), have for the most part focused on the differing content and justification of each of these language regimes.

But even if federal laws and policies in the area of official languages were above all designed in response to Québec's Quiet Revolution and challenges that ensued from it[1], the

[1] Linda Cardinal and Luc Juillet note, "It is undeniable that since the 1960s and 1970s federal government commitments with respect to Francophone minorities outside Québec have been subsumed under more pressing concerns for Québec and national unity. We must then understand that political and ideological reasons have swayed federal government actions in the area of official languages" (2005, 158-159; personal translation).

federal language regime also includes constitutional rights and legislative commitments that are specific to the close to one million French-speakers living in provinces and territories outside Québec. Put differently, often rendered invisible in the usual concern for the relationship between the federal language regime and that of Québec are legislative and constitutional measures that are clearly focused on the status and treatment of Canada's Francophone minority communities.

This thesis aims to reconstruct this federal approach vis-à-vis Canada's Francophone minority communities and evaluate how well it responds for their demands for justice and equality. In particular, it proposes to expose the content of both government measures and group claims as well as to articulate the normative logic that underpins them. It brings together and builds upon two distinct bodies of scholarship. It first relies upon what we can call the political theory of multiculturalism. This literature is concerned with how liberal democracies should respond to claims of ethnocultural minorities for just recognition and equal treatment. When studying Canada, the political theory of multiculturalism virtually always distinguishes rights and accommodations for the Québécois, for Aboriginal peoples, and for ethnic and religious minorities. Francophone minorities outside Québec remain theoretical anomalies.

The thesis also draws from l'étude des minorités francophones hors Québec. This multidisciplinary literature considers the historical evolution of the French-language population outside Québec and examines the important transformations these communities have undergone following the final demise of the French Canadian nation and the advent of French-language rights and public services. Focusing on relations between francophone communities and governments as well as on the internal evolution of these communities, l'étude des minorités francophones hors Québec has however failed to reflect on fundamental aims embedded in

community actions and governmental measures. Let me elaborate on each of these bodies of scholarship in turn.

1. The Political Theory of Multiculturalism

In his 1946 Presidential Address to the Canadian Historical Association, Frank Underhill took an infamous swipe at Canadian social scientists, criticizing their collective lack of attention to the Canadian liberal-democratic experiment. He declared, "It is a remarkable fact that in the great debate, the debate which has been going on all over the western world about the fundamental values of liberalism and democracy, we Canadians have taken very little part." And then came the fatal blow, "In the world of ideas we do not yet play a full part. We are still colonial. Our thinking is still derivative" (1946, 6-7).

That statement couldn't be farther from the truth for students of politics of my generation that were raised on Charles Taylor's authenticity and deep diversity, Will Kymlicka's liberal theory of minority rights, and James Tully's renewed constitutionalism. The Canadian case is front and center in the works of these three prominent Canadian thinkers. The publication of Taylor's *Multiculturalism and* "*The Politics of Recognition"* (1992), Kymlicka's *Multicultural Citizenship* (1995a) and Tully's *Strange Multiplicity* (1995) literally captured the imagination of a generation of theorists and philosophers as much in Canada as abroad.

From an international perspective the work of these three theorists helped inaugurate what we can call the political theory of multiculturalism. Key early works also include those from Iris Young (1990), Anne Phillips (1995), Jeff Spinner-Halev (1994), and Yael Tamir (1993). The work of these early multiculturalists amounted to a fairly comprehensive and cohesive research agenda. It cogently laid out most of the significant normative and theoretical

issues and it offered powerful conceptual and analytical resources for coming to terms with them. Together these theorists have set the agenda on the conceptualization of multiculturalism and minority rights and the institutional accommodation of ethnocultural diversity.

The central concern of the political theory of multiculturalism has always been part normative and part institutional. Multiculturalists ask whether the recognition and accommodation of minorities can be made consistent with basic liberal democratic principles and which rights, powers or resources should be afforded to them. "What is the just form of recognition," Tully recently asks, "and what is the practical form of accommodation of this recognition" (2008, 228)? Of course responses have varied considerably: from Kymlicka's liberal multiculturalism (1995a) to Brian Barry's liberal egalitarianism (2001) to Anthony Appiah's rooted cosmopolitanism (2005) to Bhikhu Parekh's new politics of identity (2008).

Works from Taylor, Kymlicka, and Tully are also significant from a Canadian perspective. Grounded in and informed by the Canadian context, their work – along with that of what's being called the Canadian School of political thought[2] – articulates principles upon which and procedures through which the claims of ethnocultural groups might be met within liberal democracies. These theorists have on the whole formulated principled theories for the just recognition and equal treatment of ethnocultural minorities by uncovering and articulating the

[2] The shorthand varies per commentator – "Canadian school of diversity" (Gagnon 2008), "Canadian school of political philosophy" (Beiner and Norman 2001; Kymlicka 2006a), "Canadian school of rights philosophy" (Ignatieff 2000), "Canadian school of pluralist political thought" (Shaw 2008), and "Canada school of multinational federalists" (Schertzer and Woods 2011). But nothing important rests on the label. What matters is that all refer to the same core group of liberal political theorists – Joseph Carens, Will Kymlicka, Margaret Moore, Michel Seymour, Ayelet Shachar, Charles Taylor, (early) James Tully, and Daniel Weinstock.

The Canadian School's favorable reading of the Canadian model has in turn led to what we could call a "counter-Canadian School," scholars that reject the liberal premises with which the Canadian School and the Canadian government are working to formulate their programs of justice and equality. This includes works from Ian Angus, Himani Bannerji, Richard Day, Rita Dhamoon, Gerald Kernerman, Eva Mackey, Sherene Razack, and Sunera Thobani.

normative logic embedded in existing institutions of ethnocultural relations in Canada. In other words, their theories of justice are a result of efforts to read off principles from the inner logic of institutions that have emerged to recognize and accommodate minorities. In exposing the political and intellectual roots of what he calls "Canada's rights revolution," Michael Ignatieff says about thinkers of the Canadian School that they "are making a theory out of the elemental experience of Canadian politics" (2000, 11).

As hinted at earlier, the Canadian School has overlooked or rendered invisible Canada's Francophone minority communities. Tully briefly speaks of how "French-speaking minorities have courageously survived" and of how federal court justices have recently given recognition to "their demands for schools and the use of their language in the courts, legislatures and public sphere of their respective provinces" (1995, 167-168). In much of his work Taylor admits to the existence of French minorities outside Québec in explaining social and political transformations relating to the nation canadienne-française. His focus though is undeniably on Québec. Over the years Kymlicka has paid increasing attention to the accommodation and recognition of Francophone minorities outside Québec. To simplify, he has gone from using French Canadian and Québécois interchangeably to footnoting the intricacies of nations and nationalism among Francophones in Canada to speaking of French-speaking *communities* settled across the country. Substantially his work however still fails to articulate the normative logic that underpins the federal government's institutional accommodation of these communities as well as that of their political demands.

This thesis focuses specifically on Kymlicka's important contribution to the political theory of multiculturalism. A number of reasons motivate that choice. He has first established himself as one of the world's leading authorities on the respect and recognition of ethnocultural

minorities within liberal democratic societies. Daniel Weinstock, for example, describes Kymlicka's liberal multiculturalism as "one of the most significant projects in the political philosophy of the postwar period" (2009-10, 261). The second reason stems from the fact that Kymlicka has complemented his theoretical work aimed at articulating principles that are normatively valid from a liberal perspective with work that applies these principles of justice to Canada. Wanting to combine normative reflection with the concrete reality of Canada's Francophone minority communities, the focus on Kymlicka then enables me to evaluate how well his general approach to normative theorizing about ethnocultural justice accounts for the recognition and accommodation of these minority communities. The third reason that justifies my focus is that recent initial efforts within l'étude des minorités francophones to reflect on the moral status of Canada's Francophone minority communities have relied upon Kymlicka's work. Focusing on Kymlicka again allows me to evaluate and more generally contribute to adding a normative layer to work being done within l'étude des minorités francophones.

If focusing on Kymlicka allows me to explore with great detail the many facets and layers to his work, the unfortunate drawback is that I have been faced with the difficult decision of setting aside other important works from, for example, Taylor and Tully. These theorists would have raised different sets of issues and perhaps led me to different sets of answers. To draw from Tully, for example, would have required me to engage much more closely with power relations within Francophone minorities outside Québec as well as between these minorities and the state. As the latter writes about his two major contributions to the political theory of multiculturalism, "*Strange Multiplicity* and *Public Philosophy* are journals of a long and involved journey in search for and discovery of a non-violent alternative to this deadly nexus of reason and violence called power politics" (2011, 157). As for borrowing from Taylor, it would

have required, for example, to explore the recognition and accommodation of Canada's Francophone minority communities from the perspective of cultural survival and what Taylor calls "a premise that we owe equal respect to all cultures" (1992, 66).[3]

In short, this thesis builds on the Canadian School's theoretical toolkit in order to examine federal efforts at recognizing and accommodating Canada's Francophone minority communities. In an effort to convey a sense of these minority communities and of their claims for just recognition and equal treatment, let me now turn to l'étude des minorités francophones hors Québec and its elucidation of trajectories taken and being taken by these communities.

2. L'étude des minorités francophones hors Québec

Historians such as Gratien Allaire (1999), Michel Bock (2004), Yves Frenette (1998), and Marcel Martel (1997) have eloquently recounted the evolution of francophone communities through studies of their internal relations with one another, with francophones in Québec, as well their external relations with non-francophones. For their part, sociologists including Roger Bernard (1998), Linda Cardinal (1994; 2012), Monica Heller (2011) and Joseph Yvon Thériault (2007) have extensively studied the impacts of, for example, the Quiet Revolution, federal policies of bilingualism and multiculturalism, and the Charter of Rights and Freedoms, on collective representations of these communities. Surveying l'étude des minorités francophones, this section highlights main transformations within Canada's Francophone minority communities and, in the process, explains how the normative perspective developed in this thesis adds a

[3] François Charbonneau delivered a paper at the 2011 Annual Meeting of the Société québécoise de science politique in which he begun to set the parameters for an understanding of Canada's Francophone minority communities from the perspective of the politics of recognition.

crucial layer to ongoing political and intellectual efforts aimed at fostering justice and equality for these communities.

Francophone minorities outside Québec exist in every province and territory. These communities emerged for the most part from French colonizers that founded Acadia in 1604 and Québec City in 1608 and of their descendents that moved into what is now Ontario as well as further west onto the prairies and eventually into what is now British Columbia. French Canadians (and to a lesser extent Acadians) relocated to Ontario and Western Canada, at times via the United States, for a number of reasons, but decisions almost always hinged on economic factors. Mass migration movements begun in the 1830s and hit their peak in the 1840s (Frenette 1998). And so when the provinces of Canada, New Brunswick, and Nova Scotia came together to form the Dominion of Canada in 1867, all were home to francophone communities, the same for all other provinces and territories that would enter Confederation over the next decades.[4]

If Canada's Francophone minority communities are the result of long historical processes within their respective provinces, they are at the same time the result of what Michael Behiels calls a "three-decade-long renaissance" (2004, xxii). This renaissance is intimately tied to the collapse of French Canada in the 1960s. Indeed from around 1840 to 1960 French-language communities outside Québec were part of the nation canadienne-française. It purported to unite all French Canadians including Acadians in the Maritime provinces. The idea of a coast-to-coast French Canadian nation emerged in the mid-1800s amid Lord Durham's infamous report recommending the assimilation of French Canadians as well as the migration of large numbers from what is now Québec to the Ottawa Valley, Northern Ontario, the Prairie provinces, and

[4] French-speaking communities in the Yukon, the Northwest Territories and Nunavut have different histories and confront distinct realities. See Robineau and Traisnel, *La francophonie boréale* (2010).

British Columbia. French Canadian and Acadian communities were able to maintain some demographic and cultural vitality owing in no small part to the support of the Catholic Church. To borrow from Frenette, "to be French-Canadian was to be Catholic" (2002, 50).

Newly transplanted French Canadian communities established parishes, classical colleges, convents, Saint-Jean-Baptiste societies, weeklies, and health and social services. Allaire writes that these were "all French Canadian" in that they were inspired from their previous Québec experience (2007, 39). In other words, French Canadians brought with them their culture and institutions wherever they went. Over the years these mostly local or regional infrastructures were deemed insufficient to preserve the distinct features of the nation and so were complemented with two national organizations that were to oversee and coordinate actions aimed at the flourishing of the French Canadian nation. The Ordre de Jacques-Cartier was the political arm aiming to influence officials in provincial capitals and Ottawa, whereas the Conseil de la vie française en Amérique (formerly the Comité de la survivance française) provided financial assistance to local associations that promoted French Canadian values and traditions. Put differently, these two organizations sought to enable cooperation between French Canadian leaders from across the country and, ultimately, to foster a strong sense of solidarity among French Canadian and Acadian communities. "The call to solidarity," Martel explains, "was an attempt not merely to justify Québec's support of the other communities, but to associate and involve all French-speaking communities in French Canada's fundamental struggle to preserve the features of its identity, in short, the struggle for survival" (1998, 9).

Of course there were internal differences in terms of identity between French-speaking communities. At national conventions in Memramcook (1881), Miscouche (1884), and Pointe-de-l'Église (1890), Acadians adopted their own national flag, anthem, and holiday, as well as

created a national association to promote their interests (see Pichette 2006). With provinces holding legislative powers over education post-Confederation, struggles for instruction in their language pitted Francophone minorities outside Québec against their respective provincial governments. The first quarter of the twentieth century witnessed the creation of associations in virtually every province dedicated to promoting French-language education. These struggles for rights and services provided the grounds for distinct founding myths and the emergence of collective identities that differed from province to province and from that of French Canadians in Québec. But Martel clarifies that "although they used the terms Franco-Ontarian, Franco-Canadian of Saskatchewan or Franco-Albertan, the elites that defined identity were conscious of belonging to the French Canadian community, a national community that transcended their provincial identities" (1998, 6).

French Canada both as an institutional network and a political concept came to an end in the 1960s. Determining factors include the consolidation of state welfare programs that came to supplant French Canadian services, public disenchantment with an elite message centered around religion and agriculture, and, of course, the advent of a secular nationalism that viewed the province of Québec as the national territory of the French Canadians and the Québec government as the best means for collective action. The final straw were the Estates general of French Canada. Approximately 2,000 delegates met in Montréal in November 1967 to discuss the future of French Canada and the role and status of Québec within Canada. Simply put, the Québécois delegates supported a motion on Québec's right to national self-determination and delegates

from other Canadian provinces rejected it. The Estates general have thus been described as the formal breakup of French Canada.[5]

This formal breakup created an important void for Francophone minorities outside Québec. With French Canadians in Québec increasingly inward-looking, coupled with the decline of the Catholic Church's influence and financial resources and the fading of traditional nationalist organizations, French-language communities found themselves at the mercy of provincial governments that had historically proven themselves hostile to any formal status for their language. And so with French Canadians *within* Québec focused on making the Québec government the principal mean of collective action for the French Canadian nation, French Canadians *outside* Québec sought to consolidate their provincial institutional networks and to build national institutions that could represent their collective interests.

What Behiels calls the renaissance of Canada's Francophone minority communities received crucial support from the federal government. Shortly following the enactment of the 1969 Official Languages Act, the federal government began granting funds to French-language community-based associations that offered cultural programming and services. This program along with other promotional and developmental programs in the area of official languages gained legislative basis with the passage of the 1988 Official Languages Act. The federal government also enshrined minority language education rights into Section 23 of the 1982 Constitution Act. Since then, and following a number of legal battles, Francophone minorities

[5] A strand of research within l'étude des minorités francophones is concerned with the importance of the Estates General in the "institutional" breakup of French Canada. While some put great emphasis on debates that played out at the Estates General, others argue that results of these meetings merely embody tensions and contradictions that begun emerging with struggles for French language schools outside Québec and the Conscription crisis. See Marcel Martel and Robert Choquette (1998) for an excellent overview of the different perspectives.

outside Québec have gained a right to management and control of French-language elementary and secondary schools.

From an identity perspective, the void that ensued from the tumultuous 1960s was filled through redefinitions along both provincial and national lines. French Canadians became Franco-Ontariens, Franco-Manitobains, Fransaskois, Franco-Albertains, Franco-Colombiens, Franco-Yukonnais, Franco-Ténois (and more recently Franco-Nunavois). At the same time they also became Francophones outside Québec or "les restes de la nation canadienne-française" (Cardinal 2003). Other significant shifts have since ensued. These are evidenced, for example, in the Fédération des francophones hors Québec changing its name to the Fédération des communautés francophones et acadienne du Canada. This change, according to Cardinal, exemplifies the formal end of the pursuit of coast-to-coast dualism in favor of the protection and promotion of French-language communities. She writes, "Francophones exist in a fragmented reality; they are scattered all over; they live in an archipelago" (1994, 72; personal translation). At present Canada's Francophone minority communities are in many ways still trying to forge a path that would reconcile them with "le Québec français" as well as incorporate them within the political institutions of their respective provinces and territories. Indeed editors of a recent synthesis on the politics and sociology of these communities observe that the consolidation of community institutions and the flourishing of their language and culture remain works in progress (Thériault et al. 2008, 22).

As suggested earlier, l'étude des minorités francophones has on the whole been indifferent to theoretical and normative debates on the status and treatment of ethnocultural minorities. Such normative reflection however reveals previously overlooked elements of the politics and sociology of these communities and of their institutional accommodation. Drawing

from Kymlicka, this thesis uncovers and articulates the normative logic that underpins these communities' demands for justice and equality and then that that underpins federal measures relating to their recognition and accommodation. What emerges is first that these communities have sought and are seeking a combination of participation and autonomy and second that the federal language regime could in fact recognize and accommodate them on these two grounds. Another perhaps simpler way of putting this is to say that the normative logic underlying constitutional rights and legislative commitments may actually hold the key to the just recognition and equal treatment of Canada's Francophone minority communities.

In summary, this thesis aims to incorporate Canada's Francophone minority communities into theoretical debates that have failed to notice and understand them and then it offers a normative perspective to a scholarship that has for the most part been dominated by sociologists and historians. This overall argument plays out in five chapters.

3. The Structure of the Argument

While I intend to focus specifically on Kymlicka's approach to theorizing on justice in diverse societies, I cannot adequately describe and explain the distinctive features of his approach without conveying a sense of main debates and broad trends within the political theory of multiculturalism. Chapter 2 engages with the political theory of multiculturalism and in particular with recent efforts to promote the deliberative resolution of issues relating to the respect and recognition of ethnocultural minorities in liberal democracies. The overall argument is that exponents of deliberation exaggerate differences and fail to capture important similarities between their approaches and those of liberal theorists of multiculturalism. It specifically challenges their claim that the normative weight of their approaches rests on democratic

procedures rather than on external moral standards by uncovering their conflicted relationship to liberal principles and institutions. The heart of the chapter consists of a close reading of recent award-winning[6] books from Monique Deveaux and Sarah Song as illustrative examples of difficulties in articulating democratic approaches that derive their normative weight from democratic procedures and so as a result are free from analytical principles established prior to deliberation.

In Chapter 3, I reconstruct the two-faceted and multilayered theoretical infrastructure of Kymlicka's contribution to the political theory of multiculturalism. I call this the Kymlickan approach to the politics of multiculturalism and minority rights, or the Kymlickan approach for short. Surveying most of his work, I argue that his approach rests on a combination of moral arguments and sociopolitical patterns. The first pillar is a set of principles and norms explaining how living up to the basic tenets of liberalism requires adopting a whole range of laws and policies that provide differentiated rights and resources to ethnocultural groups. The second pillar is a set of patterns and categories that show how the principled justification of political actions and institutions is often consistent with the normative logic that underlies a number of existing state-minority relations in liberal democracies. In short, the Kymlickan approach to multiculturalism and minority rights, implicitly or explicitly, consists of a set of morally defensible and politically viable guidelines for how liberal democracies should come to terms with claims for rights and status made by ethnocultural groups against the state.

Of course Kymlicka himself has made use of, as it were, the Kymlickan approach to understand and evaluate federal laws and public policies relating to ethnocultural minorities. The

[6] In 2008, Deveaux and Song were respectively awarded the C. B. Macpherson Prize from the Canadian Political Science Association and the Ralph J. Bunche Award from the American Political Science Association.

first part of Chapter 4 considers Kymlicka's work on Canada. It argues that if his conceptual language has come to account for the existence of Canada's Francophone minority communities, his analyses continue to render invisible their distinctive political demands and the distinctive state practices adopted in response to these demands. The second part of this chapter engages with recent efforts from Rodrigue Landry and Johanne Poirier to make use of Kymlicka to assess and account for the recognition and accommodation of Canada's Francophone minority communities. I suggest that Landry misappropriates Kymlicka's concept of societal culture and so that it cannot accomplish the same normative work that it performs for Kymlicka. If Poirier convincingly shows how Kymlicka fails to account for Francophone minorities outside Québec, I argue that she herself also fails at the task because she ignores their claims for justice and equality and states measures that are specific to them. In short, the chapter uncovers a "blind spot" in Kymlicka's conceptual ordering and principled justification of the Canadian model and argues that recent attempts at remedying that gap have also failed.

In Chapter 5, I explore the political demands of Canada's Francophone minorities in an effort to uncover and articulate the normative logic that underpins them. I focus in particular on the demands formulated by their national association, the previously referred to Fédération des communautés francophones et acadienne du Canada (formerly called the Fédération des francophones hors Québec). Since its creation, the Fédération has released a number of research reports and political manifestos detailing the plight of Canada's Francophone minority communities and condemning the overall lack of meaningful support from the federal and provincial governments. I argue that demands formulated in these reports and manifestos are embedded in a twofold normative logic. The Fédération and its members deem that bringing about justice and equality to Francophone minorities outside Québec will require the

bilingualization of public institutions, including the delivery of French-language services, and the formal endorsement of self-control in areas that are of particular concern to minority communities. Or, participation and autonomy for short.

The Kymlickan approach requires uncovering and articulating the normative logic that underpins both group claims and state measures. In chapter 6, I explore efforts of the federal government to bring about justice and equality for Canada's Francophone minority communities. In particular, I review the main legislative and constitutional dispositions of the federal language regime and explain how they were given effect through what is routinely called the horizontal management of official languages. This allows me to show how the horizontal implementation of official languages policies and programs promotes the participation of minority communities but stifles their autonomy. The last part of this chapter argues that the federal language regime's failure to enable autonomy lies with its given administrative application of legislative commitments not within commitments themselves. Put simply, the promotion of a combination of participation and autonomy for Canada's Francophone minority communities could be made consistent with the federal language regime.

In the final chapter I highlight four main conclusions to draw from the thesis and speculate on the road ahead for Canada's Francophone minority communities in their pursuit of just recognition and equal treatment.

Chapter 2

Liberalism and Deliberation

> *"There is no theory if there is mere description of lived experience and common sense, but we have theory only in name if theoretical propositions are altogether disconnected from experience, practices, and the data collected by sound empirical enquiries" (Bhargava 2010, 17).*

In 2000, Joseph Carens published *Culture, Citizenship, and Community*. This book represents the intellectual culmination of years of thinking about and writing on issues related to identity and culture in liberal democracies as each chapter is a revised and expanded version of ideas and arguments previously expressed elsewhere. Not to minimize its theoretical contribution to the political theory of multiculturalism, but its most lasting contribution rests with the methodological thread that cuts across authors considered and issues studied. Carens himself acknowledges this when he writes that "if the book achieves its goal it will be because of the emphasis I place on contextual inquiry" (2000, 2). Indeed by defining, defending, and making use of what he called "a contextual approach to political theory," he effectively became the first to think systematically about the ways in which multiculturalists had been going about combining normative analysis with cold hard facts about minorities and the functioning of liberal democracies (see also Carens 2004; 2010).

While Carens was uncovering and articulating the contextual approach to political theory, other multiculturalists were raising concerns over the misguided and on the whole amateur use of empirical data within the political theory of multiculturalism. Jeff Spinner-Halev, for example, opined that multiculturalists' "do not know how to make an abstract argument for cultural rights successfully" (2001, 21). Ayelet Shachar, for her part, argued that "much of the current

multiculturalism debate" falls prey to "misguided methodological and cause-and-effect assumptions (2001b, 288).[7] Again these serious criticisms were coming from theorists whom had previously vouched for and would go on to further contribute to the scholarship on multiculturalism and minority rights (Shachar 1998; 2001a; Spinner-Halev 1994; 2007).

In recent years, the political theory of multiculturalism has witnessed the coming of a family of theories that advocate the deliberative resolution of issues relating to the respect and recognition of minorities in liberal democracies. Daniel Weinstock links this turn to the publication of Simone Chambers' *Reasonable Democracy* (1996), Monique Deveaux's *Cultural Pluralism and Dilemmas of Justice* (2000b), and Anthony Laden's *Reasonably Radical* (2001) (2007, 245). Deliberative theorists posit that appropriate standards of evaluation for politics should arise from democratic procedures that all affected citizens have consented to. In other words, the normative weight normally afforded to liberal principles and institutions should be reassigned to democratic procedures because these principles and institutions do not reflect the traditions and values of all members of our increasingly diverse societies.

It has become routine in the process to frame the literature as opposing those whom derive normative weight from means of deliberation and those for whom analytical reasoning performs the brunt of the normative lifting. The first have described their work as endorsing democratic or dialogical approaches and the second have come to be viewed as proponents of broadly liberal or toleration approaches. In *Gender and Justice in Multicultural Liberal States*, for example, Deveaux endorses an approach that "foregrounds the deliberative judgments of cultural group members themselves" over an approach she labels "liberal toleration," "state-centric," "zero-tolerance," "liberal principles as trumps," "juridical," and "rights-based" (2006,

[7] See also Favell (1998) and Favell and Modood (2003)

3-20). A year later, in *Justice, Gender, and the Politics of Multiculturalism*, Sarah Song defends a normative framework for democratic deliberation as an alternative to "a view of liberalism as a set of principles that possess a moral standing altogether independent of the democratic process" (2007, 68).

Focusing on Deveaux and Song this chapter explores this turn to deliberation in the political theory of multiculturalism as well as its framing of approaches to ethnocultural justice. The overall argument is that exponents of deliberation exaggerate differences and fail to capture important similarities between their approaches and those of liberal theorists of multiculturalism. It specifically challenges their claim that the normative weight of their approaches rests on democratic procedures rather than on external moral standards by uncovering their conflicted relationship to liberal principles and institutions. Put simply, I aim to illustrate how democratic approaches also rely in an important way upon principles that are analytically defined prior to deliberation.

This is an important step for two reasons. It first shows that arriving at principles in an analytical fashion remains a crucial component of all work within the political theory of multiculturalism. Put differently, consenting to the deliberative resolution of issues of culture and identity cannot require doing away with normative theorizing. The challenge for all multiculturalists remains that of reconciling political theory as a normative enterprise concerned with articulating and justifying the moral principles that should guide state actions with concrete facts that we know about the world and about particular societies. The second reason for which this chapter is important is that it helps make the case for the Kymlickan approach to the politics of multiculturalism and minority rights on which this thesis is importantly premised. In other words, I argue that the foundation of any theory of ethnocultural justice – including those of

exponents of deliberation – rests with moral principles that are articulated in an analytical fashion (as well as with sociopolitical patterns as we'll see with Kymlicka in the next chapter).

The chapter begins with a broad discussion of multiculturalists' distinctive use of context in their efforts to articulate statements of justice for diverse societies (s. 1). I then offer an interpretation of the commonplace distinction between liberal (or toleration) and democratic (or dialogical) approaches to ethnocultural justice. In this I follow Anthony Laden whom has done the most analytical work over the last ten years to distinguish between these two approaches. The next two sections form the heart of the chapter. They take recent award-winning books from Monique Deveaux (s. 3) and Sarah Song (s. 4) as illustrative examples of difficulties in articulating democratic approaches that derive their normative weight from democratic procedures and as a result are free from analytical principles established prior to deliberation. The last section briefly reflects on the path forward for the political theory of multiculturalism.

Note an immediate challenge. Multiculturalists are no exception to Andrew Vincent's verdict on methods in political theory (2004): they also do not tend to be explicit about how they go about reconciling moral principles with contextual facts. For example, Duncan Ivison writes that his theory '*connects* specific rights to general principles' (2002, 11), Courtney Jung that her theory is '*anchored* in normative reflection and empirical observation and study' (2008, 28), and Elizabeth Anderson that her theory '*begins from* a structural account of the systematic disadvantages imposed on people' (2010, 6). In reality for Ivison contextual facts determine the design of his theoretical framework, for Jung they uncover the origins of identity claims and for Anderson they inform the choice of a set of political principles. My task in this chapter is then primarily interpretative insofar as I have to infer the weight given to principles and context from

close textual reading – what Wayne Norman once referred to as "reading off the record" of the scholarship (1998).

1. Political Theory and Context

Before going any further I want to suggest how the uses of context in the political theory of multiculturalism, for a moment freed from all its necessary internal differentiations, may be distinct from other uses of context. Multiculturalists are certainly not the first political theorists to pay detailed attention and to give moral weight to some set or another of contextual circumstances. For example, in *Considerations for the Government of Poland*, Jean-Jacques Rousseau formulated a plea for federalism that was founded as much on principled arguments as on the Polish sociopolitical context. Rousseau also began *The Social Contract* by stating that he was taking people "as they are and laws as they might be" (1988, 13). In the late 1780s, with the declared aim to defend the proposed Constitution for the United States, Alexander Hamilton, John Jay and James Madison published a list of essays that later became *The Federalist Papers*. They relied on theoretical principles and, as Hamilton wrote in *Federalist No. 34*, "upon a combination of [existing exigencies] with the probable exigencies of ages, according to the natural and tried course of human affairs" (cited in Epstein 1984, 1). And there are many more examples – Edmund Burke's *Reflections on the French Revolution*, Benjamin Constant's *Réflexions sur les constitutions*, and even Thomas Hobbes' *Leviathan* which Ian Shapiro has shown to be closely tied to the emergence of capitalism in England (1986, Ch. 2).

And then of course there's the case of John Rawls whom, as Philip Pettit observes, was "happy about contaminating pure philosophical analysis with materials from the empirical disciplines" (1993, 12). Multiculturalists' relationship to Rawls and problems from Rawls is

difficult to disentangle for at least two reasons. First, regardless of whether or not *A Theory of Justice* (1971) rescued political philosophy from the dead, there is no denying its enduring impact on Anglo-American political theory. "There can be no question," Brian Barry writes, "that *A Theory of Justice* is the watershed that divides the past from the present" (1990, lxix). And so in the late 1980s and early 1990s, confronted with an unexplored set of issues, early multiculturalists naturally turned to the analytical tools at their disposal. These were either Rawlsian tools or tools from traditions in conversation with Rawlsians.

Will Kymlicka's initial statement on multiculturalism, for example, relied heavily on Rawls' account of liberty and Ronald Dworkin's work on equality. He writes, "I shall try to show that the same arguments that Rawls and Dworkin give for equal rights and resources within a nation-state can be used to defend special status for minority cultures" (1989, 162). His *Multicultural Citizenship* (1995a) is also written with these two theorists' political morality in mind. Iris Young for her part endorsed what she called the mode of critical theory in her *Justice and the Politics of Difference* (1990). Unlike Rawls and Rawlsians she doesn't aim to construct a theory of justice (see generally Jaggar 2009). An important part of her project seeks to criticize the fundamental assumptions of contemporary theories of justice by uncovering the claims of justice implicit in the politics of social movements in the United States. That is then to say that Rawls and his followers seemingly informed the framing of her ideas and arguments as she presupposed a Rawlsian debating partner. Young acknowledges this feature of her earlier work in some of her last writings on the two previously unnoticed tracks in the philosophical literature on culture and identity (2007; 2009).

The second reason for which the relationship to Rawls is complicated is that the political theory of multiculturalism is also for the most part concerned with liberal democratic principles

and institutions. The debate mainly pits liberals against one another (Kenny 2004) – or as liberals against liberals-gone-astray as some would have it (Barry 2001; Kelly 2005). Most multiculturalists aim to develop principled theories that serve as normative benchmarks to evaluate existing policies and institutions and to justify new ones. Obviously critical theorists have also weighed in (Dhamoon 2009; Fraser 1997). But in sheer volume, liberal theorists have for sure dominated the literature. Geoffrey Brahm Levey therefore calls it as it is when he writes, "the debate largely has been about whether multiculturalism is a legitimate or bastard child of liberalism" (2009, 76). The scholarship on multiculturalism may then be read as the latest installment of a seemingly timeless debate: from Jeremy Bentham, John Stuart Mill and Mary Wollstonecraft to John Rawls, Robert Nozick and Ronald Dworkin and now to Kymlicka, Susan Okin and Barry. And similar to past debates there is a counter-literature that highlights the purported inherent flaws of the liberal tradition and by extension the deficiencies of multiculturalism *à la* liberal.

Of course there's much truth to these two reasons – much of the political theory of multiculturalism is in fact about liberal principles and institutions and most multiculturalists are indeed in conversation with some part or another of the liberal canon. Yet multiculturalists are not methodological Rawlsians (Norman 1998). The key difference hinges on the relationship between principled argumentation and contextual facts and more specifically on the normative weight conferred upon concrete demands, contingent circumstances and particular features.

Rawls extracts the structural features of his theory of justice from the social contract tradition of Kant, Locke, and Rousseau. This conception of justice, he says, "best approximates our considered judgments of justice and constitutes the most appropriate moral basis for a democratic society" (1971, viii). In making that move he assumed that theorizing about justice

required denying any justificatory role to particular identities and interests because these ascriptive traits should not affect the moral status of persons. Rawls' liberal institutions are arrived at deductively with the help of theoretical devices – veil of ignorance, difference principle, overlapping consensus – and their descriptions remain general as they are meant to apply to all reasonably democratic societies. The point is to abstract away from what exists, has existed, or may exist and rely on thought experiment modeling to determine liberal institutions that citizens could endorse or at least not reasonably reject.

Conversely, multiculturalists strongly believe that resolving issues raised by culture and identity requires understanding the actual experiences of minorities in liberal democracies. This has been true from the onset: Kymlicka's initial defense of secure cultural membership relied on the case of First Nations in Canada (1989, 136) and the premise of Young's first book is that "normative reflection must begin from historically specific circumstances" (1990, 5). And this belief still permeates much of the literature. Writing on context in the political theory of multiculturalism, Jacob Levy notes that much of the recent literature rests on context-dependent normative weight. He writes that it "fall[s] short of bindingness" (2007, 189). So, in contrast to Rawlsians' deductive approach to generating binding political principles, multiculturalists proceed both deductively and inductively by reconciling fundamental liberal principles with complexity of actual societies and of particular attachments and loyalties. As I show in the balance of this chapter they differ on concrete proposals and on how they arrive at them.

2. Two Approaches to Ethnocultural Justice in Diverse Societies

I want to argue that advocates of the deliberative resolution of issues of just recognition and equal treatment of ethnocultural minorities exaggerate differences and fail to capture important

similarities between their approaches and those of liberal theorists of multiculturalism. I hope to show specifically how democratic approaches also rely upon principles that are defined prior to deliberation and so in that sense that their approaches are not free from external moral standards. This is an important step to take because it situates the thesis within the broader political theory of multiculturalism, but more importantly it helps me defend the Kymlickan approach I adopt in this thesis against some of its main critics. But before examining tensions and contradictions within recent accounts of the deliberative resolution of issues relating to culture and identity, this section provides an overview of the routine framing of the literature through an analysis of Anthony Laden's important analytical work on this topic.

In *Reasonably Radical* (2001), Laden contrasts his theory of deliberative liberalism with other options in the literature by saying it espouses a "political" not "theoretical" mode to legitimating political institutions and the principles underpinning them. "Rather than to argue for one or another set of specific policy proposals," deliberative liberalism merely "aims to set out the framework in which political deliberation can fruitfully and justly take place" (2001, 17). The theory is deliberative, then, in the sense that deliberation does the legitimating work, not a standard internal to political theory. He has since further elaborated upon these two modes of political theory by way of articles on Rawls and Tully's respective philosophical methods as well as on forms of political dialogue (2004; 2007; 2011).

Proponents of the theoretical approach characterize issues of respect and recognition of minorities as theoretical problems that require theoretical solutions. "The reasoning of the theorist," Laden writes, "serves to determine the shape of the political principles the theory defends" (2001, 16). That is, they establish the legitimacy of substantive political principles by ensuring that these are consistent with fundamental traits or desires that are shared by all, either

features of human nature or the standard bundle of rights and liberties provided by liberal democracies. By constructing political principles with these universal theoretical attributes in mind, the theorist can assume that all members of society will consent to them. In short, "the *modus operandi* of a theoretical approach is to develop a theory and then apply it" (2004, 288).

Conversely, the political approach grounds the legitimacy of political principles in deliberative endorsement. That is, legitimate political principles emerge from and are maintained by reasonable political deliberation or, in practice, an exchange of public reason arguments among democratic citizens. "It is the reasonableness of deliberation," he writes, "that generates legitimacy" (2001, 13). Defining Tully's public philosophy as taking a political approach to legitimation, Laden says it involves "see[ing] the work of political philosophy as not wholly different from the work of other political actors trying to figure out what to do as we try to live together and shape our social worlds into ones where we can all live together" (2011, 114). Taking a political approach, then, doesn't mean laying out a "kind of *a priori* blueprint for an ideal society," but rather "serves to defend our reasonable faith in the possibility of a legitimate constitutional democratic regime in the face of deep diversity" (2001, 7).

In *Reasonably Radical*, Laden endorses the political approach for two main reasons (2001, 5-6). First, building on Bonnie Honig's (1993) and Glen Newey's (2001) charge that liberal political theory displaces politics by aiming at a post-political order, he distinguishes the *conditions* of political deliberation from its *results*. Political philosophy ought to focus on "conditions under which political deliberation can be legitimacy-conferring," not on the "results of political deliberation." In other words, the theorist should let citizens decide for themselves and should instead design fair deliberative practices or even engage, qua citizen, in the deliberation. Second, since liberal theorists and political philosophers more generally have been

shown to be blind to some of their own biases, political philosophy ought to leave room for politics so that their "biases can be challenged and corrected by those who do not share them." As Adam Swift writes, "conclusions about what we should do, in a particular context, can depend on a whole range of facts about the world that philosophers may know little or nothing about" (2006, 7).

More recently, in defining Rawls as having been fundamentally committed to the political approach throughout his career, a claim that was consigned to a few footnotes in *Reasonably Radical* (2001, 12n, 17n), Laden adds a third reason: the political approach takes seriously the distinction between persons. Coming to terms with "deep diversity" requires giving voice to citizens whom may not share much in common. Those who take a theoretical approach, Laden argues, fail to take the distinction between persons seriously by deriving political principles from attributes all are assumed to have. In Hobbes, for example, the Leviathan is justified by way of everyone being fundamentally concerned with survival. Because all start from the same concern, all will consent to absolute authority. The point is that the theoretical approach doesn't require engaging with actual citizens in actual liberal societies.

In 2007, in an edited volume on the advances of and challenges to the political theory of multiculturalism, Laden argues that much of that scholarship views issues of respect and recognition of minorities as theoretical problems that admit to theoretical solutions. He writes, "taking a theoretical approach thus involves seeing politics as, essentially, an unfortunate concession to the limits of our theoretical abilities, and seeing cultural pluralism as first and foremost a problem for political theories" (2007, 200). It leads multiculturalists to view politics through the *logic of negotiation*, that is, as being about the fair and rational distribution of scarce resources to citizens whom make different sorts of cultural claims against public institutions. As

embodied in the logic of negotiation, the theoretical approach has several consequences on the resolution of multicultural issues: it doesn't ensure compliance, it leads parties to exaggerate their claims, it hardens stances, it frames political stability as the absence of struggle, and it fails to deal with structural inequalities. To summarize, seeing multicultural issues in such a way overstates the importance of the end result, the degree to which the public institution satisfies the claim, and undervalues the process, how and why a given public institution has refused an exemption or only partially granted it.

Taking the perspective of engaged participants by adopting the political approach provides a much different outlook on cultural claims. Calling this the *logic of deliberation* it "involves an exchange of claims among people who regard themselves as partners working out a shared solution to a shared problem" (2007, 210). So, instead of trying to get the better deal as in the logic of negotiation, the logic of deliberation invites parties to work together in finding reasonable agreements that are mutually acceptable. The objective is to find common grounds by trying to work out a set of shared understandings and shared reasons. Deliberation is as much about the process as it is about the end result. Even if parties fail to arrive at an agreement, the deliberation will have deepened trust and fostered mutual acknowledgment. Laden writes, "the very act of deliberation reflects a kind of agreement among the parties to resolve their differences cooperatively and on mutually acceptable terms, to find and develop shared identities that can support mutually acceptable claims" (2007, 212).

In conclusion, the political approach bestows three tasks upon political theorists. The first is to engage with fellow citizens either by making arguments or by evaluating the consistency of arguments on offer with public reasons, that is, "setting out criteria for judging the reasonableness of deliberation" (2007, 216). Second, theorists can work out the "necessary

preconditions," which include the sorts of endorsement that could serve to legitimate political principles as well as any structural features such as basic rights and liberties, equal opportunity and reciprocity (2001, 16-17). Third, on days when citizens have lost confidence in their ability to establish political institutions that respect and serve the interests of all, theorists can work at restoring faith by showing that democracy is a conceptual and philosophical possibility for deeply diverse societies (2004, 292). In summary, practiced in this way, political philosophy is both ennobling and deflationary - ennobling because "philosophers are not just sitting on the sidelines spouting ultimately irrelevant theory" and deflationary because philosophers "have no special status or authority" (2004, 289).

In thinking of the turn to deliberation in the political theory of multiculturalism and its commonplace characterization of the debate, I above all have in mind recent books by Deveaux and Song. All the while being cautious not to cast my net too wide, let me point to others whom I believe have also recently framed the debate along the same line. In an oft-quoted book, Seyla Benhabib distinguishes her deliberative democratic approach from an approach she calls "premature normativism," which is "based on *culturalist premises* rather than *political evaluations* of movements and their goals" (2002, 65). In a discussion of linguistic justice, David Laitin and Rob Reich refute approaches that are "allergic to politics" and instead make a case for a liberal democratic approach that "brings politics back into liberalism" (2003, 102-103). Daniel Weinstock also recently hints at this distinction when he forewarns that his discussion of liberal approaches to internal minorities sets aside any deliberative democratic approaches because these raise a different set of problems (2007, 245). And Courtney Jung contrasts her case for democratic engagement with "liberalism's culture fetish," which "support the exclusion, or exemption, of cultural groups from democratic politics" (2008, 14, 38). To be sure the labels and

descriptions change slightly, but the underlying idea is consistent: for some legitimacy comes from citizens' democratic endorsement and for others it results from analytical soundness. That is, exponents of deliberation hold that principles of justice are to be constituted by democratic procedures that involve affected citizens and they contrast their general approaches with those of liberal theorists of multiculturalism whom derive the content of political principles from an analytically defined theory of justice. Let me now turn to recent defenses of democratic approaches in order to reveal difficulties in the operationalization of this distinction.

3. Monique Deveaux's Democratic Approach to Cultural Conflicts

Since the early 2000s, Deveaux has tried to reconcile liberal theory and practice with ethnocultural diversity, especially traditions and customs that come into conflict with fundamental liberal norms (2000a; 2000b; 2000c; 2002; 2003a; 2003b). In many ways, *Gender and Justice in Multicultural Liberal States* (2006) represents the culmination of that endeavor – an ambitious reframing of the political theory of multiculturalism. The book is set-up as an alternative to what she calls the liberal toleration approach (as well as to conventional deliberative democratic and human rights approaches). Examining the work of Brian Barry, Will Kymlicka, and Susan Okin, *Gender and Justice in Multicultural Liberal States* argues that liberal toleration approaches to theorizing justice in diverse societies are "deeply" and "highly" problematic because they generate "inflexible," "zero tolerance" responses that fail to protect internal minorities and women (2006, 3, 8, 28). In contrast, Deveaux insists on "open-ended" deliberations that aim to "democratically mediate" tensions between women's rights and liberal democratic norms (2006, 4). Her approach "cannot guarantee liberal reforms, for liberal norms and principles do not, on the view defended here, trump nonliberal cultural values and claims"

(2006, 126). The idea is that deliberation should not be constrained by liberalism, which consequently entails that it cannot guarantee liberal outcomes. She sums up her approach at about the halfway point of the book: "[it] is thus a purposive conversation in which citizens debate the meaning, relevance, and future status of contested social practices and try to reach negotiated political compromises" (2006, 118). But let me first engage more closely with the details of her critique of proponents of liberal toleration before then looking at her own conflicted relationship with liberal norms and institutions.

3.1 Unpacking Liberal Toleration

Highly schematically, I believe Deveaux's critique of liberal toleration is fourfold. First, liberal theorists set up a "dangerously false dichotomy" between cultural rights and women rights. She writes, "it is not really an option to be 'pro-women' and against cultural rights" because "women make up at least half of the cultural communities in question, and some, as we know, defend precisely those practices and arrangements that make liberals uncomfortable, like arranged marriage and polygyny" (2006, 3). Second, liberal toleration is "state-centric" (2006, 7). The result is that state concerns take priority over minority concerns. In other words, justice for minorities is a second-order concern alongside first-order concerns for security and state authority. This has three main consequences: it forecloses any attention to cultures that are not "highly bounded" for these are usually not a security threat nor do they challenge state authority, it mistakenly assumes that the conflict is between the state and the minority, and it obscures the power inequalities between the state and the minority. Third, liberal theorists tend to conceive of liberal principles as "trumps" (2006, 19). They ask whether group protections can be made compatible with the protection of individual rights and liberties of members of these

communities, especially vulnerable members such as women. In other words, they use the standard liberal bundle as a "litmus test" to evaluate whether acquiescing to minority demands for formal protections and exemptions violates women's rights or leads to their mistreatment (2006, 3-4). Liberal toleration, then, simplifies cultural conflicts to a too basic transaction: yes or no does the group accommodation violate liberal norms or rights. Fourth, liberal toleration takes an "abstracted view of social practices," which means that it speaks of minority customs and identities as fixed instead of as processes (2006, 11). In short, and as she puts it, proponents of liberal toleration "fail to support democratic principles and practices" and as a result "may generate proposals which, if implemented, might perpetuate, or even worsen, the many forms of oppression faced by vulnerable members of cultural groups" (2006, 20).

These are severe criticisms. However, it's unclear first whether they actually apply to their purported targets, and then whether Deveaux's own approach overcomes them. The underlying charge against liberals is that they view toleration as possessing independent moral standing. This leads them to give "explicitly normative reasons" to the question of whether minority accommodations are compatible with individual rights and liberties (2006, 24). This is compelling in the abstract. Asking how a minority practice or arrangement fares under the liberal toleration light is indeed an "overly blunt" way of trying to come to terms with ethnocultural diversity (2006, 4). The charge gets murkier, however, when Deveaux turns to the three aforementioned representatives of liberal toleration: Barry, Kymlicka, and Okin.

To begin, it is plainly odd that Deveaux should speak of Barry in the same breath as Kymlicka in the same breath as Okin. Sure they all identify with the liberal tradition, but their approaches and commitments couldn't be more different. In fact, Barry and Kymlicka have in many ways come to be viewed as binary opposites of the political theory of multiculturalism, the

former unashamed defender of liberal universalism, the latter champion of minority rights and accommodations. This perhaps explains the cracks emerging at the seams when examining the footnoting in her fourfold critique of liberal toleration. While she runs these three thinkers together as representatives of liberal toleration (2006, 8, 23, 27), she is forced to concede, for example, that Okin "includ[es] women in formal decision-making processes and develop[s] new, more inclusive, forums for mediating cultural disputes" and that Kymlicka has "sought to challenge the idea of an essential conflict between group-based protections and individual rights and liberties" (2006, 5n, 28n). Following the footnotes, we also come to realize that only Barry's work is referenced in sweeping statements such as "today's liberals generally argue that specifically nonliberal minorities should be accorded minimal tolerance but not substantial recognition" and "the state-centric liberal toleration framework […] has generated inflexible responses to cultural practices ostensibly in conflict with liberal norms" (2006, 8n, 25n). On Barry, moreover, it has been plausibly argued that the commitments of this self-professed guardian of liberal universalism are actually not as black-and-white as he intends them to be. Jacob Levy writes, "often a chapter will begin with a ringing statement of principle […] only to conclude with modifications and qualifications that leave the principle far more reasonable but much less simple and not actually very different from the views of Barry's targets" (2004, 319; see also Preiss, 2009).

Much more revealing, however, are detailed discussions of Okin and Kymlicka's respective approaches to issues of respect and recognition for minorities. Coming to this debate in the late 1990s, Okin cautions that claims for group rights or minority accommodations should be carefully interrogated to see whether women within these groups would be harmed or further subordinated. All the while describing Okin's approach as a "generally unqualified appeal to

liberal norms," time and time again Deveaux is forced to put water in her wine (2006, 31). First, it is revealed that Okin sometimes prefers a consultative, not juridical, approach to conflicts of culture. Vulnerable group members, especially women and young women in particular, should be given voice in discussions over contested group customs and practices. Second, in response to some of her critics, Okin writes, "I have been pressed to think about whether I advocate a solution that favors democracy or one that favors liberalism, when the two conflict" (2005, 86). Her response, which Deveaux admits to, is that she favors a liberal response towards patriarchal religions and a democratic response towards cultural or religious minorities that are, or were until recently, subject to internal or external colonialism. Third, Deveaux maintains that Okin treats tensions between minority practices with liberal norms as "indefensible, and as not warranting accommodation" (2006, 32). However, Okin actually suggests that women members of minority groups "should be taken seriously if […] they produce good reasons for preferring to continue aspects of their traditional subordinate status over moving to a status of immediate equality within their group" (2005, 87). Okin's position, then, is actually much more nuanced than the critique of liberal toleration makes it out to be.

The critique of Kymlicka revolves around his commitment to a liberalism that condemns practices that restrict an individual's range of options or that limit the freedom to make these life choices. Deveaux writes, "this autonomy-based conception of liberalism is at odds with the communal character of indigenous peoples, and the traditionalism of some immigrant groups, whose cultures often emphasize the need to shape and direct the choices of community members" (2006, 37). Bold critique, but Deveaux contradicts herself on the previous page when she writes, "Kymlicka has emphasized that […] 'liberals cannot assume that they are entitled to impose their principles', and moreover, 'some illiberal groups should be tolerated'" (2006, 36).

Much later in the book, in a passing reference, Deveaux tellingly concedes, "proponents of 'differentiated citizenship', such as Kymlicka, […] have argued that liberal states need to extend legitimating political voice, not just toleration […] to minority groups" (2006, 118).

Furthermore, returning to Kymlicka's discussion of non-liberal minorities in *Multicultural Citizenship*, I am hard-pressed to see how it fits with Deveaux's description of the liberal toleration approach. He writes, "in cases where the national minority is illiberal, this means that the majority will be unable to prevent the violation of individual rights within the minority community. Liberals in the majority group have to learn to live with this, just as they must live with illiberal laws in other countries" (1995a, 168). Deveaux then finds herself in somewhat of a bind as she is seemingly left to criticize Kymlicka for "preclud[ing] special accommodation for groups that seek to significantly restrict the freedom and equality of their members" or for allowing "state-imposed restrictions regulating how group members may be treated" (2006, 34, 36). While she still may want to object to these conditions, these bear no semblance to charges of applying dangerously false dichotomies and treating liberal principles as trump. If anything, the discussion of Kymlicka points to the tremendously complicated task of squaring basic individual rights and freedoms with the recognition and protection of minority cultures. I discuss and defend Kymlicka's approach in the next chapter.

3.2 Democratic Procedures and Liberal Principles

This reappraisal of Deveaux's interpretation and framing of Barry, Kymlicka, and Okin doesn't take anything away from her own deliberative approach. It's about the purported debating partner not about her. Deveaux presents her approach to mediating cultural conflicts as a third way between liberal toleration and theories of deliberative democracy. Let me briefly speak to

the relationship with deliberative democracy before then examining her conflicted relationship with liberal norms and institutions.

Strongly committed to deliberative democracy's premise that sound public policy follows from inclusive political deliberation, Deveaux's approach is deliberative democratic but not run-of-the-mill deliberative democratic. Her approach differs from conventional deliberative democratic approaches – such as those of Seyla Benhabib, Simone Chambers, and Bhikhu Parekh – in two main ways. Referencing the work of James Scott, she first argues that democratic legitimacy must also account for *informal* democratic activity in private and social life. Forms of cultural resistance, retrieval, reinvention, and subversion also speak to how group members view disputed customs and contested arrangements. These can include "forums sponsored by local community and cultural associations, media, and more spontaneous public responses to incidents in the community" (2006, 118). In short, she aims to expand the spaces of deliberative democracy and as a result the basis of democratic legitimacy.

Building on examples from Britain, Canada, and South Africa, she then argues that cultural conflicts are partially normative but primarily political. Cultural struggles within groups are "centrally about the concrete interests of group members and the distribution of power and decision-making authority in these communities" (2006, 106). As a result, deliberative forums should allow and even emphasize participants' strategic interests and pragmatic concerns. This is not to say that cultural disputes are never about deep moral issues, but rather that most are about conflicting interests, needs or concerns. "Both normatively and practically," she writes, "*strategically* focused deliberation – in which participants seek negotiation and political compromise – is oftentimes a better solution" (2006, 6). It can motivate intra- and inter-cultural trust and lead to practical compromise.

Deveaux distinguishes her approach from those of liberals in two main ways (2006, 89). First, for all liberal thinkers, both the *form* and the *outcome* of deliberations are constrained by basic liberal principles of equal opportunity and individual rights. She calls this liberal toleration's emblematic tension (2006, 26). Taking the work of Joseph Raz as an example, she points to a tension between the commitment to minorities being able to educate their children in the culture of the group and the commitment to having groups afford their members the skills to effective participation in the political and economic life of the country. His resolution: giving precedence to liberal principles, always. In that sense, while liberals, in theory, may endorse resolution through concrete dialogue, in practice, the deliberative process and the result need to be compatible with core liberal principles.

But to reiterate a point made in earlier discussions of Okin and Kymlicka, liberals' proposals may not be as constrained by liberal principles as Deveaux makes them out to be. Liberal theorists have in fact become much more sensitive than Deveaux gives them credit for. Regardless of that, however, I want to point to an apparent inconsistency with respect to the open-ended character of her proposed dialogical approach. Much like Kymlicka and Okin's respective approaches, hers also seems to presuppose and sometimes appeals to liberal principles. For example, in the chapter in which she outlines and defends her approach, she begins by lamenting liberal conditionality via Kymlicka whom she cites as arguing that "the logic of multiculturalism involves accommodating diversity within the constraints of constitutional principles of equal opportunity and individual rights" (2006, 89). However in describing her approach only a few pages later, she writes, "crucially, my argument presupposes that deliberation … takes place against the background of a liberal democratic state that protects fundamental individual rights and freedoms" (2006, 94). Or, consider the following: "where

cultural conflicts involve concrete and serious harm, it is hard to see why protecting cultural autonomy is necessarily more important than endorsing the right of all cultural group members to have a say in contesting, shaping, and if necessary reforming the practices and arrangements under dispute" (2006, 123). So not only is her approach also constrained by fundamental individual rights and freedoms, but in some cases, it supports the reform of contested practices. Of course, her approach perhaps remains more open-ended than that of others. However, at the very least, we have come a long way from the sweeping language of the fourfold critique and the stark distinction between constrained deliberation and open-ended deliberation.

I began this subsection by saying that Deveaux distinguishes herself from liberals in two main ways. The second distinction is that, in contrast to liberals whom make dialogue-based recommendations for disputes opposing minorities to the majority, she aims to provide a deliberative framework for minorities to work through their own issues. This, I want to argue, constitutes her real, important contribution to the political theory of multiculturalism. Fundamentally, it seems to me that this book is not about democratic rather than liberal approaches to cultural conflicts, but about normative and practical reasons for which multiculturalists ought to engage much more closely with the claims of ethnocultural groups. By not taking group elites at their words and actually peering into minority communities, multiculturalists will come to realize that minority customs and rules are often the subject of thorny debates within communities and as a result take on multiple meanings and forms. This conviction surfaces throughout the book, including the initial framing where she writes, "this emphasis on toleration […] cuts short a fuller discussion of group claims about identity and self-governance; of the many possible processes for the evaluation and reform of cultural practices; and of the power relationships between minority groups and the state" (2006, 3).

The book's greatest contribution, then, is a case for groups themselves being best positioned to evaluate and, if necessary, revise cultural practices that have been deemed problematic either by group members or by the state. So instead of asking what the liberal state should tolerate, multiculturalists should rather try to figure out the meaning and purposes of contested practices. The answers to these questions, she warns, will require changes to social and political practices within cultural communities, including empowering and giving formal voice to women and "shifting power away from those community leaders who try to silence and intimidate them" (2006, 6). More to the point, Deveaux believes that giving equal voice to all members of minority cultures will foster bargaining and compromise, which, in turn, will lead to legitimate resolutions of internal disputes as well as conflicts between minority customs and liberal norms. It leads her to promote "strategically focused deliberation" and emphasize "evaluative assessments" of all members of the community, but especially those whose customs are the subject of concern (2006, 4-6). She writes, "participants to deliberation debate the meaning, relevance, and future status and form of contested social practices, and try to negotiate political compromises … and ultimately aims to secure democratic political solutions, including, where possible, concessions for contending parties" (2006, 117).

This, then, would help explain her conflicted relationship to liberal norms and liberal institutions. While, on the one hand, she wants to give voice to community members, whom may come to conclusions that are inconsistent with liberal norms, on the other hand, she remains committed to ensuring basic rights and liberties for all group members, including internal minorities and women. As I will show in the next chapter, Deveaux's work advances rather than undermines the Kymlickan approach to multiculturalism and minority rights.

4. Sarah Song's Rights-Respecting Accommodationism

In *Justice, Gender, and the Politics of Multiculturalism*, Song defends an approach she calls "rights-respecting accommodationism." It consists of a normative framework for evaluating and addressing issues of respect and recognition of ethnocultural minorities, especially gendered issues. Acknowledging that liberal theorists have already developed a number of principled theories for coming to terms with the claims of minorities, she contends that these offer inadequate responses to issues that arise when liberal democracies simultaneously pursue equal justice for ethnocultural minorities and for women. She divides the options on offer into two main camps. The first, represented by Barry, argue that to uphold fundamental liberal principles requires rejecting differential treatment. The second, represented by Carens and Kymlicka, defend cultural preservation on the grounds that minority groups are unavoidably burdened by state principles and practices. The problem: they both fail to capture what is really at stake. According to Song, dominant theories of multiculturalism tend to operate with a simplified view of cultures as highly bounded entities whereas, in reality, cultures are the product of internal contestation as well as interaction with other cultures, namely that of the majority.

Adopting a constructivist view of culture, Song defines her framework as a "middle way" between egalitarians and multiculturalists: it requires group accommodations under certain circumstances, but it is uncompromising when it comes to basic individual rights. "My aim," she writes, "is to provide a justification for cultural accommodation and a framework for addressing the problem of internal minorities while leaving the choice of specific policies and resolutions to be decided through democratic deliberation" (2007, 10). In other words, she tries to reconcile a commitment to egalitarianism with a commitment to deliberation. Looking closely at her overall framework, however, I want to suggest it is actually not all that dialogical and, in fact, may not

be dialogical at all. I begin by discussing her theoretical account of rights-respecting accommodationism, drawing particular attention to the role of deliberation, before then turning to the use of deliberation, or the lack thereof, in the three concrete case studies that constitute the latter three chapters of the book.

4.1 Deliberation and Equal Respect

Song's starting premise is that much of the political theory of multiculturalism operates with a stable account of culture. She writes, "a conception of culture as coherent, self-contained, and tightly knitted wholes is at the heart of multiculturalists' case for cultural preservation" (2007, 32). She cites Taylor's culture as an "irreducibly social good" and Kymlicka's culture as a "primary good." We'll recall that Taylor, echoing Herder, famously declared, "just like individuals, a *Volk* should be true to itself, that is, its own culture" (1992, 31). And in making a case for liberal minority rights, Kymlicka argued that Rawls would have included cultural membership as a primary good had he not implicitly assumed coincidence of the cultural community with the political community (1989, 166). Cultures, however, don't actually work like that. Together with a long-list of multiculturalists, Song argues that they are rather contested, dynamic, fluid, interactive, interdependent and so on. "Cultural traditions and practices," she writes, "are made and re-made through both internal contestations and intercultural interactions" (2007, 13). In short, individual members' experience of cultural membership varies.

But her point is not merely analytical. She doesn't only aim to offer a theoretical account of culture that is more in tune with how cultures actually work on the ground. Taking seriously a constructivist view of culture also has important normative implications. Song argues that at present most multiculturalists derive normative prescriptions directly from their conceptions of

culture. To simplify, the existence of a minority culture ought to initiate the granting of rights or the transferring of powers, the kinds of measures depending on the kind of group. However, if culture is constructed and contested and cultural affiliations mean different things to different people, then it becomes unfeasible to draw prescriptions from it. Her alternative: rights-respecting accommodationism. It makes a case for ethnocultural minorities getting a fair hearing and it sketches the outline of a model of deliberation. In her own words, "I offer and defend a conception of justice in relations of culture and identity […] at the same time, my approach recognizes that particular solutions and arrangements must be decided through deliberation by affected parties" (2007, 9; see also 42).

The first part of her normative argument – the case for ethnocultural minorities getting a fair hearing – rests with the norm of equal respect. She writes, "my case for accommodation is grounded in a core value of liberal democracy, the idea that citizens should treat one another with equal respect" (2007, 9). In culturally and religiously diverse countries, to treat individual citizens with equal respect may, in some cases, require treating them differently. This premise has become a trademark of the political theory of multiculturalism. Multiculturalists argue that living up to the ideal of equal respect sometimes requires readjusting the building blocks of liberal democracies. Tariq Modood recently writes, "multiculturalism presupposes the matrix of principles, institutions and political norms that are central to contemporary liberal democracies; but multiculturalism is […] also a challenge to some of these norms, institutions and principles" (2007, 7-8). For Song, equal respect performs two normative tasks: it supports a presumption in favor of differential treatment and, at the same time, sets the limits on special accommodation. First, equal respect requires that, under certain circumstances, ethnocultural minorities be given a fair hearing. There are three such circumstances that afford minorities a prima facie claim to

differential treatment: present discrimination, historical injustice, and state establishment of culture. Second, but obtaining one of the three circumstances doesn't automatically trigger special accommodation because equal respect also protects the basic rights of individual group members. She writes, "I argue that these circumstances support a presumption in favor of accommodation, but this presumption may be overridden by liberal democracy's commitment to protecting people's basic rights" (2007, 11).

The second part of her normative argument is a call "for greater attention," "to examine more closely," "to take a case-by-case approach," in short "to develop context-sensitive and democratic approaches to evaluating the claims of minority cultures" (2007, 8, 35, 36, 39). So, instead of fleshing out the normative guidelines that follow from the liberal value of equal respect, such as, for example, Anna Galeotti (2002; 2009), Song turns to deliberative democracy. She claims that a deliberative approach has several advantages over its two rivals, those that emphasize compatibility with liberal principles and procedures and those that defend cultural preservation (2007, 73-75). It promotes the inclusion of minorities by giving them access to and equal voice in public institutions. It also sheds much needed light on the particulars of a given multicultural dilemma. And it furthers cross-cultural understanding between majority and minorities by bringing people together at the same table to discuss crosscutting issues.

While she wants final decisions to rest with affected parties, she doesn't leave the outcome entirely to chance. First, the minority has to show that one of the three aforementioned circumstances obtains – ie. present discrimination, historical injustice, and state establishment of culture. Second, the differential treatment must not undermine members' basic rights. Third, deliberation must ensure equal opportunities for effective participation, which requires attending to participants' resources and capacities. Fourth, treating fellow participants as equal and free

requires appealing to "mutually acceptable reasons," which she takes to mean reasons that show that the favored outcome "is in the interest of all participants in the dialogue" (2007, 71). However, in true deliberative democratic fashion, she clarifies that participants can revise both the minimal conditions necessary for legitimate outcomes and the content that satisfies the mutually acceptable reasoning criterion. Somewhat abstractly, she writes, "the view of reasoning defended here is pluralistic in the sense that participants need not fully share a set of public reasons they regard as authoritative for them as citizens, nor must they aim at consensus" (2007, 71-72).

4.2 Which Role for Deliberation?

So, to be sure, Song presents her normative framework as part of the deliberative democratic family. To add to the above account, throughout her articulation and defense of rights-respecting accommodationism, she reminds the reader that her aim is merely "to demarcate the range of morally permissible institutions and practices," "to suggest the starting terms for democratic contestation," or "to suggest the potential parameters and possibilities for public debate" (2007, 9, 42, 68). In that sense, and as she puts it, "whether claims are ultimately granted and what specific form they take will depend on public deliberation by those affected by the practices in question" (2007, 45-46). However, in spite of the narrative, it is unclear whether rights-respecting accommodationism actually constitutes a deliberative democratic approach to cultural conflicts. I want to argue that, for Song, deliberation is actually a *mode of inquiry* rather than a *mode of theorizing*. In other words, rights-respecting accommodationism is a means for the theorist to come by the particularities of an issue so that she can devise appropriate political principles, rather than a self-standing means to generating binding political principles. This

emerges in the theoretical account of the approach and it then becomes evident in the three case studies of cultural defense, tribal sovereignty, and polygamy.

Upon close reading, deliberation's detail-acquiring purpose already surfaces in the introduction to the book. Song of course affirms that solutions "must be decided through deliberation" and then lists deliberation's "several advantages" (2007, 9-10). However, at the same time, she also says that her aim is to provide a normative framework from which to "evaluate," "assess," and "investigate" cultural disputes (2007, 9-11). But these three tasks clash with the idea of letting affected parties decide for themselves. For a theorist to evaluate or assess or investigate issues of culture is clearly distinct from a theorist devising deliberative arenas or procedures where those affected can come together to work out these issues. More tellingly, she seemingly admits to deliberation being a means for the theorist to get a concrete sense of what is at stake when she speaks to "contextual inquiry [being] best taken up through democratic deliberation" and later collapsing deliberation under the heading "deliberative inquiry" (2007, 8-11). Also revealing, near the end of the introduction she writes that accommodation "will depend on […], among other things, the contingencies of national political culture, demographics and the particular commitments and practices of specific groups within the polity" (2007, 12). In a genuine deliberative approach, would the form accommodation takes not depend on deliberation between affected parties?

Deliberation as a mode of inquiry rather than a mode of theorizing becomes more apparent in the third chapter where she articulates the foundations of rights-respecting accommodationism. After reminding how final decisions ought to rest with affected parties, Song asserts, in response to Kymlicka, that not all burdens are onerous enough to open the way

for differential treatment.[8] Song takes issue with the choice-circumstance distinction as a heuristic device arguing that we should instead "ask about" the kinds of disadvantages members of ethnocultural minorities experience and "think of" cultural inequalities as structural inequalities (2007, 51). So instead of letting minorities articulate through deliberation what they perceive and experience as a culture-based inequality, she makes a normative case for how we should understand culture-based inequalities.

Next, in discussing historical injustice, one of the three circumstances that supports a prima facie case for differential treatment, Song again develops a normative case for how to proceed instead of turning to deliberation by affected parties. She writes,

> What form remedy will take depends on context, including the nature and extent of the present disadvantage linked to historical injustices, what the group actually demands, the extent to which the group's culture is institutionally embodied, and the social and political effects of granting accommodations, among other things (2007, 56-57).

Then after extolling the merits of deliberation and outlining the parameters of her preferred approach, she notes that "the nature of the burden imposed on the group has to be weighed against the compelling interests served by the law" (2007, 76). At first glance, one could think that affected citizens would take up such a task through the deliberative process. However, to help determine whether the state law or policy infringes on a minority's fundamental interests, Song establishes a "dual test" also called a "two-part deliberative inquiry" (2007, 11, 67). It is worth citing her at length on this matter:

> First, we must ask about the *impact* of the law or policy on the group. What is the nature of the burden imposed? What is the value of the tradition or practice in question, and what role does it play in defining the group's beliefs or identity? To what extent is this role contested? Does the law have the effect of denying basic liberties and opportunities to

[8] In both *Liberalism, Community and Culture* and *Multicultural Citizenship*, Kymlicka partly defends group-differentiated rights by way of "unchosen inequalities," the idea being that minorities didn't choose to be minorities and so the liberal state ought to compensate for their circumstances by providing certain external protections (1989, Ch. 9; 1995a, Ch. 6).

> members of minority religions and cultures or reinforcing their marginalized status in society? […] The second part of the dual test asks about the *rationale* of the law or policy. Is it intended to privilege or burden a particular group? What interest or purpose does it serve? Is it merely a convention that no longer serves a purpose (2007, 67)?

Beyond the apparent discrepancies in her theoretical account of rights-respecting accommodationism, Song's at length discussions of cultural defense, tribal sovereignty and polygamy also proceed with virtually no recourse to deliberation. The case studies, to be sure, are insightful, measured, and sensible discussions of and proposals for difficult issues that arise in societies that are committed to equal justice for ethnocultural minorities and for women. The point, however, is not whether the proposals are sensible, but rather whether the normative framework is deliberative. While I draw attention to only one of the case studies, I think similar conclusions could be drawn from the other two.

In chapter four, Song engages with relevant legal cases and philosophical arguments in order to offer a "qualified defense" of cultural defense (2007, 100; see also 2005a). Cultural defense refers to a defendant appealing to cultural evidence to explain her state of mind in committing the alleged crime. In one of the cases discussed, for example, a Hmong man, American resident, accused of kidnapping and rapping a Hmong woman, also American resident, claimed he was practicing the traditional Hmong custom of "marriage by capture." In such cases, Song argues, outright rejection of cultural evidence is problematic because, to stick with the above example, what constitutes consent varies per cultural context. Showing equal respect to members of ethnocultural minorities, then, may warrant the use of cultural evidence under certain conditions. Outright rejection also forecloses an opportunity to challenge the wider society's patriarchal norms. She writes, "immigrants' uses of the cultural defense for actions that harm women seem to be most successful when they resonate with the norms of the wider society" (2007, 112). Song favors "limiting the application of" defenses to murder and rape as

well as "reformulating" provocation defense (2007, 103-104). Coming to the role of deliberation, she writes, "there is a role for deliberation both within the affected communities and among the wider citizenry" (2007, 107). These roles: the court should have conducted "a more thorough examination" of the Hmong practice of matrimony and, in another case, the court should have "assessed the testimony of the lone expert with testimony from other scholars of modern Chinese law and culture" (108). Although laudable, these are about acquiring the particulars of a case rather than about letting affected parties come to acceptable to all solutions.

Her main contribution seems not to be about deliberation at all, but rather about how many unjust minority practices resonate with and gain normative leverage from unjust majority norms embodied in the wider society's institutions (see also Song, 2005b). Through detailed historical discussions, she argues that the majority's patriarchal norms motivate the positive reception of cultural defense, state deference to tribal membership rules, and ambivalent responses to polygamy. In her own words,

> The two preceding chapters illustrate an intercultural dynamic that discussions of multiculturalism must acknowledge: patriarchal practices in minority groups are sometimes accommodated because they are shaped by and congruent with the patriarchal norms of the majority culture. This chapter aims to highlight a different and more subtle intercultural dynamic: how critique of minority norms and practices, even by well-intentioned reformers, can divert attention from the majority cultures' own inequalities, shielding them from criticism and perhaps even fueling discourses of cultural superiority within the dominant culture (142).

In short, it appears that, for Song, the remedies to given issues of respect and recognition of ethnocultural minorities come from a theorist-driven contextual inquiry rather than affected parties' deliberative outcomes.

5. Path Forward

Writing in the early stages of the political theory of multiculturalism, Melissa Williams (1995) was the first to notice (or at least make explicit) that multiculturalists had tried to reconcile liberal norms and institutions with ethnocultural diversity in two different ways. She writes, "the recent literature […] evinces two distinct approaches to the task of defining justice in a manner that is responsive to social difference" (1995, 68). The first – the "juridical" model – departs from the premise that the role of the theorist is to work out, at the level of principles, the normative standard of justice that ought to guide government policies. On this view, the task of the theorist is to come up with a theory of justice that can serve as a benchmark for liberal democratic societies' pursuit of genuine equality for all. The theorist "incorporate[s] the distinctive concerns of marginalized groups into the process of philosophical reasoning that culminates in a conception of justice" (1995, 68). The rationale, essentially, is that something as crucial as a society's standard of justice should not be left to the tug and pull of majoritarian democratic politics that too often neglect or simply overlook the interests of ethnocultural minorities.

The second approach – the "political" model – holds that the task of defining justice is best left to political processes that give equal voice to marginalized groups. The rationale is that "it is impossible for the person who constructs the [standard of justice] to do so in a way that is certain not to reflect his or her social location" (1995, 79). So instead of defining the normatively appropriate standard of justice, the theorist ought to devise institutional mechanisms that can account for multiple perspectives as well as lay out all the relevant normative and theoretical issues. In brief, the standard of justice is to be arrived at discursively.

Williams follows this analytical distinction with an interesting and illuminating discussion on the limits of each model. She writes that the just recognition and equal treatment of ethnocultural minorities "challenges us to reconceive the relationship between justice and politics and that neither the political nor the juridical model of justice towards groups has yet accomplished that important and difficult work" (1995, 87). While aiming to compensate for Rawls' and Dworkin's partiality resulting from the point of view from which they construct their theories of justice, advocates of the juridical model fall into the same trap insofar as they are also unable to anticipate all standpoints. The political model also "leaves us with unanswered questions that are so fundamental that it renders the aspiration of justice itself suspect" because we are left without an independent standard to evaluate the claims of justice and equality from ethnocultural minorities (1995, 69). To resolve this dilemma she endorses a "spirit of impartiality" by which she means "putting aside our own interests and attempt[ing] to understand how justice looks from the other's point of view" (1995, 85-86). In practice, this requires connecting the political to the juridical through institutional mechanisms that allow all individual members of society to participate in the definition of justice. In the next chapter, as well as in the balance of the chapter, I suggest that the Kymlickan approach to the politics of multiculturalism and minority rights constitutes an especially fruitful way of arriving at principles of justice that account for the perspectives of ethnocultural minorities.

In summary, this chapter has tried to accomplish two things. First, in an effort to situate this thesis within theoretical debates on the respect and recognition of ethnocultural minorities, it has conveyed a sense of main debates and broad trends within the political theory of multiculturalism. Second, and more importantly, it has showed how advocates of deliberation such as Monique Deveaux and Sarah Song also rely in an important way on principles that are

analytically defined prior to deliberation. I have done this by way of uncovering their conflicted relationship to liberal principles and institutions. Two reasons motivated the writing of this chapter. I first wanted to show how the prevalent framing of the political theory of multiculturalism exaggerates differences and fails to capture important similarities. It seems to me that the challenge for all multiculturalists remains that of reconciling political theory as a normative enterprise with concrete facts that we know about the world and about particular societies. I also wanted to examine and engage with approaches that rival with the one I adopt and apply in the balance of this thesis. In that sense this chapter helps me make the case for the Kymlickan approach to the politics of multiculturalism and minority rights that I define at length in the next chapter. We will see that the Kymlickan approach combines principles articulated in an analytical fashion with a close reading of ethnocultural minorities' concrete claims for justice and equality.

Chapter 3

Will Kymlicka and the Politics of Multiculturalism and Minority Rights

> *"We need to judge for ourselves what liberalism requires under our own conditions of ethnocultural pluralism" (Kymlicka 2001b, 61 n).*

Will Kymlicka is the uncontested architect and foremost proponent of liberal multiculturalism, the view that laws and policies that provide public recognition and support to ethnocultural groups are consistent with central liberal institutions and required by fundamental liberal principles. Or, put simply, the view that there are *liberal* reasons for granting legal exemptions, language rights, territorial autonomy, and land titles. For over twenty years, he has argued that liberal multiculturalism is not only a sound philosophical position, but also a desirable public ideal that diverse societies should enact into legislation. His project spans multiple books and articles. Of note are *Multicultural Citizenship* (1995a) and *Multicultural Odysseys* (2007e), but these alone cannot account for the full richness and complexity of his work.[9]

My main goal in this chapter is to reconstruct the two-faceted and multilayered theoretical infrastructure of Kymlicka's body of work – what I call the Kymlickan approach to multiculturalism and minority rights, or the Kymlickan approach for short. I will show how this approach rests on a combination of *moral arguments* (s. 1) and *sociopolitical patterns* (s. 2). The first pillar is a set of *principles and norms* explaining how living up to the basic tenets of

[9] Of course his theoretical work aimed at articulating principles that are normatively valid from a liberal perspective has been complemented with work applied to Canada. I set this Canadian contribution aside until the next chapter where I explore its limitations from the perspective of Canada's Francophone minority communities.

liberalism requires adopting a whole range of laws and policies that provide differentiated rights and resources to ethnocultural groups. The second pillar is a set of *patterns and categories* that show how the principled justification of political actions and institutions is often consistent with the normative logic that underlies a number of existing state-minority relations in liberal democracies. In short, the Kymlickan approach to multiculturalism and minority rights, implicitly or explicitly, consists of a set of morally defensible and politically viable guidelines for how liberal democracies should come to terms with claims for rights and status made by ethnocultural groups against the state.

1. Principles and Norms

Kymlicka came to multiculturalism *from* liberalism. The direction of that relationship is important. It is important because, for him, multiculturalism and minority rights are both inspired and constrained by liberal institutions and principles. Policies and laws promoting the maintenance and reproduction of ethnocultural groups can flow from the deep-seated liberal values of freedom, equality, justice and democracy. Contrast that with those whom emphasize alternate principles or norms in their defense of minority recognition and multicultural accommodation – i.e. Charles Taylor on equal dignity and equal respect (1992), Iris Young on domination and oppression (1990), or Bhikhu Parekh on intercultural dialogue (2006). If their conclusions on concrete cases often converge, their theoretical points of departure and normative justifications remain substantially different.

This first section examines *moral arguments* in support of liberal multiculturalism. It suggests that Kymlicka's work contains three distinct albeit complementary layers of principled argumentation. First, in *Liberalism, Community and Culture* (1989) and *Multicultural*

Citizenship (1995a), Kymlicka called upon prominent normative theories of justice and democracy, what he terms "the political morality of modern liberals" (1989, 13). To simplify, the main objective was to show that group-differentiated rights and accommodations were theoretically consistent with Mill or Rawls or Dworkin. Second, in *Politics in the Vernacular* (2001b), *Can Liberal Pluralism be Exported* (2001c), and the second edition of *Contemporary Political Philosophy* (2002a), Kymlicka presents minority rights as means to alleviating the injustices imposed on ethnocultural groups by state nation-building. He writes, "far from being inherently mutually contradictory, it might be more accurate to view nation-building and multiculturalism as providing the legitimating conditions for each other" (2007e, 85 n). Third, in *Multicultural Odysseys* (2007e), as well as other recent publications, the emphasis has shifted to the logical consistency between multicultural laws and policies and the norms of universal human rights codified in international legal instruments and enacted through liberal constitutionalism. Let me speak to each in turn.

1.1 Liberal Principles

Dissatisfied with liberals' generally smug responses to minority claims for rights and status and unconvinced by communitarian alternatives to liberal politics, including their defense of minority rights, *Liberalism, Community and Culture* (1989) is a liberal defense of minority rights at a time when recognizing and accommodating minorities was widely understood as being inconsistent with liberal justice. Its starting premise is that liberals and their critics have underestimated the resources available to the liberal tradition. Chief amongst these are accounts of community and culture. Kymlicka opines, "liberalism has always included some account of our essential dependence on our social context, some account of the forms of human community and culture

which provide the context for individual development, and which shape our goals and our capacity to pursue them" (1989, 253). However, these social and cultural premises are too often left unarticulated because liberal theorists, such as Rawls and Dworkin, have assumed congruence between the political community and the cultural community.

Kymlicka recovers these overlooked features of the liberal tradition by spelling-out the crucial connection between self-respect and cultural membership. He writes, "I hope to show that the liberal view is sensitive to the way our individual lives and our moral deliberations are related to, and situated in, a shared social context" (1989, 2). In particular, the strategy consists in showing how people need access to their particular cultural community if their range of options is going to be meaningful to them, that is, if they're going to view their life plans as worthy of pursuing. The argument proceeds in two steps, the first relying on Rawls' priority of liberty, the second on Dworkin's equality of opportunity. It first links the exercise of individual freedom to cultural membership, and it then shows how being born in a minority culture is an unchosen circumstance that generates legitimate rights-claims. In short, the argument is that fundamental liberal principles of freedom and equality can justify a theory of minority rights.

Let's recall that Rawls began from the premise that individuals have a fundamental interest in living their lives in accordance with their own beliefs about what constitutes the good life. This is now widely accepted in liberal circles. "Liberals typically view society as made up of diverse social, cultural, religious, and political groups, and hold that individuals typically differ significantly in their life plans and conception of the good" (Sager and Kymlicka 2008, 253). The assumption about the importance of the freedom to form and revise life plans led Rawls to prioritize individual liberty in the elaboration of the two principles of justice – "liberty can be restricted only for the sake of liberty" (1971, 302). People cannot examine and act on their life

choices if they're not free. Following Rawls, liberals have generally maintained that the best way to make sure people can confirm the worth of their beliefs is for the state to accord a bundle of inviolable civil and political rights to all its citizens. The individual has thus established itself as the unit of moral importance in any liberal theory of justice. And so, to state the obvious, the Rawlsian scheme is seemingly unable to justify any restrictions to individual rights in the name of protecting the cultural membership of members of minority cultures.

This precedence of the individual over the community is the focus of much criticism from communitarian ranks. Rawls, say communitarians, ignored the importance of culture as the precondition to people being able to make meaningful choices about how to live their lives. Kymlicka's critique is different. He argues Rawls recognized options lacked significance when devoid of culture – "Rawls talks about how we decide our life-plans not *de novo*, but rather by examining the models and ways of life of those who have preceded us" (1989, 177). Rawls' mistake "lies not in any deep, foundational flaw in liberalism," but rather in adopting a "very simplified model of the nation-state" (1989, 177). Not distinguishing between the political community and the cultural community, Rawls is unable to dissociate cultural membership from citizenship, which prevents him from viewing cultural membership as an important good.

Kymlicka's individual liberty argument proceeds in three main steps. First, the political community and the cultural community are not one and the same. The former is where individuals-as-citizens exercise their rights and responsibilities of citizenship, the latter is where individuals-as-members articulate their aims and ambitions. Of course, these two may coincide. For many Canadian citizens, their cultural community is their political community. For others, however, they don't coincide. Think of First Nations or of the Québécois. In these cases, "individuals are incorporated into the state, not 'universally' (i.e. so that each individual citizen

stands in the same direct relationship to the state), but 'consociationally' (i.e. through membership in one or other of the cultural communities)" (1989, 137).

Second, cultural membership is a primary good – "things that every rational [person] is presumed to want" (Rawls 1971, 62). "Cultural membership," Kymlicka writes, "is a good in its capacity of providing meaningful options for us, and aiding our ability to judge for ourselves the value of our life-plans" (1989, 166). As previously mentioned, Rawls recognized that culture provides the context from which people can make meaningful choices about how to lead their lives. But since he assumes citizenship in the political community is synonymous with membership in the cultural community, he is not led to pay attention to cultural membership in the design of the two principles of justice. It is basically taken as a given. In contrast, building on the distinction between the cultural community and the political community, Kymlicka disentangles cultural membership from citizenship and argues that treating people with equal consideration in matters of justice requires protecting their cultural membership. People's exercise of individual freedom of choice depends crucially on their access to their cultural community. In other words, people reasoning behind the Rawlsian veil of ignorance would have given cultural membership status as a primary good due to its importance for self-respect had they appreciated the fact that a political community can contain two or more cultural communities. So if, like Rawls, we are deeply committed to people having access to a range of meaningful options from which to choose from, then we are compelled to adopt measures aimed at protecting and promoting the medium that renders them meaningful – cultural membership.

Third, to protect cultural membership doesn't mean to endorse the shared ends that characterize a cultural community at any given time. It is the "structure," not the "character," of a culture that provides the necessary background context. Securing cultural membership does not

mean, as some claim, ‘locking in’ or ‘freezing in time’ the preferences of those who dislike changes. To protect people from changes in the character of their culture would in fact constitute a limitation of their freedom. What requires protection is the cultural structure as a context of choice, that is, culture understood as the medium that makes people’s options meaningful to them. The cultural structure, then, denotes shared cultural heritage and language, whereas the cultural character refers to the norms currently characterizing it. As Kymlicka tries to show through the case of Québec, the Quiet Revolution revamped the main institutions of society and politics without undermining the cultural community as a context of choice. In summary, the Rawlsian argument for the priority of liberty also serves to justify the protection and promotion of minority cultures’ cultural membership.

The second part of the moral defense of minority rights for diverse societies makes use of Dworkin on equality of opportunity. It is crucial for the success of the overall thesis since the first argument on the relationship between individual freedom and cultural membership, even if correct, will have a hard time justifying giving members of minority cultures more than their equal share. The logic is that an egalitarian distribution of resources and liberties, when fully implemented, will ensure people can pursue the things they value, whether it is expensive wine or their cultural heritage. “After all,” Kymlicka writes, “liberal equality is meant to be able to accommodate the fact that different groups value different things, including, presumably, different cultural memberships” (1989, 182). So it is unclear why a liberal theory of justice should allow for an unequal distribution of rights and liberties in order to protect the cultural membership of minority cultures, even if cultural membership is a primary good and thus generates legitimate rights-claim.

But there is a crucial mistake, argues Kymlicka, in conflating all things we value and wish to pursue as resources that are up for grabs in economic and political procedures in which each citizen's choices are given equal weight. Some of the things people value are the result of their choices, others are due to their circumstances. And that matters from the perspective of justice. Differences that ensue from choices are people's own responsibility and, on a liberal view, should have no bearing on liberal procedures for distributing recourses. Those that are unchosen, however, generate legitimate claims to special consideration in a theory of justice and, in fact, may justify an unequal distribution of rights and liberties. In short, circumstances are of moral importance because they affect people's ability to pursue their chosen ends, an ability that rests, as we saw through Rawls, at the core of liberal political theory.

"So liberals need to know," Kymlicka writes, "whether a request for special rights or resources is grounded in differential choices or unequal circumstances" (1989, 186). For him, minority rights are a response to unequal circumstances. The argument proceeds by way of Dworkin on equality of opportunity. Dworkin asks us to imagine passengers of a shipwrecked vessel being given 100 clamshells each in order to participate in an auction aimed at devising the deserted island's resources. Allowing people to use their purchasing power to bid for those resources that best suit their beliefs about what constitutes the good life, the auction can be said to treat people with equal consideration. Each person, then, should prefer their own bundle to those of others because they could use their clamshells to bid for the resources of their choosing. The result, as Kymlicka notes, is that "it is difficult to see how I could have a legitimate complaint against anyone else, or they against me" (2002a, 76).

Dworkin, however, assumes participants are of the same culture. But what if they're not, what if the participants were from two ships, one large and one small, whose ports of call are in

two different countries and thus whose passengers are of different cultures? In this new scenario, people on board the smaller ship would have to implement their bundle of resources in a social and cultural environment that is alien to them. They are now clearly unsatisfied. But do they have legitimate grounds to ask for special measures that would secure the existence of their culture? Yes, Kymlicka argues, because their undesirable position is the result of *circumstances*, not of *choices*. Notice that their claim is not for a rerun of the auction so they can choose a different bundle of resources. Their chosen resources would still pass Dworkin's envy test, whereby each person prefers their bundle to anyone else's. Their claim is rather against the inequality that results from being a member of a minority culture or, to keep with Dworkin's hypothetical thought experiment, from having been on the boat with the least number of people. And so, in short, a liberal theory of justice can allow an unequal distribution of rights and resources in order to protect the cultural membership of a minority culture.

In sum, *Liberalism, Community and Culture* elucidates liberal beliefs about culture and community and, in the process, defends cultural membership as a distinct source of legitimate rights-claims in a theory of justice. The general thesis is that special measures for minority cultures are consistent with and may indeed be required by foundational liberal principles of freedom and equality. It proceeds in two main steps. First, showing that a rich and flourishing culture is an essential precondition for people to make meaningful choices about how to live their lives, Kymlicka argues that the Rawlsian commitment to individual freedom requires according cultural membership independent weight in a theory of justice. Second, building on Dworkin on equality of opportunity, Kymlicka argues that where requests for special rights and status are grounded in unchosen circumstances, not in differential choices, cultural membership generates legitimate claims to an uneven distribution of rights and liberties.

If *Liberalism, Community and Culture* aimed to show how minority rights could be defended within Rawls and Dworkin's respective statements on justice, *Multicultural Citizenship* steps back from these two theorists and attempts to construct a self-standing theory of justice for diverse societies. Of course it speaks to and builds upon Rawls and Dworkin, but it also develops a new conceptual language in order to explain how multiculturalism and minority rights can enhance fundamental liberal values. Let me explain.

"The modern world," Kymlicka writes, "is divided into what I will call 'societal cultures'" (1995a, 75). That term designates a set of public and private institutions, operating in a common language, which provide their members with an adequate range of meaningful options on how to lead their lives. Societal cultures are closely related to ideas of a nation or of a people and, as such, the concept is analogous to others such as "cultural structure" (Dworkin 1985), "encompassing culture" (Margalit and Raz 1990), "public culture" (Miller 1995), and "integrating culture" (Nielsen 1998). Liberals need to concern themselves with the viability of societal cultures for two main reasons: the fulfillment of fundamental liberal principles is "intimately tied up" with them and most people are connected in a "deep way" to their own societal culture (1995a, 76, 85).

As previously discussed, the freedom to choose a life plan, and then to reconsider that plan and replace it with another one, is a crucial feature of the liberal tradition. It helps explain the liberal commitment to providing people with a bundle of inviolable rights and liberties. Societal cultures are profoundly important to liberalism because they provide people with an adequate range of life options and they make these options meaningful to them. Put differently, they are the media that make questioning and revising our ends a possibility and, as such, are essential for executing our most important life plans. Indeed, for Kymlicka, it hardly makes any

sense to speak of genuine freedom in the absence of a societal culture. In short, societal cultures are contexts of choice – "valuable, not in and of themselves, but because it is only through having access to a societal culture that people have access to a range of meaningful options" (1995a, 83).

But even if correct, the connection between freedom and culture doesn't tell us whether people should have access to their own societal culture. On Kymlicka's view, most people have a deep attachment to their own culture. It is an undeniable fact about our societies, laying "deep in the human condition," and thus something we should not regret (1995a, 90). Of course some people switch cultures, giving credence to Jeremy Waldron's "cosmopolitan alternative" (1992). Most, however, expect to remain in their own societal culture. As a result, "in developing a theory of justice, we should treat access to one's culture as something that people can be expected to want," as "something to which one is reasonably entitled" (1995a, 86). In Rawls' terminology, one's access to her own societal culture should be viewed as a "primary good."

So individual freedom is conditional on people having access to their own societal cultures, but not all minority cultures are societal cultures. Recall that *Liberalism, Community and Culture* spoke of minority cultures tout court. But lumping all minorities, John Danley argued, "fails to account for the morally significant differences between aboriginal and nonaboriginal cultural minorities" (1991, 185). *Multicultural Citizenship*, perhaps in response to critics, discards minority cultures in favor of a binary distinction between national minorities and ethnic groups. The first are societal cultures, the second are not. The distinction first hinges on consent. In choosing to uproot themselves, immigrants "relinquish" or "waive" their right to their own societal culture (1995a, 96). The act of immigrating to a new country, so the argument goes, implies consenting to integrating into the institutions of the new societal culture. "The

expectation of integration is not unjust," Kymlicka writes, "so long as immigrants had the option to stay in their original culture" (1995a, 96).

But the 'Anglo-conformity' model having long been discredited, integration doesn't mean assimilation. Newcomers are no longer expected to assimilate to the norms of the dominant culture, nor to relegate their customs and practices to the home. To enable integration, liberal democracies are required to adapt their institutions and practices so as to make the society hospitable to ethnic groups, that is, make sure the state and its mechanisms reflect the needs and desires of its diverse population. In practice, this means "strong efforts at fighting prejudice and discrimination" as well as "group-specific polyethnic rights" (1995a, 96-97).[10]

The distinction between national minorities and ethnic groups also relies on linking cultural membership to equal consideration. The principle of equal consideration means giving all citizens equal access to economic, educational, political and social opportunities. For many liberals, treating people with equal consideration requires endorsing benign neglect, the idea that the state should remain neutral on all matters relating to culture broadly understood. But benign neglect is untenable, for two main reasons. The first is that it is "incoherent" for "there is no way to avoid supporting this or that societal culture" (1995a, 113). Proponents of benign neglect often argue that, like with religion, liberals should endorse the separation of state and culture. However, if it makes sense for the state not to have an established church, it doesn't make sense for the state not to have a language. The second reason is that benign neglect virtually always ends up supporting the majority societal culture, thereby disadvantaging both ethnic groups and

[10] Contrast this position with Kymlicka's position in "Liberalism and the Politicization of Ethnicity" where the argument seems to be that ethnic groups have no right to public support: "public subsidization of the ethnic activities of voluntary immigrant groups is best seen as a matter of policy, which no one has a right to, or a right against" (1991, 250).

national minorities. Put simply, the practice of benign neglect doesn't translate into treating all citizens with equal consideration.

Kymlicka's solution is to connect equal consideration with cultural membership instead of with benign neglect. He writes, "we need to take seriously the importance of membership in societal cultures, and any proposal that makes it impossible for people to have freedom and equality within viable societal cultures is inconsistent with liberal aspirations" (2001b, 54). For ethnic groups, ensuring equal consideration entails enabling their integration into an existing societal culture. Since national minorities already possess a societal culture, treating them with equal consideration requires making sure they can continue providing an adequate context of choice to their members. In short, taking seriously the principle of equal consideration entails "ensuring that all national groups have the opportunity to maintain themselves as a distinct culture, if they so choose," as well as "enabling integration, by providing language training and fighting patterns of discrimination and prejudice" for ethnic groups (1995a, 113-114).

Of course nothing precludes ethnic groups from becoming national minorities. Immigrants could settle together and seek to recreate their societal culture. However, in reality, ethnic groups "have not asked for or received such support" (1995a, 15). What is more, encouraging ethnic groups to establish their own societal cultures would most likely restrict their members' freedom and equality. Their lack of territorial concentration and of historical institutions makes its highly unlikely that ethnic groups would be able to provide their members with a meaningful range of options. As Kymlicka writes, "immigrant groups would just have a shadowy existence at the margins of society, denied both equality in the mainstream, and the means to develop and maintain a flourishing societal culture alongside the mainstream" (2001b, 54).

Above all, liberalism is a theory of individual rights. So, for a theory of minority rights to be considered liberal, minority rights should protect liberty and equality, not restrict them. Many believe it is impossible to square minority rights with individual rights. To counter these "erroneous assumptions," Kymlicka distinguishes minority rights as external protections from minority rights as internal restrictions (1995a, 35). Only rights that provide external protections are consistent with liberalism. These are intended to protect members of an ethnocultural group from external decisions. For example, granting self-government rights to national minorities can promote their distinctive societal cultures by making sure they are not outvoted in key areas such as education, culture and language. Or granting polyethnic rights to ethnic groups can protect important beliefs and practices that may be disadvantaged by existing legislation. Conversely, internal restrictions aim to limit the basic civil rights and political liberties of group members. A liberal theory of minority rights refuses to grant rights and accommodations that are sought after to curtail internal dissent or to impose religious beliefs or cultural norms on group members. In short, external protections can remedy "unfairness between groups" by "putting the various groups on a more equal footing," whereas internal restrictions lead to "individual oppression" by "limit[ing] the right of group members to question and revise traditional authorities and practices" (1995a, 36-37).

1.2 Nation-Building

The moral defense of liberal multiculturalism took a new turn in *Politics in the Vernacular* (2001b), *Can Liberal Pluralism be Exported* (2001c), and the second edition of *Contemporary Political Philosophy* (2002a). In these three books, Kymlicka presents minority rights as inherently tied to nation-building, speaking of the "complex dialectic of state nation-building and

minority rights" (2002a, 363). This new layer supplements, rather than trumps, the previous layer. It "draws upon" and seeks to "refine and extend" *Multicultural Citizenship*'s liberal theory of minority rights (2001b, 1; 2001c, xiv). In short, if the first layer was about drawing out the implications of fundamental liberal principles for multiculturalism and minority rights, the second layer is about drawing out the implications of state nation-building for multiculturalism and minority rights.

Only in the last fifteen to twenty years have liberal theorists begun to reflect on the role and legitimacy of nation-building within liberal democracies. Indeed, prior to the advent of liberal nationalism (Miller 1995; Moore 2001; Tamir 1993), nation-building had largely escaped the liberal philosophical tradition. Bentham, Mill, Rawls, and Dworkin all ignored it. To write about how nation-building relates to liberal principles of freedom, equality, and democracy required moving past benign neglect. As noted in an earlier discussion, the orthodox liberal position affirms that liberal states should be neutral with respect to cultural and linguistic matters. On this view, both liberal politics and liberal constitutional philosophy should be guided by the "norm of ethnocultural neutrality." Liberal states should define adherence to the political community in terms of political principles and should remain indifferent to the maintenance and reproduction of ethnocultural groups. In short, the flourishing of one culture and the decaying of another is independent of state support; it rests with whether or not people find if worthy of their allegiance, not with nation-building.

But benign neglect doesn't capture the liberal state, "both historically and conceptually" (2001c, 17). In reality, liberal democracies have made use and continue to make use of all sorts of state powers to promote integration into a societal culture. Indeed, they encourage even pressure their citizens to learn an official language and participate in common societal

institutions. For example, the United States, often held up as the prototypical neutral state, requires children, immigrants under the age of fifty, and civil servants to learn English. Modern states have several such tools of nation-building at their disposal. Writing on the legitimacy of nation-building in multinational states, Wayne Norman lists nine of them: official language policy, rules of immigration and naturalization, school curriculum, military service, mythology around wars, national symbols and holidays, naming of streets, towns, buildings, and geographical features, control or regulation of national media, and promotion of sports, particularly in international competitions (2006, 46-47).

Revealing that liberal states purposely aim to create or reinforce attachment to the societal culture through tools of nation-building is not merely a case of exposing a gap between liberal practice and liberal theory, of liberal democracies not living up to the norm of ethnocultural neutrality. It rather reveals that liberal states cannot be neutral because nation-building serves a number of important liberal democratic goals. Indeed, tools of nation-building have been of crucial importance for the implementation of fundamental liberal principles as well as for the overall consolidation of liberal democracy. Liberal democracies, in their *normal* operation, have made *deliberate* use of state powers to motivate attachment to the societal culture. Their expressed underlying goal has been for all citizens to view their life chances as intimately tied to the common language and societal institutions. Kymlicka writes, "promoting integration into a common societal culture has been seen as essential to social equality and political cohesion in modern states" (2001b, 26; 2001c, 21). In short, and to borrow from Michael Billig, nation-building and nationalist politics may be "banal," but banal doesn't mean benign (1995).

So, contrary to liberal orthodoxy, liberal states have historically been nation-building states. State policies, activities and discourses have served to promote liberal values such as freedom and equality, but also deliberative democracy, distributive justice, and social solidarity. At the same time, most of these come at a price for ethnocultural groups: they create injustices ranging from permanent exclusion to stigmatization to unsought integration. As Kymlicka writes, "people talk about 'troublesome minorities', but behind every minority that is causing trouble for the state, we are likely to find a state that is putting pressure on minorities" (2001b, 2). What emerges from unpacking the functions and goals of the liberal state is a new perspective on minority rights. If we accept that the liberal state, as its nation-building self, imposes injustices on ethnocultural groups, then we can see multicultural laws and policies, not as special rights and privileges, but as compensation for unjust disadvantages. In short, minority rights are perhaps best understood as legitimating conditions of state nation-building.

This revised account of the modern liberal state provides new moral leverage for the public recognition and accommodation of ethnocultural groups. In *Liberalism, Community and Culture* and *Multicultural Citizenship*, the moral case hinged on the compatibility of multiculturalism and minority rights with individual freedom and equal consideration. The main argument was that ethnocultural justice requires securing cultural membership, which entails protecting national minorities' societal cultures and enabling the integration of ethnic groups into their new society. In *Politics in the Vernacular*, *Can Liberal Pluralism be Exported*, and the second edition of *Contemporary Political Philosophy*, the morality of minority rights flows directly from the nature of the liberal state. Ethnocultural justice requires complementing state nation-building with minority rights. Put simply, justice in diverse societies takes the form of a

"complex package of robust forms of nation-building combined and constrained by robust forms of minority rights" (Kymlicka 2002a, 365).

1.3 Human Rights

So far we've seen that multiculturalism policies and minority rights promote individual freedom and equal treatment as well as help legitimate state nation-building. In recent years, namely in *Multicultural Odysseys* (2007e), but also in various responses to critics of multiculturalism, Kymlicka has supplemented these two layers of moral argumentation with a third layer that links multiculturalism to human rights. The argument is that the United Nation's *Universal Declaration of Human Rights* inadvertently set the stage for a threefold human rights revolution: the struggle for decolonization, the struggle against racial segregation, and the struggle for multiculturalism and minority rights. "The framework of human rights," he claims, "provides the overarching framework within which these struggles are debated and addressed" (2010e, 100).

With *Multicultural Odysseys* (2007e), Kymlicka set out to document the global diffusion of multiculturalism and minority rights, and to clarify the challenges ahead. The outlook is far from encouraging. The slate of norms and best practices being circulated by international intergovernmental organizations such as the United Nations, the International Labour Organization and the World Bank are fraught with "conceptual confusions, moral dilemmas, unintended consequences, legal inconsistencies and political manipulation" (2007e, 8). Without providing a full roadmap, Kymlicka begins to resolve these difficulties by detailing how these norms and practices are "fundamentally liberal in character" (2007e, 7). In particular, the book discusses the reasons for the return of minority rights on the agenda of the international community, formulates what Daniel Weinstock helpfully terms a 'general theory for the

implementability of liberal multiculturalism' (2009-10, 262), and examines norms and standards for national minorities in Europe and Indigenous peoples from around the world. Now, of course, convincing commentators to view multiculturalism as part and parcel of broader processes of liberalization and democratization doesn't translate into ensuring the future of the protection of minorities at the international level, but it does hopefully set the terms for a reasoned debate on the internationalization of multiculturalism and minority rights.

Of particular interest for present purposes is the connection between multiculturalism and human rights, in particular, the assertion that liberal multiculturalism is a "natural and logical evolution of the norms of universal human rights, and operates within the constraints of those norms" (2007e, 6). These two admittedly make strange bedfellows for, when conceived of, the universal human rights framework was precisely seen as an alternative to minority rights. Let's recall that the United Nations' predecessor, the League of Nations, sanctioned bilateral treaties whereby neighboring countries granted reciprocal protections to co-nationals having found themselves on the 'wrong side' of the border. This scheme contributed to the outbreak of the Second World War when Germany justified its invasion of Poland and Czechoslovakia by alleging that these two countries had failed to respect the treaty rights of ethnic Germans residing within their borders. Following the war, with notions of minority rights severely discredited, the international community reconstructed itself around the idea of universal human rights. The assumption was that guaranteeing civil and political rights to all individuals regardless of group membership would provide sufficient support to members of ethnocultural groups. Freedom of association, for example, enabled individuals to come together and so provided indirect support to a group's way of life. In short, human rights protected individual members of ethnocultural

groups, but, in contrast to the inter-war system or other schemes of minority rights, it did not protect collective institutions and practices.

Yet, since the 1960s, consolidated liberal democracies, all signatories of the UN's *Universal Declaration of Human Rights*, have accorded group-differentiated rights and protections to minorities and, since the 1990s, international intergovernmental organizations have promoted the same for post-communist and post-colonial states. Some see in these the triumph of cultural relativism and oppression, others the deepening of equality and justice. For Kymlicka, whether minority rights help or hinder human rights depends on their content and motivations. So, to be sure, the language of multiculturalism has been taken up to defend a mixed bag of minority practices, some consistent with human rights and liberal values, others not so much. For example, both sides of the recent Ontario debate over the establishment of Islamic arbitration tribunals presented their views as being in line with multiculturalism. If advocates argued that multiculturalism justified the protection of religious practices, opponents argued that multiculturalism foreclosed accommodations that weakened the equal rights of women (see Eisenberg 2007).

Looking at the schedule of multicultural accommodations and minority rights that emerged in liberal democracies, and that are now being diffused around the world by international organizations, Kymlicka argues that these are "an inseparable part of a larger human rights framework, and operate within its limits" (2010c, 75). More precisely, human rights were simultaneously inspiration and constraint for existing programs of multiculturalism and minority rights. "If it has helped to inspire minorities to push for multiculturalism, it is equally true that the human rights revolution constrains the ways in which minorities articulate and pursue their minority rights" (2010c, 78). Let me address each in turn.

First, human rights inspired liberal multiculturalism in the sense that the existing infrastructure of multiculturalism and minority rights in liberal democracies emerged out of, as an extension of, what we could call the international regime of human rights. This regime committed states to standards of equality and justice. For example, it repudiated ethnic and racial hierarchies and affirmed the equal moral worth of all human beings. This set of standards became a powerful tool for ethnocultural groups, providing them political clout and normative leverage in their struggles for equality and justice. More to the point, groups made rights-claims on the grounds that their respective governments were failing to live up to treaties, declarations, conventions, and agreements on human rights. Or, as Kymlicka puts it, the human rights norms "generated a series of political movements designed to contest the lingering presence of enduring effects of older ethnic and racial hierarchies" (2007e, 89). In short, the political and legal justifications for rule exemptions, territorial autonomy and language rights rest with the international regime of human rights.

Second, human rights also serve to constrain liberal multiculturalism in the sense that multiculturalism policies and minority rights are conditional on their consistency with the *Universal Declaration of Human Rights* and subsequent human rights norms. That is, "states are unlikely to accept strong forms of minority rights if they fear they will lead to islands of local tyranny within a broader democracy state" (2007e, 92). As a result, the sorts of multicultural laws and policies that have taken root in liberal democracies protect minorities against the majority, but also protect vulnerable individuals within the minority. A poignant example from the Canadian context is the debate on Aboriginal self-government and the *Charter of Rights and Freedoms, 1982*. If many liberals have come to support self-government for Aboriginal peoples, their support remains conditional on these entities operating within the limits of the *Charter* or of

an Aboriginal bill of rights that embodies basic human rights. James Tully, one of the country's more sensible commentator on Aboriginal peoples, insists, for example, on "the rights and freedoms of due process, the ability of citizens to participate in their governments, freedom of speech, gender equality, security of the person and so on" (2008, 250). In short, the international regime of human rights has served as a filter of ethnopolitical claims for political recognition and institutional accommodation.

These twin functions of human rights are crucial to properly understanding how multiculturalism and minority rights took shape in liberal democracies. Human rights have been central to the way ethnocultural groups formulated their claims for rights and accommodations as well as the way states formulated their responses to these claims. Moreover, understanding this dual role of human rights also adds another layer to the moral defense of liberal multiculturalism. Beyond being consistent with, perhaps even required by, basic liberal principles and helping to legitimize state nation-building, the recognition and accommodation of ethnocultural minorities also furthers the norms and standards embodied in the international regime of human rights. In sum, liberal multiculturalism goes hand in hand with human rights as articulated in international law and embodied in state and sub-state constitutions.

2. Patterns and Categories

If correct, the three-part moral defense of liberal multiculturalism justifies the adoption of laws and policies intended to recognize and accommodate ethnocultural groups. But no matter how convincing, these principles and norms, apart from distinguishing national minorities from ethnic groups on the grounds of their relationship to societal cultures, provide next to no guidance in terms of how liberal democracies should concretely go about responding to the distinctive needs

and protecting the distinctive identities of ethnocultural groups. One way to put this is to say that the first pillar of the Kymlickan approach to multiculturalism and minority rights may provide us with a principled defense of minority rights, but it doesn't provide us with a theory of minority rights.

Cue the second pillar of the approach – patterns and categories. Its goal is twofold. It first aims to make sense of the normative logic that underpins patterns of state-minority relations in liberal democracies. It then establishes categories of ethnocultural groups – a typology of groups – and identifies the rights and accommodations appropriate for each. So, beyond moral arguments, the theoretical infrastructure that underlies Kymlicka's body of work also calls upon sociopolitical patterns – what minorities actually claim in terms of recognition and accommodation and how liberal democracies in fact deal with ethnocultural diversity. The second section of this chapter examines the use of these sociopolitical patterns in the articulation of liberal multiculturalism. I first speak to the method, discussing its role and its motivations, before then looking at how the patterns and categories have evolved from *Liberalism, Community and Culture* through to *Multicultural Odysseys*.

2.1 On Theorizing Multiculturalism and Minority Rights

As far as I can tell, Kymlicka's first explicit discussion of methodology broadly understood came in a reply to commentaries on *Multicultural Citizenship* – "I will start by briefly restating the main motivation and *methodology* of the book" (2001b, 50; my emphasis). As we've seen, liberal theorists believe that the state should not help nor hinder the maintenance and reproduction of ethnocultural groups. Their currency is individual rights and liberties. Liberal legislators and jurists, however, think differently. Since the 1960s, they have been much more

inclined to move to protect and promote minorities' distinctive ways of life. Indeed, if we look closely at existing ethnocultural relations in liberal democracies, we find that virtually all states have complemented the familiar set of common rights and protections with group-specific rights and accommodations.

The result, then, is a gap between the practice and theory of liberal democracies. In the past, the gap was explained away as a mere matter of liberal states failing to live up to liberal theories of justice. However, for Kymlicka, as well as for all those contributing to the political theory of multiculturalism, liberal practice in the area of multiculturalism and minority rights may better embody liberal principles than liberal theory does. "I believe," Kymlicka writes, "that liberal democracies have in fact learned important lessons over the years about how to treat ethnocultural groups in a way that is consistent with constitutional guarantees of freedom and equality" (2001b, 53). Or, "we might also say," Joseph Carens suggests, "that liberal theories (and the theories of the critics of liberalism) often do not live up to liberal practices" (2000, 4). The challenge, in short, is to disentangle principles from practices in order to reveal patterns and establish categories. Put differently, Kymlicka seeks to develop a theory of multiculturalism and minority rights by articulating the normative logic that underlies the existing institutions and policies for respecting ethnocultural diversity.

For more on methodology, we must fast-forward to a recent article on Michael Walzer's contribution to and impact on the political theory of multiculturalism. This article, entitled "Categorizing Groups, Categorizing States," constitutes Kymlicka's clearest statement on the role of state practices and group claims in the articulation of his theory of liberal multiculturalism. The politics of multiculturalism and minority rights play out differently across countries and across minorities. Minorities make different claims against their states and states

treat the minorities on their soil differently. The hard reality, Kymlicka admits, is that if we hope to arrive at a theory that can help us understand and evaluate the politics of multiculturalism and minority rights, we need to identify "certain common patterns" in order to bring "some conceptual order" (2009a, 373). Put differently, "we need to distinguish the fundamental principles from the contingent practices" (2001b, 7).

There are two basic ways of doing this. Like Walzer we could aim to develop a "*state-differentiated* theory of minority rights" or like Kymlicka we could opt for a "*group-differentiated* theory of minority rights" (2009a, 374; emphasis in original). For Walzer, coming up with a theory of minority rights requires accounting for the normatively important differences that exist between types of states in terms of how they deal with their internal diversity. Looking closely at the politics of multiculturalism and minority rights, we'll notice that patterns of ethnocultural relations are consistent across types of states. As Kymlicka writes in describing Walzer's approach, "each type of state is seen as having a distinctive but coherent logic toward diversity" (2009a, 374). The crucial task, then, consists in categorizing states, in establishing a typology of states. In *On Toleration*, for example, Walzer distinguishes five types of states – what he calls "regimes of toleration" or "models of a tolerant society" (1997). Each type of state is taken to observe a distinct set of principles and practices towards the recognition and accommodation of ethnocultural diversity. There are, Walzer argues, "norms of everyday life appropriate to each" (1997, 3). So, on this view, the German government can legitimately treat ethnocultural groups within its borders differently than the American government for Germany is a nation-state and the United States is a post-ethnic state or an "immigrant society." In short, and as Walzer writes in a short response to Kymlicka, "it is worth insisting that there are different

types of states, even of liberal democratic states, and the differences need to be described before we can argue about what their consequences ought to be" (2001, 150).[11]

For Kymlicka, the patterns that matter are those that are consistent across types of groups, not across types of states. To articulate a theory of minority rights, we need to categorize groups and then formulate the rights and accommodations that are appropriate for each. Each type of group has an "intrinsic tendency," a "distinctive logic of legitimate claims-making" (2009a, 374). Wherever a certain type of group exists, the state should adopt the principles and practices of the relevant category. So, to stick with the above example, what matters about Germany and the United States is not that one is a nation-state and the other a post-ethnic state, but that they are both liberal democracies. On this view, what's important about nation-states and post-ethnic states is that they are liberal democracies and liberal democracies should be governed by the same set of norms and standards. As Kymlicka writes in *Multicultural Odysseys*, "we cannot hope to understand the theory and practice of liberal multiculturalism without coming to grips with its targeted or group-differentiated character" (2007e, 79).

The group-differentiated (and state-undifferentiated) approach to theorizing multiculturalism and minority rights rests on a number of assumptions. One, it departs from the premise that ethnocultural groups want to belong to the political institutions of the country in different ways. It assumes that different groups want different political or legal status within the

[11] To be fair, Walzer has slowly come on board with the idea of distinguishing between groups. For example, in *Politics and Passion*, he concedes, "when arguing about multiculturalism and democratic citizenship, we have to pay attention, *as I have only begun to do*, to the specific features of group life and the specific demands of different groups" (2004, 45; my emphasis). That being said, that same book asserts that "groups that make the strongest claims" are "committed to a traditionalist or fundamentalist version of religion and culture," a statement that clearly misrepresents a number of struggles for multiculturalism and minority rights. So, in short, the verdict is still out on whether Walzer will actually complement his typology of states with a typology of groups.

larger state. We can already see this assumption in *Liberalism, Community and Culture* when Kymlicka distinguishes individuals that are incorporated into the state 'universally' from those that are incorporated 'consociationally' (1989, 137). The assumption, however, probably draws much of its purchase from Charles Taylor's oft-quoted distinction between first-level and second-level or deep diversity. "To build a country for everyone," he argued, "Canada would have to allow for second-level or 'deep' diversity, in which a plurality of ways of belonging would also be acknowledged and accepted" (1993, 183). Kymlicka calls this 'the assumption of intrastate deep diversity in claims-making'.

Two, proponents of the group-differentiated approach assume consistency in the political behavior of types of groups across liberal democracies, or what Kymlicka calls 'the assumption of cross-national consistency in claims-making'. If we look closely at patterns of state-minority relations in countries that are part of the liberal-democratic family, we will find that similar types of groups seek similar kinds of rights and accommodations. This assumption was crucial to *Multicultural Citizenship* – "there are deep and relatively stable differences between various kinds of ethnocultural groups" (2001b, 59). Further, in defending the differential treatment of ethnic groups and national minorities, Kymlicka argued that it was a "well-established" and "long-standing" feature of "virtually all" liberal democracies (2001b, 50-51).

Three, the group-differentiated approach also assumes that liberal democracies, precisely because they are liberal democracies, should use similar normative criteria for understanding and evaluating claims for recognition and accommodation. The normative criteria used to evaluate the claims of ethnocultural groups, Kymlicka argues, should be "nationally anonymous" rather than "nationally-specific" (2009a, 375). This assumption can draw weight from standards and legal norms being codified and disseminated through international organizations such as the

United Nations, the Organization of American States, and the International Labour Organization (Kymlicka 2007e). This is called 'the assumption of uniformity in normative criteria'.

In short, for Kymlicka, theorizing multiculturalism and minority rights entails closely examining group claims and state practices in order to uncover and articulate their underlying normative logic. This method – of making sense of the normative logic embedded in ethnocultural relations – reveals what Kymlicka calls 'the operative principles that guide legislators and court cases' (2009a, 385).

2.2 Kymlicka's Typology

I now want to examine the significant evolution in Kymlicka's classification of ethnocultural groups. Indeed, most overlook or decide to ignore the fact that, over the years, he has defended two-, three-, four-, five-pronged group-based typologies. Discussing these changes helps me to first emphasize what's normatively important about the categories he has finally settled on and then show how the approach is flexible enough to account for differences within and beyond the established categories.

Kymlicka's original typology distinguished African-Americans from all others – what he called minority cultures. Others encompassed the "American Indian population," "aboriginal peoples in Canada, New Zealand, and Australia," "minorities in the multicultural countries of Western Europe, such as Belgium and Switzerland," and cultural minorities in "many African, or Eastern-bloc, countries" (1989, 136-137). His main focus, though, was the Aboriginal peoples of Canada. As we've already seen, *Liberalism, Community and Culture* constituted a liberal defense of minority rights at a time when liberals didn't defend minority rights. There are a number of reasons for which liberals rejected any legislation that distinguished people on the basis of ethnic

or racial or linguistic affiliation, but the main one was their predisposition to viewing minority struggles in terms of American race relations. Hence Kymlicka's contention that the "fundamental task confronting political philosophers outside the United States" is that of disentangling "the core lessons and ideals of American liberal political philosophy" from the "local peculiarities of American race relations" (2006a, 83-85).[12] Or, on a more sarcastic note, self-described American-Canadian Joseph Carens tells that Rawls couldn't have been a Canadian since no Canadian would overlook language in a comprehensive theory of justice, same as no American would ignore race or religion (2000, 5).

So, in *Liberalism, Community and Culture*, Kymlicka reasons that the "first task is to take a closer look at the analogy between the segregation of blacks and aboriginal self-government" (1989, 145). The problem is that, unlike what most liberals have come to believe, American race relations are anomalous, not paradigmatic, when seen in relation to the struggles of other minorities from around the world. To be sure, racial desegregation required defending the primacy of individual rights and adopting a colour-blind constitutional framework. Group-specific rights and policies had clearly served to justify racial privileges and perpetuate unjust treatment. Coming to minority rights with, perhaps inadvertently, the American case in mind, liberal theorists, like Rawls and Dworkin, equated equality and justice with the right of every citizen to full and equal participation in the cultural, economic and political life of the country. However, if for African-Americans justice required facilitating their full integration into the institutions of mainstream society, for other minorities, such as Aboriginal peoples in Canada, justice calls for measures that will allow them to develop their distinct cultural lives. Most

[12] Or more bluntly: "It is often said that for a man with a hammer, every problem looks like a nail. For Americans with a powerful theoretical and institutional framework of anti-discrimination laws, every minority problem looks like southern-style racial segretation" (2006a, 84).

minority cultures have different cultures and different languages and want these protected and promoted. In short, if African-Americans sought integration into mainstream society, other minorities want separation or distance from mainstream society.

The distinction between African-Americans and minority cultures tout court was before long discarded in favor of another two-pronged typology, which was introduced in a 1991 article entitled "Liberalism and the Politicization of Ethnicity," but really gained prominence through *Multicultural Citizenship*.[13] It distinguishes national minorities, which were self-governing before being incorporated into a larger state, from ethnic groups, which are the result of individuals and families whom chose to leave their society. The distinction rests with their mode of incorporation, which in turn shapes their desired relationship with the larger society.

National minorities are "previously self-governing, territorially concentrated cultures" that were often forcibly, at times voluntarily, annexed into larger states. As a general rule, they "wish to maintain themselves as distinct societies alongside the majority culture." Their demands against the state typically revolve around "forms of autonomy or self-government." For their part, ethnic groups arose as a result of individuals and families choosing to leave their society in order to join another one. Unlike national minorities "they typically wish to integrate into the larger society, and to be accepted as full members of it." Their demands are for exemptions from and modifications to the institutions and laws of the larger society so as make them more accommodating of their distinctive customs and norms (1995a, 10-15).

[13] To be fair, Kymlicka was most likely referring to 'national minorities' when speaking of 'minority cultures' in *Liberalism, Community and Culture*. His main examples, Aboriginal peoples in Canada and French Canadians (meaning Québécois), became the main examples for national minorities. Moreover, in the introduction to *Liberalism, Community and Culture*, he writes that the "issue of cultural membership which lies at the heart of most claims by *national minorities*" (1989, 4; my emphasis). Last, in "Liberalism and the Politicization of Ethnicity," he uses 'national minorities' and 'minority cultures' interchangeably (1991, 239).

Most liberal democracies have responded to minorities' differing aspirations by adopting differing sets of measures. In response to national minorities' demands for forms of political autonomy, liberal states have adopted self-government rights. These entail the devolution of political powers in key areas, such as culture, education and language, to a political unit controlled by the national minority. Polyethnic or accommodation rights are intended to promote and facilitate the integration of ethnic groups into the larger society. They include exemptions from rules and laws that put them at a disadvantage, such as animal slaughtering legislation, official dress codes and Sunday closing, changes to the education curriculum, and public funding of associations and events. Although not as prominent as the first two, special representation rights have received increasing interest from ethnocultural groups and from academics. Political institutions in virtually every liberal democracy are dominated by middle-aged, middle-class, able-bodied white men, and one way to counter this would be to reserve seats in the legislature for the members of disadvantaged or marginalized groups.

Of course not all ethnocultural groups are national minorities or ethnic groups. The most obvious is the situation of African-Americans, whom were certainly not voluntary migrants and whom do not share a distinct common language, nor have a homeland in the United States. Refugees also didn't voluntarily leave their former society; political persecutions and economic hardships namely compelled them to flee. And others, such as the Hutterites, Mennonites and Doukhobours in Canada, "fall in-between," with a "status that involves more than polyethnic rights but less than self-government" (1995a, 216 n 23; see also 1991, 250 n 39). Despite these hard cases and grey areas, Kymlicka defends the importance of distinguishing national minorities from ethnic groups. They are the two "most common" patterns of ethnocultural diversity and represent "real and important successes," which may "give us the confidence to tackle the more

difficult cases" (2001b, 57-58). Stated differently, we have to begin somewhere, and there is definitely merit in starting with patterns that are working comparatively well.

Then came what we can describe as a crossroads. On the one hand, making sense of the normative logic embedded in patterns of state-minority relations entailed expanding the two-pronged typology in order to account for ethnocultural groups that aren't national minorities nor ethnic groups. "In order to identify the underlying logic and social implications of minority rights claims, we need first to consider what sorts of groups exist within the state" (Kymlicka and Norman 2000, 18). On the other hand, coming up with a morally defensible and politically viable theory of justice for diverse societies required focusing on the main types of groups that dominate the field of ethnocultural politics. "I have focused on these two cases," Kymlicka explains, for example, in relation to national minorities and ethnic groups, "because they are the most common, the most successful, and the most relevant for future-oriented decisions" (2001b, 59). Another way to put this is to say that the first pillar of the Kymlickan approach pulled towards emphasizing the liberal credentials of the main patterns of ethnocultural relations, whereas the second pulled towards articulating the normative logic underlying all group claims and all state practices.

Initially, Kymlicka followed both paths simultaneously. For example, if *Citizenship in Diverse Societies* (2000), *Can Liberal Pluralism be Exported* (2001c) and *Contemporary Political Philosophy* (2002a) worked with four- and five-pronged group-based typologies, *Politics in the Vernacular* (2001b) sought to refine and extend the liberal theory of minority rights outlined in *Multicultural Citizenship* (1995a) and as such largely stuck to its two-pronged typology. However, as the focus of his work shifted from the domestic politics of ethnocultural diversity in liberal democracies to the internationalization of multiculturalism and minority rights

through treaties and declarations, Kymlicka finally settled upon three forms of ethnocultural diversity: national minorities, indigenous peoples and ethnic groups.[14] In *Multicultural Odysseys* (2007e), for example, liberal multiculturalism is taken to mean the accommodation and recognition of national minorities, such as the Flemish in Belgium and the Catalans in Spain, indigenous peoples, such as the Sami in Scandinavia and the Maori in New Zealand, and the immigrant groups of countries of immigration such as Canada and the United States, but also Britain, France and the Netherlands. Part of the explanation behind the global diffusion of norms and standards of multiculturalism and minority rights was the hope that the three-pronged liberal multiculturalism that had taken root in liberal democracies could be extended to the rest of the world. As Kymlicka puts it, "the hopeful belief in a truly liberal and democratic form of multiculturalism provided the inspiring ideal and sense of moral direction" (2007e, 51). These categories, in short, have become embedded in the legislation and institutions of a number of liberal democracies and are those that international intergovernmental organizations have been working with.

The underlying point to draw from this broad discussion of *patterns and categories* is that the Kymlickan approach can account for ethnocultural groups beyond national minorities, indigenous peoples and ethnic groups. As Kymlicka himself allows, "I believe that we could

[14] It took some time for Kymlicka to come around to the distinction between national minorities and indigenous peoples. In *Multicultural Citizenship*, indigenous peoples were part of national minorities. In a 1999 commentary later published in *Politics in the Vernacular*, Kymlicka refused to fully endorse James Anaya's sharp divorce of indigenous rights from the rights of national minorities, arguing that "more work remains to be done in exploring the relationship between indigenous peoples and other national groups" (2001b, 120). The year later, in an article entitled "Federalism and Secession," he somewhat revised his position, stating that national minorities can be "subdivided" into stateless nations, such as the Québécois, and indigenous peoples, such as the Inuit (2000, 207). Then, in a 2003 article entitled "Multicultural States and Intercultural Citizens," he came around to the now standard threefold distinction (2003c, 152-153).

extend this method to look at other types of ethnocultural groups which do not fit into the category of national minorities or immigrants" (2001b, 32). In short, the task consists in locating patterns – both group claims and state practices – and uncovering their underlying normative logic.

In conclusion, this chapter has tried to clearly distinguish the many layers and facets of Kymlicka's approach to multiculturalism and minority rights, as well as, in the process, defend the overall approach as an especially fruitful way of conducting normative enquiries into the politics of ethnocultural relations. In reconstructing this Kymlickan approach, the chapter introduced a basic distinction between moral arguments and sociopolitical patterns. These represent the two pillars of his normative defense of liberal multiculturalism.

The first pillar – moral arguments – consists of three layers of principled argumentation. These flesh out, in turn, the relationship multiculturalism and minority rights bear with prominent theories of liberalism, nation-building and nationalist politics, and universal human rights. The three-part moral defense of liberal multiculturalism justifies the adoption of laws and policies that recognize and accommodate ethnocultural groups. However, it doesn't provide much guidance in terms of how liberal democracies should concretely go about recognizing groups and accommodating their claims. The second pillar – sociopolitical patterns – compensates for this by locating common patterns and establishing categories of groups. It is at this stage that Kymlicka, in an effort to formulate a politically viable theory of justice, sets out to uncover and articulate the normative logic that underpins patterns of state-minority relations in liberal democracies. Conducting such analysis will enable him to identify the rights and accommodations appropriate for the three more common types of groups: aboriginal peoples, national minorities, and ethnic groups.

More broadly, this chapter has also revealed how Kymlicka's approach to theorizing about ethnocultural justice sits much closer to democratic approaches than their exponents admit to. As shown, Kymlicka doesn't merely ask whether or not liberal states can tolerate given minority demands, but instead insists that multiculturalists uncover the normative logic that underlies both group claims and state measures. He has in fact advanced pragmatic and deeply contextual arguments for granting rights and accommodations to ethnocultural minorities. Writing on dilemmas facing the internationalization of minority rights, for example, Kymlicka writes that perhaps the role of the international community should be to promote the creation of "a democratic space for states and minorities to slowly work out their own accommodations" by ensuring "respect for human rights and political freedom." The relationship in his approach between liberal principles and democratic debate emerges in the last sentence of that article: "if it proves impossible to codify substantive minority rights in international law, we must at least be clear that the meager provisions currently codified in European instruments are the starting point for democratic debate, not the end point" (2006b, 61-63).[15] In brief, the point is not that Deveaux and Kymlicka, for example, endorse the exact same approach to normative theorizing about ethnocultural politics, but rather that both are combining moral principles with contextual facts in an effort to devise morally consistent and political viable solutions to issues relating to the respect and recognition of ethnocultural minorities. The next chapter examines how Kymlicka, as well as two of his critics, have failed to properly give effect to, as it were, the Kymlickan approach when studying the recognition and accommodation of Canada's Francophone minority communities.

[15] More anecdotal but very telling, Donald Horowitz has recently complained about the lack of normative arguments in Kymlicka's recent work – "*Multicultural Odysseys* lacks normative argument" (2010, 145).

Chapter 4

Canada's Francophone Minority Communities

> *"Les minorités francophones hors Québec échappent largement à la réflexion tant sur les minorités – consacrée essentiellement aux minorités territorialisées – que sur les groupes ethniques, ce qu'elles ne sont pas complètement" (Thériault et al. 2008, 22).*

The last chapter uncovered and articulated the at times intricate theoretical infrastructure that underlies Kymlicka's body of work from *Liberalism, Community and Culture* (1989) through to *Multicultural Odysseys* (2007e) and beyond. If correct, the Kymlickan approach to multiculturalism and minority rights rests on a combination of *moral arguments* and *sociopolitical patterns*. It requires connecting multiculturalism and minority rights with fundamental liberal principles such as equality, liberty, justice and democracy, and then articulating the normative logic embedded in both group claims and state practices. The main goal is to show how current patterns of ethnocultural relations perhaps already embody liberal principles and, if they don't, explain how they could be made compatible.

This chapter shows how Kymlicka and his main critics have failed to fully address and properly account for the entire line up of rights and accommodations that aim to recognize and accommodate Canada's Francophone minority communities. The analysis proceeds in two main steps. First, it surveys Kymlicka's own, influential efforts to understand and evaluate federal laws and public policies responding to Canada's internal diversity – what's often termed the "Canadian model of diversity" (s. 1). Second, it examines and criticizes Rodrigue Landry and Johanne Poirier's respective efforts to make use of Kymlicka's toolkit to assess and account for the federal government's response to claims for justice and equality from Canada's Francophone

minority communities (s. 2). In short, the chapter uncovers a "blind spot" in Kymlicka's conceptual ordering and principled justification of the Canadian model and argues that recent attempts at remedying the gap have also failed.

1. Kymlicka's Canada

Kymlicka has of course published extensively on Canada, relying on his more theoretical work – what I've termed the Kymlickan approach to the politics of multiculturalism and minority rights – to make sense of state-minority relations in his home country. His *Finding our Way* (1998a) perhaps still stands as the most comprehensive conceptual account and normative defense of the Canadian model of diversity, especially of state multiculturalism. What is more, since that book, he has published over a dozen articles on the Canadian model, distinguishing its core institutional features, identifying its underlying social and political circumstances, and evaluating its outcomes. Surveying all these publications, I provide a comprehensive overview of Kymlicka's views on the Canadian model, accounting for the evolution in his thinking over time, before then looking more closely at how he has understood the policies and laws responding to what he calls "Canada's French Fact."

1.1 Finding Our Way (Or Two Tracks to Ethnocultural Relations in Canada)

In the late 1990s, amid the "near hysteria" that had taken hold of much of the public and even academic debate on ethnocultural relations in Canada, Kymlicka's *Finding Our Way* aimed to "put things back into perspective," to "emphasize the lessons we have already learned, and the ample resources we can draw upon" (1998a, 4-5). Let's recall that it was written during a tenuous political period, on the heels of the failure of the Meech Lake and Charlottetown

Accords in 1990 and 1992, the near victory of separatist forces in the second Québec referendum on sovereignty in 1995, and the release of the Report of the Royal Commission on Aboriginal Peoples in 1996. On the whole, after carefully examining the basic institutions and principles that underlie the Canadian model of diversity, it concludes that multiculturalism is working well and that federalism finds itself in a bind.

This book represents Kymlicka's initial foray onto the Canadian political system. He had previously written on Canada, but not systematically. *Liberalism, Community and Culture* (1989) appealed to Aboriginal peoples and the French Canadians in Québec to defend cultural membership; the recognition and accommodation of Québec was called upon in *Multicultural Citizenship* (1995a); and there were a handful of Canadian-content articles on group representation (1993), Québécois nationalism (1995b), and differentiated citizenship (1996). *Finding Our Way*'s real significance, however, lies not in being Kymlicka's first comprehensive treatment of Canadian policies and principles in the area of ethnocultural diversity, but rather in being the first tout court. Of course, over the years, many have analyzed and evaluated public policies specific to Aboriginal peoples (Asch 1984; Cardinal 1969), to immigration (Porter 1965; Reitz and Breton 1994) and to official languages and Québec (Laforest 1995; McRoberts 1997). But none had endeavored to describe and explain how each of these clusters of political measures and legal decisions relate to one another and perhaps even come together to form a distinctly Canadian model of diversity.

Finding Our Way goes back and forth between two levels of analysis. Let's call them *conceptual* analysis and *normative* analysis. It first aims to provide a sort of conceptual map of the public policies, administrative practices and constitutional principles that speak to ethnocultural diversity in Canada. It then tries to articulate the normative rationale that underlies

these measures and emphasize their relationship to liberal principles of democracy, individual freedom, and social justice. In other words, beyond mapping the Canadian model of diversity, it also asks whether it is morally defensible. Underlying the book is a plea for being careful not to confuse and conflate policies and principles of ethnocultural diversity. The 1988 Multiculturalism Act is not the 1988 Official Languages Act, Section 35 of the 1982 Constitution Act is not Section 27 of the same Act, and Ukrainian-Canadians are not the Québécois.

The book begins with the assertion that there are two broad patterns of ethnocultural diversity in Canada: *national* diversity and *polyethnic* diversity. The first source includes "the people who were here before the British, namely the Aboriginal peoples and French Canadians" (1998a, 6). They form "national minorities" because they were self-governing societies before their incorporation into British North America and continue to see themselves as nations within (or without) Canada. Not only do they still live on their historic lands, but also their political demands typically revolve around rights to govern themselves according to their own rules. As Kymlicka notes, these are not demands of "general decentralization of power, to promote administrative efficiency or local democracy," but rather demands of "recognition as distinct peoples and as founding partners in the Canadian state who have maintained the right to govern themselves and their land in certain areas" (1998a, 6). Aboriginal peoples and the Québécois typically desire self-government rights.

The second source of ethnocultural diversity is the result of personal and family immigration. Immigration is a long-standing feature of Canada. In contrast to national minorities, ethnic groups chose, more or less voluntarily, to leave their country to come settle in Canada. "The fact that these groups were formed initially through immigration," Kymlicka writes, "is pivotal in understanding their status in Canada" (1998a, 7). Their political demands also differ

significantly from those of the Aboriginal peoples and the Québécois. They typically seek exemptions or adjustments to society's rules in order to practice their cultural or religious customs. These are called polyethnic rights. The intent of these rights is to facilitate the full integration of immigrants into the mainstream economic and political institutions of the country without threatening their most fundamental cultural practices or religious beliefs.

As mentioned, *Finding Our Way* argues that Canadian multiculturalism has been more successful than many have been recently led to believe – "I hope to show that multiculturalism is a coherent, defensible, and indeed successful approach to the integration of ethnic groups in Canada" (1998a, 8). Misunderstandings of its role and impact ensue from commentators failing to examine what the actual policy involves and government officials relying on broad notions of 'diversity' and 'tolerance' to defend its merits and define its limits. Trying to move the debate past "misinformed critics" and "inarticulate defenders," Kymlicka's strategy is to provide a comprehensive overview of the constitutive substance – the principles and the institutions – of Canadian multiculturalism (1998a, 122).

To him, multiculturalism is best understood as a "regulative" or "organizing" principle, as a "vehicle to adjusting the terms of integration" across a range of policy areas that relate to ethnocultural relations, including education, employment and citizenship (1998a, 1, 8 and 58; see also Abu-Laban and Gabriel 2002). Put differently, if we can imagine government policies as generally standing vertically, multiculturalism lies horizontally and so cuts across most other policy areas. In that sense, multiculturalism promotes integration in that, as an 'horizontal' policy statement, it aims to make sure that 'vertical' line departments set fair terms of integration for immigrants and their descendants. "After all," Kymlicka notes, "multiculturalism is not the only – or even the primary – government policy affecting the place of ethnic groups in Canadian

society; it is just one small piece of the pie" (1998a, 24). For example, multiculturalism comes with monitoring mechanisms whereby government departments are required to report back each year on how their policies and programs are consistent with the Multiculturalism Act.

So, Canadian multiculturalism promotes integration by encouraging and enabling newcomers to renegotiate their terms of integration in society and its major social, political and economic institutions. All modern democracies seek to integrate newcomers (and residents) to common institutions. Kymlicka writes, "the Canadian government encourages, pressures – even legally requires – integration into either the anglophone or the francophone societal culture in Canada" (1998a, 28). Such integration can serve legitimate democratic goals, such as social equality and political solidarity. Having equal opportunities requires having learned at least one of the country's official languages in order to be able to participate in the modern economy, and the continued existence of a strong sense of membership to a common societal culture is relied upon to sustain support for welfare programs. Integration can also impose undue burdens and unfair requirements on immigrants (and on national minorities). Norms and principles that were long thought to be neutral are in fact derived from the culture and religion of the dominant group. A society's dress codes, civic holidays, and dietary customs are generally those of the majority.

Immigrants, then, make demands upon the state – are brought to negotiate their terms of integration – because the state and its institutions impose demands that put them at a disadvantage. Canadian multiculturalism, Kymlicka argues, has evolved into a framework through which the host society and immigrants can negotiate and eventually revise the terms of integration across a range of policy areas, to ensure that they are fair. Specifically, since espousing multiculturalism in 1971, the federal government has adopted numerous policies and programs in an effort to promote fairer terms of integration, including affirmative action

programs, anti-racism education programs, transitional bilingual education programs, and revisions to school curricula, work schedules and dress codes.

Beyond setting fair terms of integration, multiculturalism also raises the question of the limits of tolerance. If multiculturalism comes with the liberal democratic impulse of facilitating the institutional integration and civic participation of immigrants, it also comes with the liberal democratic impulse of affirming basic principles of individual freedom and equality. For example, multiculturalism has rejected the practice of clitoridectomy and of compulsory arranged marriages since these are not about integrating into mainstream institutions and, further, they violate liberal democratic principles that underlie Canadian institutions. The challenge, then, is to facilitate social and political integration without infringing on individual rights, namely those of women and internal minorities.

Building on a distinction introduced in *Multicultural Citizenship*, Kymlicka says that multiculturalism can only justify rights and accommodations that aim to limit a group's vulnerability to economic or political decisions made by the larger society, not those that would give groups the power to restrict the liberty of their members. Liberal democracies can only endorse 'external protections', not 'internal restrictions'. Existing policies of affirmative action and revisions to school curricula, for example, fit the bill as they are about promoting equality between groups by facilitating access to mainstream institutions – "what multiculturalism does provide is a set of external protections for immigrant groups dealing with rules and institutions of the larger society" (1998a, 64).

While multiculturalism has broadly speaking positively impacted immigrants by enabling their institutional integration, federalism has increasingly become an impediment to the satisfactory accommodation of the Québécois and the Aboriginal peoples – "the outlook for

accommodation of our 'national differences' is not particularly promising" (1998a, 10). These ethnocultural groups pose challenges that are fundamentally distinct from those raised by immigrant groups. If most immigrant minorities want to integrate and request help in doing so, non-immigrant national minorities want to maintain themselves as distinct self-governing societies. Put simply, the first seek integration, the second reject it.

Canadian federalism has historically managed to come to terms with minority nationalist aspirations in a mostly peaceful and democratic way, especially with regards to Québec. However, the current recipe of strong minority demands for national recognition paralleled with a government strategy of 'papering over differences' is unsustainable in the new constitutional context. Precisely, with the adoption of the 1982 Constitution Act, Canada effectively went from having a neutral constitution to what Kymlicka calls an "aspirational constitution" – a constitution that entrenches a particular view of national identity and national loyalty (1998a, 148). "The problem," as Kymlicka observes, "is that French- and English-speaking Canadians have adopted two very different conceptions of federalism" (1998a, 136). The former – Québécois and Aboriginal peoples – understand Canada to form a multinational state and as such pursue multination federalism, whereas the latter – non-Québécois and non-Aboriginal Canadians – have a territorial understanding of the Canadian federal system and thus endorse territorial federalism. The crux of the problem is that the view of the federal government and the nine other provinces has been given constitutional standing and that of the Québécois and Aboriginals has not.

All this may come as a surprise since the principal reason behind the adoption of a federal system in 1867 was the need to accommodate Québec. It is well rehearsed that most English-Canadian leaders would have preferred a unitary government. But instead Canada became a

federation and reestablished the province of Québec. In fact, the Canadian federation provides a realm of self-government for the Québécois that includes control over education, language, culture and an important say on immigration. (These constitutional powers are also guaranteed to the nine other provinces.) Sujit Choudhry writes, "Canada is a multinational federation because the boundaries of the province of Quebec were drawn so that francophones would constitute a majority therein" and because "Quebec has been granted a mix of concurrent and exclusive jurisdiction over a wide range of policy areas that gives it the tools to ensure the survival of a francophone society" (2007, 613). We could then be led to believe that the Canadian federal system is genuinely multinational in character.

But Canadians, Kymlicka argues, have refused to follow through on the logic of multinational federalism, insisting instead on an equal distribution of legislative powers between all provinces and the federal government.[16] The Québécois seek different and more extensive powers than other provinces in order to sustain their cultural distinctiveness and to affirm their national character. What is more, beyond the structural features of the federal system, multinational federalism is also about whether the political culture is in step with principles of multinationalism – with 'intersubjective norms of mutual recognition' that are hospitable to the different nations that comprise the country (Tully 2004, 87-90). Canadians' support for territorial federalism and opposition to multinational federalism has come clearly into view in debates on 'special status' for Québec.

To be clear, the issue here is not that Québec and the other provinces have different visions of the separation of legislative powers. And so it is not merely about Québec wanting

[16] While my discussion here focuses on Kymlicka, Alain-G. Gagnon has probably given this issue its most extensive treatment in a series of books and articles. See namely *Federalism, Citizenship and Québec* (and Iacovino 2007) and *L'âge des incertitudes* (2011).

more powers than say Manitoba or Nova Scotia. The crux of the debate is more fundamental; it is about how Québec's understanding of the federation and the federal system differs from that of most of the rest of Canadians. As Kymlicka puts it,

> For national minorities like the Québécois, federalism implies, first and foremost, a federation of *peoples*, and decisions regarding the powers of federal subunits should recognize and affirm the equal status of the founding peoples […] By contrast, for English-speaking Canadians federalism implies above all a federation of *territorial units*, and decisions regarding the division of powers should affirm and reflect the equality of the constituent units (1998a, 143; emphasis in original).

So, for Québec, having more powers than other provinces is about *national* recognition, it is about constitutionally acknowledging that Québec is not merely a province but a people or a nation (or a national minority). In that sense, an across-the-board devolution of powers from the federal government to provincial governments will not suffice. As Alain-G. Gagnon and Raffaele Iacovino state in introducing their book on multinationalism in Canada, "Canada can grapple all it wants with questions of national unity, but Quebec will always be there demanding the rightful accommodation of its status as a majoritarian democratic space within the larger federation" (2007, 4). In short, in a multinational federal system, 'nationality based-units' will have different powers and different forms of recognition than 'region-based units' (Kymlicka 1998a, 139).

Issues of national recognition also underlie much of the on-going debates between the Canadian federation and Aboriginal peoples. Indigenous peoples in Canada and elsewhere generally self-identify as nations and have been recognized as bearers of rights of self-determination in the 1993 UN Draft Declaration on the Rights of Indigenous Peoples (finally accepted by the UN General Assembly in 2007). Then again, the situation of Aboriginal peoples is much more difficult than that of the Québécois because Aboriginals do not control a federated unit nor enjoy extensive rights of self-government (except in Nunavut since 1999). Kymlicka, however, doesn't spend much time discussing Aboriginal peoples for there were important

internal debates within Aboriginal communities at the time as to the nature of their self-determination and of their units of self-government.[17]

In summary, *Finding Our Way* establishes a clear-cut distinction between the accommodation and recognition of ethnic groups and of national minorities. The first mostly demand changes to their terms of integration and, in large measures, the existing multicultural framework has encouraged and enabled the renegotiation of these terms so as to make mainstream institutions more hospitable to numerous beliefs and ways of life. The second reject integration and have sought powers that would enable them to develop and flourish as distinct self-governing societies alongside the majority society. The Canadian federal system, unlike multiculturalism policies and principles, has failed to fully come to terms with demands for national recognition and collective autonomy, instead pushing ahead with vague references to 'distinct society' coupled with an emphasis in government publications and rhetoric on 'shared values'. In short, understanding and eventually evaluating ethnocultural relations in Canada requires acknowledging, first, that there are two distinct forms of ethnocultural politics in the country and, second, that each requires distinct state responses.

1.2 Canada's Three-Pronged Approach to Ethnocultural Diversity

Since *Finding Our Way*, Kymlicka has published a dozen articles and book chapters on the politics of multiculturalism and minority rights in Canada (1998b; 2001a; 2002b; 2003a; 2003b; 2004; 2007b; 2007c; 2007f; 2009b; 2010b; 2010f). All speak to the ethnocultural makeup of Canadian society, as well as to the legal and institutional response to ethnocultural mobilizations.

[17] Kymlicka has since engaged much more directly with the rights and status of Indigenous peoples, especially in the context of international legal norms and international intergovernmental organizations. See namely *Multicultural Odysseys* (2007e) and "Minority Rights in Political Philosophy and International Law" (2010d).

Here, I want to draw particular attention to three of these publications that describe the Canadian model of diversity as three "silos" or "prongs" that are, for all intents and purposes, disconnected from one another (2004; 2007c; 2010b).[18]

The silos pertain to those "with roots in Canada that predate European colonization," those "rooted in projects of European colonization settlement," and those "that have emerged in Canada as a result of immigration" (2007c, 79 n 1). Stated differently, there is a set of laws and policies in response to the demands of immigrants and ethnic groups, another in response to Aboriginal peoples, and yet another in response to "Canada's French fact." Kymlicka writes, "each silo has its own well-established entry points and opportunity structures, and anyone who wishes to participate effectively in these political debates must use these access points, and master the relevant laws, constitutional provisions, and terminology" (2010b, 303).

So, if *Finding Our Way* spoke of multiculturalism and federalism as two components of the Canadian model of diversity, his more recent work on Canada argues that there are in fact three such Canadian models. Indeed, in a recent report on multiculturalism commissioned by the Department of Citizenship and Immigration, Kymlicka flags "the relationship between multiculturalism and the other two main dimensions of ethnocultural diversity in Canada: French Canadians and Aboriginal peoples" as a "real" issue that is too often "overlooked" by scholars working in the area (2010a, 18-19).

[18] The 2004 article entitled "Marketing Canadian Pluralism in the International Arena" was revised and reappeared as "The Canadian Model of Multiculturalism in a Comparative Perspective" (2007a) and "Marketing Canadian Pluralism in the International Arena" (2008b). The 2007c book chapter entitled "Ethnocultural Diversity in a Liberal State: Making Sense of the Canadian Model(s) was translated in French and appeared as "La diversité ethnoculturelle dans un État libéral: Donner sens au(x) modèle(s) canadien(s)" (2008a). The 2010b article entitled "Ethnic, Linguistic, and Multicultural Diversity of Canada" is in essence a condensed version of the above two.

The first silo concerns the status and treatment of ethnocultural groups that are the result of immigration. Some of these groups arrived in Canada close to one hundred years ago, others in contrast have settled in the last forty years. The turn of the 1970s marked an important shift in their intake and settlement patterns for the federal government made two important changes – what has been called 'state multiculturalism', or even 'multicultural citizenship'. First, in 1967, it adopted a "points system" whereby potential independent immigrants were to be assessed on a set of race-neutral selection criteria. We'll recall that a mere twenty years earlier, in a oft quoted speech, Prime Minister Mackenzie King opined, "any considerable Oriental immigration would … be certain to give rise to social and economic problems" (in Kelley and Trebilcock 1998, 312). The points system fundamentally changed the composition of the immigrant intake and, over time, the makeup of the overall population. Indeed today there are more than two hundred ethnic origins in Canada, almost twenty four percent of the population aged 15 and over is foreign-born, and visible minorities account for over sixteen percent of the total population (Statistics Canada 2008). Second, in 1971, the federal government adopted a policy of multiculturalism. In a speech to the House of Commons, Prime Minister Trudeau declared, "a policy of multiculturalism within a bilingual framework commends itself to the government as the most suitable means of assuring the cultural freedom of Canadians." Goals were the recognition of cultural diversity, the removal of barriers to participation, the promotion of cultural interchange, and the support of official languages acquisition. Since then, the respect of Canadians' multicultural heritage has been given symbolic affirmation in Section 27 of the 1982 Constitution Act, and the initial parliamentary statement on multiculturalism was given statutory basis through the adoption of the 1988 Multiculturalism Act. The former states, "this Charter

shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians" (1982, s. 27).

At the level of administration and coordination, the Multiculturalism Act is given effect through the Multiculturalism Program housed at the Department of Citizenship and Immigration.[19] The Multiculturalism Program has two primary functions. It first administers a number of funding programs that relate to the promotion and flourishing of ethnocultural diversity in Canadian society and in the federal government. Programs include support for academic research, NGOs working on ethnocultural relations, and public institutions that seek to implement reforms that promote the participation of ethnocultural minorities (Kymlicka 2007c, 44-45). Second, the Multiculturalism Program also monitors the implementation of the Multiculturalism Act by other federal departments and agencies. Indeed, as explained earlier, multiculturalism is best viewed as laying 'horizontally' and thus cutting across the various line departments, which on this view all stand 'vertically'. In short, state multiculturalism has come to permeate federal institutions and, to a large extent, a number of areas of public life including provincial and municipal governments, private companies and NGOs.

The second silo concerns the "Indians," Inuit, and Métis. In the past, the federal government adopted policies with the avowed intention of assimilating Aboriginal peoples into the institutions and ways of life of the dominant society. It included stripping them of their land, forcing children to attend residential schools, withholding citizenship rights, and undermining their political institutions. In 1969, the federal government released its White Paper on Indian Policy in which it proposed to abolish land treaties and special legal status in order to replace

[19] The Multiculturalism Program, formerly called the Multiculturalism Directorate, was moved from the Department of Canadian Heritage to the Department of Citizenship and Immigration in 2006.

them with the liberal bundle of individual rights and liberties. Put differently, it stated that Aboriginal peoples should not enjoy a distinct political status. The result was across the board mobilization from Aboriginal peoples, arguing that these historic rights and treaties formed the basis of Aboriginal self-government. The government retreated and, more importantly, adopted a much more open and respectful approach towards Aboriginal peoples. The 1982 Constitution Act, for example, enshrined the protection of existing treaty and Aboriginal rights as well as avowed to protect any future land or treaty agreements. It declares,

> 25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including
>
> (a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and
>
> (b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired (1982, s. 25).

Today, relying on the 1982 Constitution Act, the 1985 Indian Act, and historic treaties, Aboriginals continue to work towards an institutional framework of self-government and the Department of Aboriginal Affairs and Northern Development, formerly the Department of Indian Affairs and Northern Development, is engaged in a number of treaty negotiations. In short, Kymlicka writes, "the Canadian government today accepts, at least in principle, the idea that Aboriginal peoples will exist into the indefinite future as distinct societies within Canada, and that they must have the land claims, treaty rights, cultural rights, and self-government rights needed to sustain themselves as distinct societies" (2010b, 307).

Laws and policies for the "French fact" form the third and last silo of the Canadian model of diversity. The term French fact designates "the French-speaking communities that were initially established during the period of French colonialism, centered in Quebec and New

Brunswick, but with long-standing settlements in many parts of Canada" (2010b, 307). The question of their political recognition dates back to when the British gained control of New France following their victory over the French on the Plains of Abraham (in 1759). The population the British inherited had its own language and religion and was used to operating within its own political and legal institutions. At the time of Confederation, following two failed attempts at assimilation (1763 Royal Proclamation and 1840 Act of Union), the British had at last come to the realization that they would have to recognize and accommodate the French. The institutional solution adopted at the time, that on which the present-day recognition and accommodation of the French fact is still importantly premised, is what Kymlicka initially called "bilingual federalism" (2004, 836) and now calls the "basic framework of provincial autonomy and federal bilingualism" (2007c, 50). It included reestablishing the province of Québec, as well as guaranteeing the use of the French language in the Parliament and federal courts.

There have of course been a number of changes to the two constitutive components of the basic framework. First, in terms of federal bilingualism, the federal government, following the work of the Royal Commission on Bilingualism and Biculturalism, adopted the 1969 Official Languages Act. The Act declared English and French to "enjoy equality of status and equal rights and privileges as to their use in all the institutions of the Parliament and Government of Canada" (1969, s. 2). It also created the position of Commissioner of Official Languages, whose central role is to ensure that the Parliament and the federal administration comply with the text and the spirit of the Act (1969, s. 19-34). Since then, Kymlicka writes that this commitment to institutional bilingualism was enshrined in the 1982 Constitution Act (s. 16-20 and 23), was reaffirmed in the 1988 Official Languages Act, and strengthened in the 2003 Action Plan for Official Languages (2007c, 50). Second, in terms of provincial autonomy, the federal

government has signed a series of intergovernmental agreements with Québec in matters of welfare, immigration, and health. All these accords had the underlying goal of protecting and expanding Québec's sphere of autonomy. As Kymlicka writes, "there has been a broad consensus, from 1964 to today, that the federal government must not be seen to be trampling on Quebec's autonomy and must be willing to negotiate a more "cooperative," "flexible" or "renewed" federalism in response to Quebec's aspirations" (2010b, 309-310).

In summary, to speak of ethnocultural relations in Canada is to speak of three separate legal frameworks and political discourses. Or, as Kymlicka puts it, "there is no single model or principle for dealing with diversity in Canada, but rather a three-pronged approach, using different strategies for different types of diversity" (2004, 835-836).

1.3 "Canada's French Fact"

I now want to take a closer look at Kymlicka's account of Canada's French Fact – of both the French-language communities themselves and the federal laws and public policies relating to their status and treatment. Specifically, I want to suggest that if his conceptual language has come to account for the existence of Canada's Francophone minority communities, his analyses have overlooked both their distinctive political demands and the distinctive state practices adopted in response to these demands. Stated differently, I want to argue that Kymlicka has not fully followed through on, as it were, what I've termed the 'Kymlickan approach to multiculturalism and minority rights' when analyzing and evaluating the politics of recognition and accommodation of Canada's French Fact. The objective in this section is to identify the "blind spot." The actual legwork of cataloguing these communities' political demands and

articulating the normative logic embedded in relevant state practices is undertaken in the next two chapters.

Kymlicka has made use of a number of terms over the years to denote the close to seven million Francophones in Canada – "French Canadians," "French Canada," "the French nation in Canada," "Québécois," "Francophones/Québécois," and "a francophone society." More specifically, in chronological order:

- "It was aptly called the 'Quiet Revolution' in *French Canada*, since *French Canadians* began to make very difference choices than they traditionally had done" (1989, 167).

- "Aboriginal peoples and the *Québécois* are not simply demanding a general decentralization of power to promote administrative efficiency or local democracy" (1993, 72).

- "It is also potentially misleading to describe the *French Canadians* as a single nation. The French-speaking majority in the province of Quebec views itself as a nation – the '*Québécois*'. But there are francophones outside Quebec, and the *French nation in Canada* was not always identified so closely with the province of Quebec" (1995a, 197 n 2).

- "Yet the real threat to Canada's long-term stability is the ongoing failure to reach a satisfactory arrangement with Canada's non-immigrant national minorities: the *Québécois* and the Aboriginal peoples" (1998a, 2).

- "The only place in Canada where *francophones* remain the dominant group is in Quebec, and in narrow strips adjoining Quebec in Ontario and New Brunswick. The "*French fact*," which was once powerful throughout Canada, has been progressively reduced in territory" (2001a, 53).

- "When the English began to settle in Canada in the late 1700s, there were already two distinct national groups – the *French*, who had begun to settle *in Quebec* almost 200 years earlier, in the early 1600s; and the Aboriginal peoples (Indians and Inuit) who had lived here for thousands of years" (2002b, 81).

- "The *Québécois* are Canada's main example of a sub-state nationalist movement" (2003a, 372).

- "There is a *francophone society in Quebec (and part of New Brunswick)*, and an anglophone society in the rest of the country, each with its own full set of economic, educational, media, legal, and political institutions, and each with its own robust public debates" (2007d, 513).

- "When Canada became an independent state in 1867, it recognized "the *French fact*" through official bilingualism and through provincial autonomy for Quebec" (2009b, 24).

- "The *"French fact" in Canada* – that is, the status of *the French-speaking communities* that were initially established during the period of French colonialism, centered in Quebec and New Brunswick, but with long-standing settlements in many parts of Canada" (2007c, 49; 2010b, 307).

And so, as these excerpts reveal, Kymlicka has gradually come to recognize the existence of the close to one million French-speakers living in provinces and territories outside Québec. To simplify: from using French Canadian and Québécois interchangeably to footnoting the intricacies of nations and nationalism among Francophones in Canada to speaking of the French-speaking *communities* settled across the country. At the level of terminology, in short, it is clear from the more recent publications that there are French-speakers outside Québec, and that these communities have historical roots in their respective provinces.

If the conceptual language has come around, the same cannot be said for accounts of the French fact's political demands and of public policies and laws relating to its recognition and accommodation. First, I want to suggest that there is an analytical slip in Kymlicka's work on Canada whereby he goes from an understanding of Canada's French fact as multiple French-speaking communities to cataloguing and analyzing the political demands of the Québécois. Kymlicka, in essence, has taken Québec's claims for autonomous political institutions and recognition of its distinct national identity to be the claims of all Francophones in Canada. For example, in an article that begins by defining the French fact as French-speaking *communities*, the analysis of political demands then refers to "modernizing elites in *Quebec*" that engaged in struggles "to acquire the powers of provincial autonomy" and "to achieve real linguistic equality within the federal government" (2007c, 50; my emphasis). But while the Québécois have sought powers that would enable them to reproduce their distinct societal culture, it's unclear from

Kymlicka's work whether Canada's Francophone minority communities have also sought political autonomy or something else altogether. So as far as I can tell, at no point does he speak of their political claims, let alone catalogues and analyzes them. I undertake this task in the next chapter.

Second, since at least *Finding Our Way* (1998a), Kymlicka has presented the federal government's strategy with respect to the French fact as having two dimensions: one it imposed institutional bilingualism on its administration and in the delivery of public services and two it promoted and strengthened autonomy for the French-majority province of Québec. He calls this 'the basic framework of federal bilingualism and provincial autonomy' – or 'bilingual federalism' for short. I want to suggest that these two dimensions render invisible political and legal developments that relate to the status and treatment of Canada's Francophone minority communities. Specifically, federal bilingualism and provincial autonomy cannot account for Section 23 of the 1982 Constitution Act and Part VII of the 1988 Official Languages Act, both of which have been further strengthened by 'generous' court decisions (Thériault 2007, 310).

Section 23 enshrined education rights for Canada's Francophone minority communities (and Anglophones in Québec), which includes the right to manage and control their publicly funded schools. Part VII commits the federal government to "enhancing the vitality of the English and French linguistic minority communities and supporting and assisting their development." This latter commitment has gained further legal leverage since its adoption. One the one hand, the Supreme Court, building on a prior decision by the Federal Court of Appeal, ruled that the Official Languages Act "belongs to that privileged category of quasi-constitutional legislation" because it "constitute[s] an example of the advancement of language rights through legislative means" (1999, 24). On the other hand, following an amendment to the Official

Languages Act, the federal government is legally obligated to "take positive measures" to enhance the development of official language minorities, and citizens have recourse to legal remedies if these obligations are not respected (2005b, 19). In short, these are most definitely not about enabling autonomy for Québec, nor about the delivery of public services in the two official languages. I articulate the normative logic embedded in these policies and laws in the last chapter of this dissertation.

2. Kymlicka's Main Critics

In the balance of this chapter, I turn to two recent attempts at making use of Kymlicka's toolkit to assess and account for the recognition and accommodation of Canada's Francophone minority communities. Scholars of these communities, and of language politics in Canada more generally, have only recently turned their attention to the political theory of multiculturalism. Of these efforts, Rodrigue Landry and Johanne Poirier have done the most in terms of trying to remedy the above gap in Kymlicka's work on Canada. However, I want to argue that their respective efforts misappropriate Kymlicka's toolkit, which leads them to not fully follow through on the application of the Kymlickan approach to the case of Canada's Francophone minority communities. Rodrigue Landry borrows Kymlicka's concept of societal culture to justify greater cultural autonomy for these communities, but overextends it to the point where it takes on a new meaning and so it cannot do the work it does for Kymlicka. As for Johanne Poirier, she convincingly shows how Kymlicka doesn't properly account for Canada's Francophone minority communities, but then, instead of cataloguing and analyzing their claims as well as existing state practices, she turns her attention to institutional models of autonomy and alternate classifications of minorities.

2.1 Rodrigue Landry: Official Languages and Societal Cultures

Following hints at cultural autonomy in an 1999 publication with Réal Allard and in his book, written with Serge Rousselle, entitled *Éducation et droits collectifs* (2003)[20], Rodrigue Landry has in recent years articulated and promoted a model of cultural autonomy for Canada's Francophone minority communities (2008; 2009; 2011; 2007; 2010b).[21] The model draws inspiration from theories and models of language revitalization, ethnolinguistic vitality, cultural governance, and minority rights. More concretely, cultural autonomy *à la* Landry has three constitutive elements: social proximity, institutional completeness, and ideological legitimacy. These three elements interact with one another and with the group's collective identity. The result of this dynamic interaction can be "virtuous" – i.e. promote linguistic vitality and group autonomy, or it can be "vicious" – i.e. lead to acculturation and linguistic assimilation (2008, 156; 2009, 30; 2007, 148). In short, the extent and depth of cultural autonomy depends on social proximity between group members and their institutions, self-control of these institutions, and support from the state and the general population.[22]

[20] With Allard: "Dans le contexte canadien, il est difficile pour les communautés francophones d'aspirer à l'autonomie politique et économique, mais ces communautés devraient viser le plus haut degré possible d'*autonomie culturelle*, car, dans un cadre démopolitique limitatif, l'autonomie culturelle est une des seules voies institutionnelles qui puisse favoriser le développement d'une vie communautaire" (1999, 419; emphasis in original). With Rousselle: "Le modèle des balanciers compensateurs invite les minorités francophones à se doter d'une certaine *autonomie culturelle*" (2003, 103; emphasis in original).

[21] With the exception of the 2007 article that is published in English, all citations that follow are personal translations.

[22] Or, as Landry et al. put it, "L'autonomie culturelle d'un groupe minoritaire résulte de l'interaction de l'identité collective avec trois composantes essentielles de la vitalité du groupe : a) la proximité socialisante (sa concentration géographique, sa proximité avec les institutions) et la richesse de la vie communautaire qui en découle, b) la gestion des institutions du groupe par la société civile et la force mobilisatrice de la structure de gouvernance dont elle se dotera et c) les

Of course Landry provides much more background and explanation for the model and its constitutive elements. The model is in fact built upon close to thirty years of empirical research on the importance of French schooling for the ethnolinguistic vitality of Canada's Francophone minority communities. But since I come to his work from normative political theory, rather than from education or sociolinguistics, I am most interested in his theoretical claims. Specifically, in his three most recent publications on this topic, Landry borrows Kymlicka's concept of societal culture in order to justify cultural autonomy for Canada's Francophone minority communities. Here, I explore some problems with Landry's use of societal culture, and suggest that more work remains to be done in applying the 'Kymlickan approach' to the recognition and accommodation of Canada's Francophone minority communities.

Landry turns to Kymlicka's work in asking whether Canada's Francophone minority communities can "legitimately claim" cultural autonomy (2009, 31). He writes, 'Kymlicka's liberal theory of minority rights will be relied upon to justify the recognition of Canada's Francophone minority communities through cultural autonomy' (2011, 7). His overall thesis is that cultural autonomy for these communities is justified because they share, with Québec, one of Canada's two linguistic societal cultures. Specifically, the argument can be broken down into three steps. First, referencing the 1988 Official Languages Act and the 2005 Solski v. Quebec Supreme Court decision, Landry clarifies how the legal and institutional infrastructure of official language rights in Canada is premised on the idea that there are two distinct official language communities in the country. The Official Languages Act, for example, states that "the Government of Canada is committed to enhancing the vitality and supporting the development of English and French linguistic minority communities, as an integral part of the *two official*

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politiques de la reconnaissance de l'État et le pouvoir symbolique de la langue du groupe tant sur le « marché des langues » que dans les représentations sociales du groupe" (2010b, 101).

language communities of Canada …" (1988, Preamble; my emphasis). Looking at Solski v. Quebec, Landry contends that the "the Supreme Court acknowledges the existence of two distinct language communities in Canada," and in fact even "speaks of Francophones in Québec as 'the majority […] of the Francophone minority in Canada'" (2009, 41-42).

Second, Landry argues that these two distinct official language communities form two distinct societal cultures. "Beyond Aboriginal societal cultures," he declares, "there are two linguistic societal cultures in Canada, one of French roots, another of British roots" (2009, 33-34; 2010b, 95). Or, "Canada's Francophone minority communities, based on our understanding of their constitutional rights, are part of the French language community in Canada and share with Quebec a French language societal culture" (2010b, 95). These two societal cultures, he says, "ensue" from Canada's linguistic duality (2009, 39). More specifically, and as he puts it in his most recent publication on the topic, "we can postulate that all communities that shared this French language societal culture during the period of French Canadian nationalism have maintained more common cultural elements than not, even if they have evolved within distinct geographical and legal landscapes" (2011, 9).

Third, given that they belong to a societal culture, Canada's Francophone minority communities have sound moral and political grounds to autonomy, especially cultural autonomy. We'll recall that, for Kymlicka, liberal democracies ought to afford support to societal cultures for they provide people with a range of meaningful options – they enable individual freedom and promote equal consideration. He writes, "any proposal that makes it impossible for people to have freedom and equality within viable societal cultures is inconsistent with liberal aspirations" (2001b, 54). This connection between societal cultures and fundamental liberal values leads him to endorse self-government rights for ethnocultural minorities that have (and seek to maintain)

their societal cultures. Landry argues that autonomy for Canada's Francophone minority communities would not be 'governmental' like that of the Québécois, for example, but would be 'institutional' in that they would control institutions that relate to key cultural and social concerns. In short, and to link back to cultural autonomy, the belief is that granting them 'institutional' self-government rights would enable 'virtuous' interactions between cultural autonomy's three constitutive elements of social proximity, institutional completeness, and ideological legitimacy, as well as on the group's collective identity.

There are, however, two interrelated problems with Landry's justification of cultural autonomy for Canada's Francophone minority communities. The first problem is that the legal notion of official language communities is analytically distinct from Kymlicka's theoretical concept of societal culture and as a result cannot carry out the normative work conferred upon it. Stated differently, if it is indeed correct to point out that the federal government justifies rights and accommodations for Francophone minority communities on the grounds that they are part of an 'official language community', it is today false to infer that this Francophone official language community forms a societal culture in the Kymlickan sense. For Kymlicka, a societal culture is a "territorially-concentrated culture, centred on a shared language which is used in a wide range of societal institutions, in both public and private life – schools, media, law, economy, government, etc. – covering the full range of human activities, including social, educational, religious, recreational, and economic life" (2001c, 18). Put simply, societal cultures are cultures that are "institutionally embodied" (1995a, 76) – they are consolidated into a wide-range of institutions and practices, all of which operate in the common language.

Conversely, official language community is a legal notion that denotes French- and English-speakers in Canada. Of course it has both political meaning and normative weight in that

the federal government has enshrined the equality of status of English and French as to their use in all of its institutions, as well as committed itself to supporting official language minority communities and advancing the equality of status of English and French within Canadian society (Government of Canada 1988). However, the Francophone official language community doesn't have an institutional life nor does it ensure societal integration through a wide range of institutions, including schools, media, the economy and government. It rather, and simply, encompasses all Canadian citizens and permanent residents that speak French. In that sense, the Francophone official language community cannot be considered a societal culture in the Kymlickan sense because it is not 'institutionally embodied', it lacks the required 'institutional cement' (Kymlicka 1995, 98-100). In short, although important, the legal notion of official language community cannot stand-in for societal culture in Kymlicka's liberal theory of minority rights.

The Francophone culture that is institutionally embodied in Canada is that of the Québécois.[23] A quick glance at French language public and private institutions reveals their inherently Québécois character. First, public institutions in Québec are of course decidedly *Québécois* institutions. The Caisse de depôt et placement du Québec, Hydro-Québec, Télé-Québec and all government departments and agencies belong to and provide for residents of Québec. Second, and perhaps more tellingly, major French language private institutions such as

[23] I believe that this is also Joseph Yvon Thériault's point when he speaks of the necessity for Canada's Francophone minority communities to "renew with Québec society" [*se réarrimer à la société québécoise*], "accept, one way or another, to be Québécois… from abroad" [*accepter, quelque part, d'être des Québécois… d'outre frontières*], or acknowledge that "any pancanadian affirmation of the francophonie will be necessarily stamped of québecness or will not be" [*toute affirmation 'pancanadienne' de la francophonie sera nécessairement marquée de la québécitude, ou ne sera pas*] (2007, 13, 173, 254). Moreover, I believe Kymlicka also indirectly makes this point in "considering what the *Québécois* have had to do to maintain their societal culture" (1998a, 32-34).

Archambault, Desjardins, La Presse, Le Devoir, Renaud-Bray, TVA, TQS, and Vidéotron are also all *Québécois* institutions. If, in the popular imagination, the French language societal culture in Canada was effectively the Francophone official language community, then such private institutions would tailor to French-speakers settled across the country.

To be sure, a Franco-Albertain can place an order with Archambault and have it delivered to Edmonton. But surely that doesn't make Archambault a Franco-Canadian institution. The fact that FNAC will ship me a book to Canada doesn't make it less French and more Canadian. FNAC's primary market is France, much like Archambault's is Québec. Even the Société Radio-Canada speaks of *la musique québécoise* and *la cuisine québécoise* and not *la musique franco-canadienne* and *la cuisine franco-canadienne* (and pays more attention to traffic flows on Pont Champlain and l'Autoroute Métropolitaine than to cultural events in Moncton or Sudbury). We'll recall that its mandate stipulates that it should 'reflect the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities' (1991, Part 3). The Société Radio-Canada, then, has also evolved into an almost exclusively *Québécois* institution. In short, "societal cultures," as Kymlicka specifies, "are typically associated with national groups," and "no one," Landry rightly notes, "contests Québec's national character" (Kymlicka 1995a, 75-76; Landry 2011, 8).

The second problem is that Landry's use of societal culture is not consistent with that of Kymlicka. So even if Canada's Francophone official language community indeed formed a societal culture, Landry's justification of cultural autonomy for Canada's Francophone minority communities by way of societal culture would remain flawed in principle. For Kymlicka, societal cultures are empirical first, normative second. A societal culture first captures a sociological

reality – "the modern world," he writes in introducing the concept in *Multicultural Citizenship*, "is divided into what I call 'societal cultures'" (1995a, 75). The existence of a societal culture then triggers the granting of a certain set of rights and accommodations. Accordingly, the bundle of rights and accommodations for the Québécois, Catalans, Flemish and Scots is not justified on grounds that these minorities could perhaps or ought to form societal cultures. Rather, these national minorities *are* societal cultures (first step), and so *ought to* enjoy internal self-determination (second step). Following the same logic, part of the moral justification for not granting self-government rights to ethnic groups is that they do not form societal cultures nor have demanded the sorts of regional autonomy and language rights needed to sustain a societal culture. Thus, while it is possible, in theory, for an ethnic group to settle together and try to re-create its own societal culture, in practice, this has not happened, consequently ethnic groups ought not to be granted self-government rights.

Landry, in contrast, goes back and forth between societal culture as sociological reality and societal culture as desired outcome. At times he proceeds as if the Québécois and Francophone minority communities share a societal culture, at other times he says that the Québécois and Francophone minority communities could and ought to share a societal culture. Let me provide a few examples (emphasis is mine).

<u>Sociological reality</u>:

- There *are* in Canada two distinct linguistic societal cultures (2009, 34)
- Québec *is*, obviously, the main actor in a French language societal culture that *it shares* with all other Francophone communities in Canada (2009, 34).
- Within the context of these two societal cultures and due to *their belonging to* one of them, Canada's Francophone minority communities … (2010, 96).
- The French language societal culture prevails in Québec and aims to establish itself as the common public culture, but it also *imposes itself* within institutions ruled by Canada's Francophone minority communities (2011, 10).

Desired outcomes:

- The English and French linguistic minority communities *can at least claim* participation in their respective societal cultures (2009, 36).

- We can ask *whether it would not be* in Québec's interests to claim constitutional affirmation of two languages of convergence, that is of two linguistic societal cultures (2009, 42).

- [Canada's Francophone minority communities'] *can choose* to "faire société" in French in Canada and to share with Québec the French language societal culture (2010, 95).

- … societal culture, a concept not restricted to Québec, but that *would apply* to the two linguistic communities on which Canada's linguistic duality is premised (2011, 12).

As these excerpts reveal, Landry goes back and forth between two analytically distinct understandings of societal culture. As shown above, taking the sociological reality route is highly problematic for the legal notion of official language community cannot stand in for Kymlicka's theoretical concept of societal culture. What is more, taking the desired outcome route is also highly problematic because then the concept of societal culture is being used in an analytically distinct fashion from Kymlicka's 'empirical first, normative second'. The problem, to be clear, is not so much that Landry's use of societal culture is inconsistent with that of Kymlicka – concepts and principles take on new meanings all the time, but rather that his justification of cultural autonomy for Canada's Francophone minority communities is presented as being premised on Kymlicka's liberal theory of minority rights, particularly its concept of societal culture.

Reading and re-reading Landry's work, my sense is that, for him, sharing a societal culture with the Québécois is what Canada's Francophone minority communities ought to strive for. Cultural autonomy is a theoretical model, but it is also, and perhaps even first and foremost, a normative project. So, on the one hand, cultural autonomy is a theoretical model that describes and explains how cultural, social and political factors affect the maintenance and reproduction of linguistic minorities – "the model of cultural autonomy aims to define the conditions for

linguistic reproduction by incorporating, beyond factors of ethnolinguistic vitality, other more political factors, including the governance structure" (2010, 93). On the other hand, cultural autonomy is a normative project that outlines the road to the survival and flourishing of Canada's Francophone minority communities – "a project of cultural autonomy aims at a group's linguistic vitality through the optimal control of factors of linguistic vitality and the exercise of diverse forms of political autonomy" (2010, 97). In short, Landry's work appears to oscillate between two distinct understandings of cultural autonomy, neither of which makes proper use of societal culture in the Kymlickan sense.

To conclude, the argument is not that Canada's Francophone minority communities cannot 'legitimately claim' cultural autonomy, but rather that Landry's justification is flawed for it misapplies Kymlicka. In the following two chapters, I try to show how the Kymlickan approach to the politics of multiculturalism and minority rights can be put to use in defending the recognition and accommodation of these communities.

2.2 Johanne Poirier: Political Demands and Theoretical Reflections

Johanne Poirier has recently turned her attention to Canada's Francophone minority communities, discussing a range of legal instruments and institutional mechanisms on which their recognition and accommodation could be premised. She has three publications on the topic (2006; 2008; 2011), of which one deals head-on with Kymlicka's work.[24] It argues, in a nutshell, that his typology of ethnocultural minorities "has been unable to account for the intricacies associated with the realities of Canada's Francophone minority communities and has in fact rendered them invisible" (2011, 4-5). My concerns with her work are of a different order than

[24] All citations from Poirier are personal translations.

those expressed above with respect to Landry. While, for the most part, Poirier correctly presents both Kymlicka's general theory and his account of the Canadian model of diversity, her work remains unsatisfying, at times even frustrating. The crux of the problem is that she repeatedly acknowledges that the crucial task in coming to terms with Canada's Francophone minority communities consists in elucidating their political demands, yet sidesteps the task altogether in favor of theoretical reflections on forms of autonomy and typologies of groups. Put simply, much like Landry and Kymlicka himself, she doesn't fully follow through on what I have called 'the Kymlickan approach to the politics of multiculturalism and minority rights'.

As far as I can tell, Poirier was the first to pay sustained critical attention to how Kymlicka's work essentially ignores or renders invisible Canada's Francophone minority communities. To be fair, Joseph Carens had previously acknowledged the shortcoming, writing "within Canada, for example, the millions of francophones outside Québec cannot aspire to maintain a societal culture in the way that the Québécois do, even though many of them are not simply emigrants from Quebec (or their descendants) but people with quite distinct group identities and long collective histories (in the Canadian context)" (2000, 64). But he offered nothing in terms of resolving it, rather building off of it to criticize the concept of societal culture.

Returning to Poirier, she rightly observes that even if Kymlicka acknowledges the historical presence of Canada's Francophone minority communities, both his general theory and his account of the Canadian model have focused on the politics of nationhood and autonomy in Québec and discounted the politics of the close to one million French-speakers living outside Québec. "His work often waltzes ambivalently between French Canadians and Québécois," she

argues, “but only the Québécois are taken into consideration in terms of their self-determination and the legitimacy of their claims for autonomy” (2011, 13-14).

The Kymlickan approach, as shown in the previous chapter, requires first showing how the recognition and accommodation of an ethnocultural minority would promote fundamental liberal values, and second cataloguing its political demands in order to determine the institutional form this recognition and accommodation ought to take. The approach has led to the establishment of a general theory of minority rights, which Kymlicka now calls liberal multiculturalism. The theory justifies the granting of distinct sets of rights and accommodations to distinct group categories, ie. indigenous peoples, national minorities, and ethnic groups. As Poirier rightly acknowledges, these categories were established by looking at the concrete claims of groups. For example, in describing national minorities and indigenous peoples, she says that the nature of their claims represented a “fundamental criteria” in establishing the parameters of the categories, and then, speaking to ethnic groups, she notes that the category is notably derived from “claims put forward by their members” (2011, 11-12). But these three categories, Poirier argues, cannot properly account for Canada’s Francophone minority communities for these communities combine features of both national minorities and ethnic groups. On the one hand, they’re historically settled, but, on the other hand, they were not self-governing prior to their incorporation into the country. The result, then, is that “Canada’s Francophone minority communities fall into the margins of theories of multiculturalism and minority rights, which aim to distinguish groups that can legitimately claim autonomy from those that cannot” (2008, 523).

However, despite repeatedly acknowledging the importance of concrete claims in establishing the three-part typology, Poirier doesn’t catalogue nor analyze the political demands of Canada’s Francophone minority communities. She instead offers three alternatives to

Kymlicka's categorization: a continuum derived from Iris Young (1997) ranging from groups claiming substantive equality to groups claiming political autonomy; carrying on with the categories but studying more closely institutional options available to Canada's Francophone minority communities; and creating a fourth category. Proposing alternate conceptual schemas, however, is putting the cart before the horse. The crucial task, that which will allow us to convincingly locate these communities within Kymlicka's influential typology, consists in cataloguing their claims and articulating their normative logic. Then we will be equipped to alter or add categories.

To be sure, I most certainly do not want to take away, or even minimize, the significance of Poirier's contribution to the study of Canada's Francophone minority communities. That body of literature – commonly called l'étude des minorités francophones hors Québec – has essentially kept its distance from debates in comparative political science, international law, and normative political philosophy on liberal democracies and their obligations towards ethnocultural minorities. In that sense, Poirier's analyses of international legal instruments and comparative institutional options could lead to exciting connections with analogous minorities from around the world.

She shows how research on the status and treatment of Canada's Francophone minority communities has centered around three main models: cultural or administrative autonomy (see Landry above), institutional completeness (see Aunger 2010), and linguistic governance (see Wallot 2005). Though clearly distinct, all three rule out "political autonomy."[25] In models of, for example, administrative autonomy or linguistic governance, group members exercise powers on the state's behalf or take part in state decision-making processes. In contrast, political autonomy

[25] Somewhat confusingly, Poirier uses "political," "governmental," "normative," "state," and "institutional" interchangeably to refer to the same category of autonomy.

involves the formal devolution of state powers so that group members become authors not merely bearers of rights. Groups that enjoy political autonomy, she writes, "hold a fraction of state sovereignty" (2011, 8).

Political autonomy can take a number of forms. For example, Poirier explains the Belgian federal solution to linguistic diversity, showing how the creation of regions and communities has provided substantial autonomy to the Flemish and the Walloons all the while allowing both to intervene in Brussels, the Walloon-majority capital region located in Flanders (2006). In another article, she describes the multilayered political system created in Nunatsiavut for the Inuit of Labrador, and also tries to extract institutional lessons for Canada's Francophone minority communities from declarations and statements adopted by international non-governmental organizations, including the United Nations, the Council of Europe, and the Organization for Security and Cooperation in Europe (2008). In brief, although on the right track, Poirier's work ultimately remains unsatisfactory for it fails to fully follow through on the crucial task of cataloguing and analyzing the claims of Canada's Francophone minority communities.

In summary, this chapter has shown how Kymlicka and his main critics have failed to uncover the logic that underpins the claims for equality and justice of Canada's Francophone minority communities as well as that that underpins the full range of policies and laws adopted in an effort to recognize and accommodate these communities. The next two chapters aim to carry out the Kymlickan approach by analyzing and evaluating first these communities' claims for equality and justice and then federal efforts with respect to the promotion of the two official languages within and outside federal institutions.

Chapter 5

Participation and Autonomy

> *"La vie politique au Canada français a historiquement oscillé entre cette volonté de compter sur ses propres moyens, d'être maître chez-soi et cette non moins persistante volonté de participer à un monde plus large, de ne pas se couper d'une canadianité et même d'une américanité que la collectivité francophone a largement contribué à construire"(Cardinal 1994, 109)*

This chapter aims to expose the normative logic that underlies the political demands of Canada's Francophone minority communities. In line with the Kymlickan approach, there is normative weight to this largely empirical exercise because promoting justice and equality for ethnocultural minorities requires understanding the aims and aspirations of groups themselves. It examines in particular the demands formulated by their national association the Fédération des communautés francophones et acadienne du Canada (FCFA), formerly called the Fédération des francophones hors Québec (FFHQ). Created in 1975 when Francophone leaders from across the country decided to join forces in order to "plan, organize, and lead" the concerted struggle to live and flourish in French in Canada outside Québec (FFHQ 1977, 4; personal translation), the Fédération is today an alliance of twenty-two provincial and national associations. It brings together the main Francophone associations from each province and territory minus Québec, a number of which were established in the early 1900s, as well as ten national associations, including, for example, the Alliance des femmes de la francophonie canadienne, the Société santé en français, and the Association de la presse francophone. Its overarching goals are to ensure the cultural development of Francophone minorities outside Québec as well as to promote

the overall flourishing of the French language in Canada. As it states on its website, "our organization is committed to promoting linguistic duality, supporting the ability of Canadians everywhere to live in French, and fostering the full participation of French-speaking citizens to Canada's development."

Since its creation, the Fédération has released a number of research reports and political manifestos detailing the plight of Canada's Francophone minority communities and condemning the overall lack of meaningful support from the federal and provincial governments. These reports and manifestos contain several demands relating to a number of areas. It states, "whether its legal rights, education, media, culture, or economic development, the associations hereby united in a federation have without respite demanded just recognition" (1977b, v). Looking beyond these specific issues requiring concrete measures, this chapter argues that demands formulated in these reports and manifestos are embedded in a twofold normative logic. The Fédération and its members deem that bringing about justice and equality to Francophone minorities outside Québec will require the bilingualization of public institutions, including the delivery of French-language services, and the formal endorsement of self-control in areas that are of particular concern to minority communities. Or, for short: participation and autonomy.

The rationale for this chapter is akin to that of Andrew Sharp in *Justice and the Maori* (1990). In introducing the second edition of the book, Sharp explains that the overall narrative of the book took time because he 'felt obliged to record for New Zealanders something of their recent intellectual and political history that had not, until then, been related in coherent form' (1997, vii). I have argued in previous chapters that the political theory of multiculturalism has ignored or rendered invisible Francophone communities outside Québec and that l'étude des minorités francophones has failed to examine and engage with moral principles and normative

reflection. Aiming to compensate for these important gaps, this chapter, in line with Sharp's rationale, chronicles the political development of Canada's Francophone minority communities through an analysis of their struggles for justice and equality. Adopting such an approach allows me to tell their recent political history but also, hopefully, enables me to uncover the normative logic of their political demands so that the next chapter can evaluate how well the federal language regime accounts for them.

The analysis that follows is divided into two sections. Any study of the politics of Canada's Francophone minority communities must begin with a discussion of their historically central political demand: French-language schools that they themselves manage (s. 1). This first section is simultaneously broad and narrow for it focuses on struggles undertaken in specific provinces as well as on trends that cut across all French-language minority communities. Recounting these communities' struggles for justice and equality in the area of education leads me to the coming together of the nine provincial associations representing the interests of Francophone minorities outside Québec under the auspices of the Fédération (s. 2). In an effort to expose and articulate the normative logic that underpins the Fédération's reports and manifestos, the second section uncovers what I call a comprehensive program of recognition and promotion. It consists of an account of the state of French-language communities outside Québec and of the rights and services that are required to foster justice and equality. This comprehensive program of recognition and promotion is embedded into, or so I argue, a twofold normative logic of participation and autonomy.

Of course focusing on the political demands of one association, albeit the main association, means that what follows is inevitably an incomplete, and partial, account of the political demands of Canada's Francophone minority communities. "Someone else would tell the

story differently," writes Joseph Carens in introducing the unfamiliar case of Fiji in order to reflect on familiar theoretical positions, "but that does not mean that there is no point in my trying to tell it" (1992, 553). Although, like him, my account admittedly contains limitations, there are two motivating reasons for telling it. First, cataloguing, in broad strokes, the political demands of Canada's Francophone minority communities will hopefully prompt scholars working on these communities to follow suit by, for example, examining the claims of other national associations or even comparing and contrasting the claims emanating from different provincial associations. Second, providing a broad account will also hopefully entice the Canadian School of political thought to include these communities in their work on the recognition and accommodation of ethnocultural diversity in Canada. In short, my hope is that sketching a simplified 'big picture' will motivate others to also examine the concrete claims of Canada's Francophone minority communities.

1. The Long Road to Full School Governance

If the research community has not sought to bring together in coherent form the political demands of Canada's Francophone minority communities as formulated by their leading national association, the opposite is true for these communities' protracted struggles for "full school governance" (Behiels 2004) – the right to homogeneous schools that they would themselves manage. This topic is the subject of important comprehensive works from, amongst others, Michael Behiels (2004), Pierre Foucher (1985; 2005) Rodrigue Landry, Réal Allard and Kenneth Deveau (2010a) and Angéline Martel (1991; 2001).

Education is of particular concern to minorities for the exact same reasons majorities concern themselves with education: the transmission of language and culture, of norms and

values. Indeed, as forcefully shown by the literature on nations and nationalism, schools, along with the army, are the primary means used by state authorities to foster loyalty and, ultimately, create members of the community. "The monopoly of legitimate education is now more important, more central than is the monopoly of legitimate violence," Ernest Gellner famously wrote in *Nations and Nationalism* (1983, 34). Or, speaking directly to Canada's Francophone minority communities, Annie Pilote and Marie-Odile Magnan write, "education is the most powerful means for ensuring the reproduction of the cultural identity of Francophones in minority situations through the socialization of future generations, but also through its contribution to the sociocultural development of the community" (2008, 275-276; personal translation).

In this section, I relate key events in these communities' historical struggles for schools in which French would be the language of instruction and administration. I begin here for two mains reasons. On the one hand, struggles for full school governance have been central to the historical evolution of these communities. Education, to borrow from Thériault, has "structured their collective being" (2007, 191; personal translation). On the other hand, issues of education in the minority language remain of importance for the Fédération and its members. There are a number of ongoing community actions and legal proceedings aimed at implementing or clarifying the scope of existing French-language education rights (see Bourgeois and Johnson 2005 and CSFY v. Yukon 2011).

1.1 A Century of Struggles

French-language schools predate the founding of Canada. Almost everywhere they settled, from the Maritime Provinces to the Northwest Territories, Acadians and French-Canadians established

a local school. As Angéline Martel explains, "education services, often rudimentary, were delivered, funded, and administered by members of the community, in collaboration with religious authorities" (1993, 736; personal translation). Governments didn't regulate these schools' curriculum or their teachers' certification. The result is that, until Confederation, French-language communities enjoyed full control over education, transmitting local linguistic norms and cultural values.

Of course this was prior to Confederation, prior to the advent of provincial governments enabled to pass legislation regulating education, from the language of instruction to curriculum content to lists of authorized textbooks. Indeed, the 1867 Constitution Act gave exclusive jurisdiction over education to the provinces. This would prove of crucial significance for the evolution of French-language educational systems and, more fundamentally, Canada's French language population. In Québec, where French-speakers formed a democratic majority, full school governance was de facto assured. Elsewhere, however, French-speaking minorities were left to the democratic will of the English-speaking majority.

Within a few decades of Confederation, virtually all provinces minus Québec had passed legislation denying their French-language population access to separate schools as well as to instruction in their mother tongue. Not only was full school governance promptly written off, but instruction in French within mixed or bilingual schools was also repealed or severely restricted. And so, by early 1900s, each provincial education system implicitly or explicitly aimed to assimilate its French-language population (and all other linguistic minorities) to the Anglophone majority. As Pierre Savard writes, "the first three decades of Confederation will make Acadians and French Canadians outside Québec acutely aware of the vulnerability of their linguistic and cultural status, in particular during the New Brunswick school question, the execution of Louis

Riel, and the Manitoba school question" (1993, 233; personal translation). Or, in Gratien Allaire's provocative words, "schools were used in the process of ensuring Canada outside Quebec became British" (2007, 36).

Determined nonetheless to safeguard French-language education and, ultimately, ensure the survival of their language and culture, Acadians and French-Canadians formed provincial associations to coordinate their struggles and to promote their interests vis-à-vis their respective governments and the federal government. These include the Association canadienne-française d'éducation de l'Ontario (1910), the Association catholique franco-canadienne de la Saskatchewan (1912), the Association d'éducation des Canadiens-Français du Manitoba (1916), the Société Saint-Thomas d'Aquin de l'Île-du-Prince-Edouard (1919), and the Association canadienne-française de l'Alberta (1926). Acadians had established the Société nationale de l'Assomption in 1890, and French-Canadians in British Columbia would eventually create their provincial association in 1945 – the Fédération canadienne-française de la Colombie Britannique. Moreover, leaders of these associations were in close contact with one another and with French Canadian leaders in Québec through most having been trained in the network of French Canadian schools and colleges, as well as through activities of the Ordre de Jacques-Cartier and the Conseil de la vie française en Amérique. Gerald Gold explains,

> Francophone minorities have maintained close contacts with Quebec. The networks of contact are, or have been, dependent on the networks of French Canadian clerical orders with headquarters in Quebec. Also important was the Caisse Populaire, a federation of credit unions with offices across French Canada, old school contacts between Quebec-trained professionals and links with other 'national' French-Canadian institutions operated from Montreal or from Quebec City (1984, 107).

In each province, these associations operated in large part behind the scenes, covertly working to establish elementary schools, develop curriculum, hire bilingual teachers, and lobby school inspectors. The Association canadienne-française d'éducation de l'Ontario, for example,

played a crucial role in the opposition to Regulation 17, and thereafter continued its efforts to expand French-language rights and services. Put simply, these provincial associations "often played the role of a department of education for French language instruction" (Allaire 2007, 40). Since the conditions that led to their establishment and the actions undertaken are particular to each province, let me discuss a few of the struggles undertaken by these associations and their members against their respective provincial governments.

The New Brunswick government intervened in education almost immediately following the creation of Confederation. In 1871, through the passing of the Common Schools Act, it declared that all publicly funded schools must be non-denominational and that teacher certification must meet provincial guidelines. If the Act was not couched in explicit anti-French nor anti-Acadian language, it was nonetheless seen as a deliberate attack on Acadians whom in large part enrolled their children in Catholic schools, which used French as the language of instruction. The Act effectively imposed English-language education on Acadians, whom constituted at the time close to 16% of the population or approximately 45,000 people (Roy 1995, 168). This decision led to massive protests, most famously the 1875 Caraquet riots, and, ultimately, the partial reversal of the legislation. Following negotiations with Acadians, the government authorized elementary schooling in the French language and exempted religious orders from new teacher certification guidelines. More precisely, "the compromise of 1875 dealt with four important points: catechism instruction outside of regular school hours; the wearing of religious habits; exemption for religious sisters from attending the Training School; permission to communicate and study in French in the primary schools" (Couturier LeBlanc et al. 1995, 533) This agreement was possible, according to Edmund Aunger, because of the regional concentration of Acadians. He writes, "religious and language concessions could be

implemented with little effect on the English-speaking Protestant majority and, often, without its knowledge" (1996, 197).

These concessions, if important, were not a panacea. Until massive reforms following the 1960 election of Liberal premier Louis J. Robichaud, Acadians were taught in a poorly funded network of bilingual schools. The provincial government provided English-language schoolbooks and its education funding procedure worked against Acadians. On the one hand, school budgets mostly came from local property taxes, a formula that worked against poorer Acadians. On the other hand, Acadian families were for the most part larger, but provincial transfers to schools were based on the number of households not the number of children. Acadians, as Foucher reminds us, set up private secondary schools and colleges, which "provided them with the security that the provincial government would not guarantee," but these were only accessible to an elite (1985, 57).

At Confederation, both Ontario and Québec agreed to confessional education rights. Section 93 of the 1867 Constitution Act guaranteed the protection of Protestant schools in Québec and Catholic schools in Ontario, wherever these schools already enjoyed right or privilege at the time of union. It was assumed that the French-language population in Ontario had education rights, insofar that a large proportion of them were Catholics and that their schools existed prior to Confederation. These rights went untested for almost five decades. Of course the Ontario government legislated on education before the crucial test, including an 1885 regulation that made the teaching of English compulsory and an 1890 law mandating that English be the language of instruction in all Ontario schools except where pupils did not understand English. But school inspectors didn't enforce regulations rigorously, and so schools in francophone counties continued to provide instruction in French (see Allaire 1993, 105-108). In 1912,

following a report showing that bilingual schools "were in fact functioning largely in French and teaching the English language very poorly," the provincial government passed Regulation 17 (Hayday 2005, 18). It effectively prohibited the use of French as a language of instruction in all schools in the province after grade two. To borrow from Robert Choquette's authoritative study of the history of French-English relations in Ontario, "Toronto decreed that French teaching had one year's grace; thereafter all must speak English in Ontario schools" (1975, 167). For Chad Gaffield, making English the sole language of instruction in all schools of the province proved necessary when softer policies didn't lead to the assimilation of French-speakers (1987).

Francophones, at the time numbering approximately 200,000 or eight percent of the total population, passionately rejected the elimination of their language as an official language of instruction in the province. They requested no less than the immediate abolition of Regulation 17. French Canadian leaders from across the country, the Québec provincial legislature, Québec newspapers, the Ottawa Separate School Board, the Association catholique de la jeunesse canadienne-française with its 77 local committees, and the Catholic Church all joined the Association canadienne-française d'éducation de l'Ontario in denouncing the Ontario government.[26] Section 93 proved to be an ineffective means to protecting language rights for the court opined that these guarantees were on the basis of religion, not language. Finally, in 1927, after fifteen years of bitter and divisive debates, the Merchant Commission Report recommended the reestablishment of French-language elementary schools, bilingual high schools, and the hire of French-speaking school inspectors to overview French-speaking teachers. The government put these recommendations into effect in late 1927, and formally repealed Regulation 17 from the

[26] These developments are thoroughly recounted in Robert Choquette's *Language and Religion: A History of English-French Conflict in Ontario* (1975).

Education Act in 1944. For the next forty years, the Association canadienne-française d'éducation de l'Ontario continued its battle for French-language secondary schools and for the management of all French-language schools.

Manitoba entered Confederation in 1870, following negotiations between Ottawa and the provisional government of the Red River. Its founding Act guaranteed the use of the French and English languages in the legislature and the courts, and provided for confessional schools. It ensured, to borrow from W.L. Morton, "the balance of English and French nationality on which Confederation rested" (1967, 141). Twenty years later, in 1890, after an influx of a large number of British Canadians from Ontario, the Manitoba government passed three bills that effectively put an end to official status for the French language and to French-language education. In turn, it abolished the mixed Protestant and Catholic board of education, established a system of nondenominational schools thereby eliminating the public funding of Catholic schools, and declared English to be the language of the legislature, the courts, and the civil service. Two lower court decisions declared the 1890 Official Languages Act unconstitutional, but these were ignored by the provincial government (Blay 1987). The Judicial Committee of the Privy Council in London opined that the federal parliament had the power to impose a remedial law on the province, but the latter refused to do so.

Through the work of the Association d'éducation des Canadiens-Français du Manitoba, a number of schools in rural areas continued to use French. For close to seven decades, French-language education rested on the Association's ability to come to modus vivendis with school inspectors. In short, as Raymond Hébert writes, "the network of religious and language safeguards painstakingly erected and fought for by Louis Riel and Fathers Jean-Noël Ritchot and

Alexandre Taché in 1869 and 1870 was systematically dismantled within a single generation by federal and provincial interpretation of the Manitoba Act" (2004, 3).

Similar stories could be told about the Fransaskois and the Franco-Albertains. In 1892, the legislative assembly of the then Northwest Territories, from which Saskatchewan and Alberta were created, amended its School Ordinance to make English its sole language of instruction, with special permission for instruction in the French language for one hour per day to those parents willing to pay a supplementary fee (Aunger 1989). During negotiations of both the Alberta and Saskatchewan Acts, Prime Minister Laurier tried to reestablish rights for French Catholics, but was forced to back down in the face of stiff pressure from the press and the resignation of his Interior Minister (Martel 1997, 32). And so, in both provinces, the one-hour per day rule was more or less intact until the late 1960s. During that period, the Association catholique franco-canadienne de la Saskatchewan and l'Association canadienne-française de l'Alberta filled the void as best they could by recruiting bilingual teachers, administering French-language exams, and providing school manuals (Allaire 1988; Lapointe and Tessier 1986).

In summary, for close to one hundred years, all of what existed in terms of instruction in the French language was made possible through, first, the continuous resistance of provincial associations with the support of parents, and, second, the compassion and good will of government officials, particularly school inspectors. Put simply, the French-language population virtually had no formal status in the political arena and, moreover, French-language education was a matter of government generosity, not fundamental right.

2.2 Towards French-Language Education Rights

Efforts to establish French-language schools outside Québec were finally given new life in the 1960s through the convergence of four main developments. This decade witnessed the advent of a more assertive nationalism in Québec, the creation of the Royal Commission on Bilingualism and Biculturalism, an at last openness to French-language education from provinces, and the emergence of a new class of leaders in Canada's Francophone minority communities.

Québec was undergoing profound social, political and economic changes. After fifteen successive years of Maurice Duplessis' conservative Union nationale, the 1960 election brought Jean Lesage's Liberals to the National Assembly and ushered in the Quiet Revolution. If Bill 22 and Bill 101 were passed in the 1970s, the 1960s nonetheless set the stage for a full participation of francophones into the economy. Its reforms namely included the nationalization of all hydroelectric facilities, the creation of a department of cultural affairs and the Caisse de dépôt et placement, and the complete renewal of the department of education. Changes in education ensued from the Parent Report, which declared that education would be the key to improving the overall status of French in the province.

In other provinces, after a century of at best benign neglect and at worst active assimilation, governments were slowly moving towards increased bilingualism in their educational systems. Put differently, education witnessed the emergence of rights and status for the French-language population. In New Brunswick, the election of Louis J. Robichaud brought about important reforms in education. Steps were immediately taken to translate school manuals into French, to improve second-language education programs, and to render bilingual the department of education. In 1966, as part of its Equal Opportunities Program, the government

overhauled the entire educational system, amalgamating the 422 financially and administratively autonomous school districts into 33 French, English or bilingual school divisions.

The Ontario educational system was also undergoing important reforms at the time. Following an 1963 amendment authorizing the teaching of select subjects in the French language, John Robarts' government passed legislation in 1968 authorizing instruction in French in all subjects and at all levels where numbers warrant. Robarts' openness stemmed in part from the long-standing demands of Franco-Ontarians for a complete French-language education system, and in part from the belief that improving the status of Franco-Ontarians would help to convince Québec leaders that the Canadian federation was conducive for the cohabitation of two linguistic communities.

French-language education was also gaining ground in the Prairies. In Manitoba, an 1970 amendment authorized schools to dispense teaching in French where a set number of parents requested such instruction – twenty-eight for elementary schools and twenty-three for secondary schools. French effectively acquired formal status for the first time since the infamous 1890 Official Language Act. In Saskatchewan, following a 1968 amendment to the School Act, the provincial cabinet was enabled to designate schools where French could be used for a period of time determined at its discretion. As for Alberta, French-language instruction was tolerated at one hour per day until an amendment in 1964 that authorized the use of French in elementary schools, but on a descending scale – "grades 1 and 2, one hour of English; grade 3, two hours of English; grades 4-9, one hour of French per day, with all authorized textbooks in English only" (Martel 1991, 95).

Official Languages and French-language education rights also made their way on the federal government's agenda during this decade. In 1963, amid escalating pressures from within

and outside Québec, the federal government established the Royal Commission on Bilingualism and Biculturalism. It was mandated "to inquire into and report upon the existing state of bilingualism and biculturalism in Canada and to recommend what steps should be taken to develop the Canadian Confederation …" (Privy Council of Canada 1963). Moreover, the commission was also asked to consult with provinces on existing opportunities available to learn the English and French languages within their respective educational systems.

The Royal Commission released its Preliminary Report in 1965. After close to two years of holding public forums, meeting with advocacy groups and with provincial premiers, sifting through hundreds of briefs, and analyzing a number of commissioned studies, the commissioners unequivocally declared that Canada was "passing through the greatest crisis in its history" (1965, 13). Their course of action came in the form of 150 recommendations, spread across their momentous six-volume Final Report. It is worth citing the commissioners at length on the state of French language education systems outside Québec:

> There have been serious gaps and dislocations in the sequence from one educational level to another; essentials such as teacher-training, guidance, and so on, have left a great deal to be desired; a technical or scientific education has been largely unavailable. As a consequence, even where conditions have been most favourable, French-speaking children have been seriously handicapped in their education, with the result that often they were deficient in both languages. *Not only have there been injustice in human terms, but these Canadian citizens have not been able to make their potential contribution to society* (RCBB 1967, 123; my emphasis).

The commissioners' work didn't lead to the immediate enshrinement of a right to full school governance. That would take another fifteen to twenty-five years, depending on the province. Its work, however, set the stage for two major official languages initiatives. On the one hand, the federal government assented to institutional bilingualism in all federal institutions through the adoption of the 1969 Official Languages Act. The French language finally had formal equal rights and equal status to the English language in all federal institutions. On the

other hand, the commissioners' recommendations forced the topic of education rights for official language minorities upon provincial and federal agendas, which eventually led to the creation of the Bilingualism in Education Program.

The fourth and last factor that came to a head in the 1960s on the topic of French-language education rights is the emergence of an urban, well-educated, and secular leadership in francophone milieus outside Québec. The waning influence of the Catholic Church, for a long time a source of moral and financial support, coupled with the decline of the Ordre de Jacques Cartier and the Conseil de la vie française, two organizations that had historically supported these communities, exerted significant pressures on French-language communities outside Québec and their delicate institutional foundations. In the face of these social and economic constraints, not to mention demographic constraints relative to the shrinking of the French-language population outside Québec, a new generation of leaders embarked on what Michael Behiels calls "the arduous but ultimately successful rebuilding of Canada's francophone minority communities at the provincial and national levels" (2004, xxi).

In each province, a number of urbanized Francophones became increasingly dissatisfied with the lack of French-language rights and services, as well as disillusioned with the traditional elites that governed their provincial associations. In Gold's words, "Francophone white-collar leaders from the new education and professional sectors declared themselves unwilling to accept the accommodations worked out by previous generations" (1984, 109). In Ontario, for example, a "feisty new generation" gained control of the Association canadienne-française d'éducation de l'Ontario, and used its contacts "to replace Catholic Church officials as Franco-Ontarians' natural leaders in education" (Behiels 2004, 8). In the next province over, the new generation of Franco-Manitoban leaders sought for the Association d'éducation des Canadiens-Français du

Manitoba to forego its passive resistance, evidenced by negotiations of modus vivendis with school inspectors, and invest in the political arena through protest and lobbying (Hébert and Vaillancourt 1971). These associations, deprived of their traditional means of funding, increasingly drew funding from governments, initially from the Québec government's short-lived Service du Canada français d'outre-frontière, and later from the federal government's Secretariat on Bilingualism. Indeed, as Allaire shows in an analysis of financial statements from the Association catholique franco-canadienne de la Saskatchewan, government funding almost at once trumped funding from French Canadian parishes and institutions (1992, 236).

In summary, after a century of struggles, of continuous lobbying of government officials, and of offering basic education services in spite of legal impediments and inhospitable political environments, Canada's Francophone minority communities' demand for justice and equality in education were at last not falling on deaf ears. Provinces, most of which had been actively hostile to French-language education, were legislating in the area. The federal government, long absent on grounds that education was an exclusive power of provinces, was also finally involving itself in language issues, namely with the creation of the Royal Commission on Bilingualism and Biculturalism. Well aware of these openings, leaders in French-language communities outside Québec will come together to create a national association, which was to serve as a platform for filling their common grievances and articulating their common claims, but also for voicing them vis-à-vis federal and provincial governments.

2. The Comprehensive Program of Recognition and Promotion

Shortly following its creation, the Fédération released, in turn, *Les héritiers de Lord Durham* (1977a; 1977b), *Deux poids, deux mesures* (1978), *Pour ne plus être… sans pays* (1979), *À la*

recherche du milliard (1981a), *Un espace économique à inventer* (1981b), and *Pour nous inscrire dans l'avenir* (1982).[27] Taken together, I suggest that these six research reports and political manifestos amount to what we could call a comprehensive program of recognition and promotion of Canada's Francophone minority communities. Indeed, upon my reading, the first captures the impetus for the comprehensive program by reporting on the abysmal overall state of the French-language population outside Québec, the middle four examine issues that are of importance to these communities and formulates demands for rights and services, and the last elucidates the global objectives that ought to direct and inform the articulation of concrete demands. Of course these contours – impetus, proposals, and objectives – are not clearly demarcated from one another. The six reports and manifestos were conceived of separately, or at least were not conceived of together. And so, for example, *Pour ne plus être… sans pays* speaks of principles that ought to guide constitutional reforms and *Pour nous inscrire dans l'avenir* cites statistical data and legislation. However, with the benefit of hindsight, I hope to make clear that we can and ought to understand these reports and manifestos as a six-volume political statement on the past, present, and future of Francophone minorities outside Québec.

More specifically, this comprehensive program of recognition and promotion rests upon a twofold normative logic of a combination of participation and autonomy. In practice, this means being elected to local, regional, provincial and federal institutions, but also managing their own affairs in areas of concern; sitting on boards of major businesses and companies, but also controlling credit unions and cooperatives; receiving public services in French from governments, but also self-administering a number of these services. It's worth citing the Fédération at length on the back and forth between these two normative goals:

[27] All citations from the Fédération's reports and manifestos are personal translations.

> The specificity of our struggles will always vary in relation to the particular character of our history and the given sociability that emerged from it. Concretely, this means: that the pursuit of greater economic equality requires greater community control over economic means; that the pursuit of political power cannot restrict itself to the participation of French-speakers in the upper-echelons of government but must also entail political structures that speak to our reality and that are enacted into legislation; that the pursuit of linguistic security must not bound itself to obtaining French language services from public and private institutions, but must also involve the creation of institutions that are, from their conception to execution, linguistically and culturally ours (1982, 28-29; personal translation).

In an effort to articulate the comprehensive program of recognition and promotion as well as to uncover the twofold normative logic that underpins it, this section discusses the main findings of the Fédération's six-volume political statement.

Les héritiers de Lord Durham exposes, "without complacency nor reluctance," the state of the French-language population outside Québec (1977, 21). It examines cultural, demographic, economic, educational, geographic, judicial, political and social features in each province. Its scope and depth led two authors to conclude that "*Les héritiers de Lord Durham* constitutes the most complete statistical overview of the French-language population outside Québec" (Lapointe and Thériault 1982, 61; personal translation). Its overarching message is that, since the end of the Second World War, the assimilation of Francophones outside Québec has accelerated menacingly everywhere except in New Brunswick. Of the 1.4 million people outside Québec that declared French as their ethnic origin in the 1971 Canadian Census, 924,000 declared French as their mother tongue and 675,000 make primary use of French at home. Put differently, outside Québec, only about half of the people of French descent speak French in their home. To explain these assimilation rates, the report explores a multitude of factors and tests them against available data on urbanization, migration and immigration, mixed unions, socioeconomic conditions, French-language education, media and culture, and legislation on official languages.

Data suggests that the French-language population is more likely to assimilate in the transition from primary to secondary school, and from secondary school to the workforce. It also suggests that French-speakers in mixed unions virtually always adopt their partner's language. Rates here are staggering: anywhere from 83 to 97 percent use mainly English in their home (1977, 33). Immigration flows reveal that most French-speaking newcomers to Canada settle in Québec. The francophonie in Alberta, British Columbia, and Ontario has attracted French-speakers from other provinces thanks to their provinces' economies. These migrants, however, tend to settle in cities where, as Richard Joy explains, "without the protective shell of the rural French parish, the city-dweller is constantly exposed to the English language" (1972, 34). And so, on internal migration, the Fédération says that future censuses will determine whether or not French endured as these people's primary language. In short, attending an English-language school, moving to the city to find work, and choosing a partner outside the linguistic group are all factors that help explain assimilation rates of the French-language population outside Québec.

Of course the Fédération doesn't believe that governments or French-language communities should dictate the choice of life partners or place of residence. Its answer rather resides with providing rights and status to the French language and the communities that speak it through legislating on schools, employment, media, and culture. And so, in the course of exposing the number of factors that the French-language population has to militate against to live in their language and transfer their culture to the next generation, *Les héritiers de Lord Durham* evolves into a cutting critique of existing rights and services or their lack thereof. At issue are language and education rights, cultural institutions such as Radio Canada and the National Film Board, and economic development.

The federal government's 1969 Official Languages Act and its related funding programs have provided little direct support to Canada's Francophone minority communities. The Act is directed at the federal government and its institutions not at official language minorities. It confers "equality of status and equal rights and privileges" to the English and French languages "as to their use in all the institutions of Parliament and Government of Canada" (1969, s. 2). Or, put simply, it aims at creating a federal government that can communicate effectively in both English and in French. Of the funds allocated to official languages, only a small proportion makes it to community associations and activities. Funding is shared between federal institutions and provinces. And so official bilingualism has "contributed slightly, if not imperceptibly, to the development of French-language communities outside Québec" (1977, 108).

If the French language has formal status within federal institutions, it is more or less a foreign language in all provinces except Québec and New Brunswick. At the time of the publication of *Les héritiers de Lord Durham*, French could not be used in legislatures or courts in British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, Prince Edward Island and Newfoundland. In Ontario, the statutes of the legislative assembly allowed for the use of French in debates, and the civil service provided limited basic services and official documents in French in areas where the Franco-Ontarians formed a majority or an important minority. It was impossible to speak of formal status for the French language, however, for the legislature didn't make available simultaneous translation and the offer of basic services in French is a matter of practicality not right.

"Radio Canada," the Fédération claims, "has failed at its task" (1977, 81). The problem with the public broadcaster is twofold. On the one hand, a number of French-language communities don't have access to it. What is more, of those that are within an area of service, the

radio station often has poor sound and the television station has mediocre picture. On the other hand, radio and television programming are destined for the French-language population in Québec. In New Brunswick, for example, Radio Canada offers one hour per day of local content and the rest of the content is on Québec. But high winds in Gaspésie and union lockouts in Saguenay are of little to no interest for Acadians. The Fédération also says it is unsatisfied with the National Film Board and the National Arts Council (1977, 89 and 97). However, *Les héritiers de Lord Durham* doesn't document these federal agencies' realizations or lack thereof.

As previously discussed, education has been the main historical battleground for Canada's Francophone minority communities. In *Les héritiers de Lord Durham*, the Fédération calls existing French-language educational systems outside Québec "absurd," and claims that schools are "cruelly harming" their children (1977, 68 and 74). If French-language schools are the key to transmitting the French language and culture, the prevailing bilingual or mixed schools are means of assimilation. In New Brunswick, Ontario, and Manitoba, instruction in French enjoys formal status, but the application of the law comes up against administrative restrictions and political reluctance. In Ontario, for example, the 1968 School Act recognizes instruction in the French language, but stipulates that, among other things, "in the opinion of the board the number of such French-speaking pupils so warrants" (1977, 65). In all other provinces, ministries of education retain discretionary powers regulating instruction in French. In Saskatchewan, for example, instruction may be provided in the French language "subject to such terms and conditions as the Lieutenant Governor in Council may prescribe" (1977, 64). Instruction in French, then, depends on the good will of the Cabinet. In short, the French-language population outside Québec doesn't enjoy inalienable educational rights and services.

Les héritiers de Lord Durham is comparatively silent on economic development and employment, the Fédération explains, because socioeconomic data from the 1971 Census was received within a too short window from publication (1977, 34). Preliminary analyses reveal that in all provinces except British Columbia and Newfoundland the socioeconomic levels of the French-language population are inferior to that of the overall population. Part of the explanation, the Fédération argues based on available data, lies with French-speakers' below average levels of education and in jobs with low social status. In short, "the regress of the French-language population is dramatic" and only "an immediate and complete reversal of attitudes" will put these communities on the road to justice and equality (1977, 23 and 117). The Fédération's next four publications try to articulate what exactly this change of attitude would look like in terms of rights and services.

If specific issues and concrete proposals are given an initial cursory treatment in *Les héritiers de Lord Durham*, the Fédération's next four research reports proceed to elucidating issues of significant importance and suggesting actions and initiatives to resolve them. This second section shows how, taken together, the rights and services demanded in these reports amount to a comprehensive program of recognition and promotion of Canada's Francophone minority communities. Moreover, in the process of reviewing these demands for rights and services, this section also tries to extract the twofold normative logic of participation and autonomy that underpins these reports.

The first of these four reports, entitled *Deux poids, deux mesures*, is a response to analysts and politicians whom tend to liken living in French outside Québec to living in English in Québec. As René-Jean Ravault explains,

> Several French-speaking leaders outside Québec whom I met in my research spoke of their intention to write a document drawing the attention of English-speakers outside Québec –

> then scandalized by Bill 22 of Québec's Liberal government – to the position of French-speakers in their provinces, a position infinitely more precarious than that of English-speakers in Québec (1993, 317).

The report proceeds in two main parts. Relying on data from Statistics Canada as well as other statistical analyses, the first two chapters provide a snapshot of the Anglophone community in Québec and Francophone minority communities outside Québec. Chapters three to six provide a comparative analysis of the rights and services available to each.

Compiling and arranging data previously dispersed in a number of publications, the first chapter provides a demographic overview of the Anglophone community in Québec and of Francophone minority communities outside Québec. In terms of mother tongue, there are 790,000 Anglophones in Québec and 925,000 Francophones outside Québec. Their similar numbers, however, cannot hide their dissimilar demographic realities. Data shows the decline of the French-language population outside Québec and the growth of the English-language population within Québec. If close to fifty percent of people outside Québec that declared French as their ethnic origin make primary use of the French language in their home, close to one hundred and forty percent of people within Québec that declared British as their ethnic origin use mainly English at home. More concretely, the French-language population outside Québec is assimilating at rates ranging from 70% in British Columbia to 35% in Manitoba to 8% in New Brunswick, while the English-language population in Québec is taking in 12.5% of its demographic weight (1978, 24-25). The second chapter, comparing average annual salaries according to mother tongue in New Brunswick, Ontario and Québec, reveals that Acadians and Franco-Ontarians are below their respective provincial average whereas Anglo-Québécois are well above. Indeed, Anglophones in Québec have the highest average annual salary in the whole country, and within this group, unilingual Anglophones are better off than bilingual Anglophones

(1978, 28). Anglo-Québécois also have significantly higher levels of education than Acadians and Franco-Ontarians, undoubtedly a factor in explaining socioeconomic discrepancies.

Whether the basis of comparison is educational rights, media, health services, or legal services, Canada's Francophone minority communities' are far behind the Anglophone minority in Québec. On education, *Deux poids, deux mesures* shows that the Anglo-Québécois have control of a full educational system: 471 homogenous schools, 29 homogenous school boards, six homogenous colleges, and three homogenous universities. Outside Québec, Acadians in New Brunswick have 166 homogenous schools, four homogenous school boards, and one homogenous university, Franco-Ontarians and Franco-Manitobans have 324 and 10 homogenous schools respectively, and all others are instructed in English or partly in French within a 'bilingual' institution. More significantly, except in New Brunswick, French-language communities do not manage their educational systems. "Not only do Francophones outside Québec not control educational services," the Fédération explains, "but they are often forced into making concessions, such as bilingual or mixed schools, which are nothing more than means of assimilation" (1978, 43).

Media are important because they are both a window onto and a reflection of the minority. They provide venues to express thoughts and to showcase realities, but they also, more significantly, enable those that are part of the group to see their culture and read in their language. In *Les héritiers de Lord Durham*, the Fédération was harshly critical of Radio Canada for its failure to reach French-language communities and to provide programming on these communities. *Deux poids, deux mesures* turns to private daily and weekly newspapers, as well as radio and television stations. Similar to educational systems, the scope of media controlled by official language minorities is miles apart. For example, the English-language population in

Québec controls three daily newspapers with a total circulation of 350,000, while the French-language population outside Québec has two daily newspapers with a readership of around 30,000 people.

Health and social services is yet another area where the reality of the French-language population outside Québec is far removed from that of the English-language population within Québec. The Anglophone minority in Québec, for example, has three times more English-speaking doctors and English language day-care centers, and twice the amount of English language nursing homes than Canada's Francophone minority communities. Or, as Thériault and Lapointe ask rhetorically, "English-language hospitals in Québec, for example, have an enviable reputation across North America; French-language health services outside Québec…" (1982, 63).

Predictably, the Anglo-Québécois are better off than Francophones outside Québec in the area of legal services. Even with the adoption of the Charte de la language française (Bill 101), the English-language population in Québec enjoys rights to a hearing, to a jury, and to pleadings in English. In contrast, in most provinces outside Québec, legal services for the official language minority are uncommon. New Brunswick has made progress since the adoption of its 1969 Official Languages Act, Ontario too with its pilot projects for select regions, and elsewhere a translator is the best-case scenario. In short, *Deux poids, deux mesures* says that "the state of legal services offered to the English-language population in Québec represents a model that the French-language population outside Québec would like to see implemented for their communities" (1978, 54).

The second research report, entitled *Pour ne plus être… sans pays*, represents the Fédération's intervention into mega-constitutional politics on the repatriation of the Constitution

Act and the adoption of a Charter of Rights and Freedoms. It offers a blueprint for a constitutional framework, complete with a preamble, declarations of fundamental and linguistic rights, and an amendment procedure. "The perspective is that of a French-speaker living outside Québec," but the proposition is intended to "satisfy as much as possible the interests of all Canadians" (1979, 3-4). Its proposals are bold: complementing guaranteed individual rights with provisions for collective rights, abolishing the senate and replacing it with a house of the federation comprised of an equal number of English- and French-speakers, and establishing a separate tribunal to oversee the implementation of language rights.

At the heart of the manifesto, behind legal instruments and political mechanisms, lies the view that Canada is a federation of two founding peoples – French Canadians and English Canadians. Of course a lot of ink has been spilled on whether the Canadian federal system, to oversimplify, is a creation of provinces or of peoples. Sidestepping these debates, the Fédération proposes constitutional principles and political institutions that it believes could establish the equality of the two founding peoples and of the ten provinces. It states, "Francophones outside Québec are convinced that any valid project [of constitutional reform] will rest upon the double reality of the association of two peoples and of ten provinces" (1979, 4).

For the Fédération, the constitutional framework ought to combine individual and collective rights. On the one hand, it ought to ensure that each citizen and permanent resident of Canada has, for example, freedom of conscience and thought, freedom of opinion and speech, and equality before the law. Ensuring the liberty and equality of all citizens, however, at times requires the adoption of collective rights. Without collective rights, *Pour ne plus être… sans pays* argues, the French-language population outside Québec cannot "attain in social and cultural terms a status equal to that of the majority" (1979, 19). Collective rights, then, are meant to

render effective individual rights by enabling official language minority communities to administer given services or control given responsibilities. The Fédération's proposal for instituting such collective rights is a "power of initiative," whereby official language communities can seek the devolution of powers or the control of services in areas of key concern. Let me explain.

The advent of the modern welfare state and the civil service that administers it following the Second World War involved consolidating administrative powers previously held by local communities into central institutions located in provincial capitals. The consequences of these developments on Canada's Francophone minority communities are twofold. First, concentrated in rural areas with pockets in cities, the French-language population finds itself removed, geographically speaking, from decision-making centers. Second, the transfer of powers from local communities to central bureaucracies means that French-language communities, politically speaking, lost administrative authority over areas of concern that often included education, health, and social services. In cases of regional offices or of government agencies established in regions, their impacts on the French-language population depend on its numbers. In regions where there are too few French-speakers, the office or agency operates in English and so doesn't contribute to the flourishing of the official language minority by creating employment or increasing the use of the minority language. Conversely, if the region is majority French-speaking, the office or agency can offer employment in French and French-language services. In that sense, the establishment of the Public Service Pension Centre in Shédiac, New Brunswick had considerable economic, cultural, and linguistic benefits on the Acadian population, while the arrival of the Canadian Tourism Commission in Vancouver had little to no impact on the vitality of the Franco-Columbian community.

The power of initiative is designed to compensate and lessen the impacts of distant and generally English-speaking central institutions. It would complement institutional bilingualism and minority language education rights, which are both expressly affirmed in the proposed constitution. Instead of setting a predetermined formula based on demographic weight or institutional capacity or geographical concentration, *Pour ne plus être… sans pays* proposes a mandatory consultation process that would be triggered at the demand of the given official language minority community. It states, "the minority community that has enough resources and vitality to plan and control services that are of importance should have the option to claim its responsibility" (1979, 24). A French-language community, for example, could have recourse to this constitutionally entrenched right to prevent the amalgamation of their predominately French-speaking municipality to a larger English-speaking metropolitan area. Another French-language community seeking control of its own recreational services, for example, could also resort to this power of initiative. In these examples, collective rights render effective individual rights because enabling the French-language population to control its municipal government or recreational activities contributes to putting them on equal footing with the majority population.

The language rights tribunal – called the 'binational cultural commission' – would oversee the process. It would consult with relevant parties to determine appropriate responsibilities and services, review constitutional and legislative consequences that would result if the transfer was ratified, and oversee referendums in cases where requests require substantial modifications, i.e., creation of a regional authority within a province or even a new province. This power of initiative, *Pour ne plus être… sans pays* acknowledges, would require changes that run counter to prevailing bureaucratic principles or economic rationales. However, in a telling sentence that resonates soundly with *Deux poids, deux mesures*, the Fédération explains

that existing practices in other provinces could serve as "powerful precedents," especially if we consider the "disproportion that exists today between public services offered to the English-language minority in Québec compared to those offered French-language minorities in other provinces" (1979, 25). In short, to cite the Fédération, "vibrant official language minorities must in fact have a very broad power of initiative in order to be able to ensure that institutions at the local level reflect their culture and their language" (1979, 21).

Two years later, in 1981, the Fédération released two more research reports. The first, entitled *À la recherche du milliard*, evaluates the impacts of the Bilingualism in Education Program on French-language education outside Québec, and the second, *Un espace économique à inventer*, offers both a theoretical and practical reflection on economic development in French-language communities outside Québec. Let me extract their main findings and key proposals.

In 1970, after close to two years of top-level negotiations between federal and provincial officials, the federal government created the Bilingualism in Education Program.[28] Drawing from recommendations of the Royal Commission on Bilingualism and Biculturalism, these education programs aimed to ensure that parents had the opportunity to educate their children in the official language of their choice and that children had the option to learn the other official language as their second language. In the first decade alone, the program would cost the federal government over a billion dollars. *À la recherche du milliard*, as its title suggests, seeks to establish where those funds were spent. But before relating the Fédération's two main criticisms, let me fill in a bit of the context on their inner workings of these bilingualism in education programs.

The Bilingualism in Education Program is first and foremost a funding scheme whereby the federal government agreed to pay 'supplementary costs' associated with providing minority-

[28] Its name was officially changed in 1979 to the Official Languages in Education Program.

language education for children of official language minorities and second-official-language instruction for children of the linguistic majority. Amounts of financial assistance are based on a percentage of the average per-student costs involved in providing official-language programming. Three formulas were established for these purposes. The first paid 9 percent of the average cost for students enrolled full-time in minority-language education programs, coupled with an extra 1.5 percent for supplementary administrative costs, based on the total number children in the official language minority. Note that full-time student, or "full-time equivalent," refers to students whom received 75 percent of their instruction in the minority language in elementary schools and 60 percent in secondary schools. The second federal assistance formula covered 5 percent of average annual costs for students enrolled in second-language programming. The third paid to each province 10.85 percent of the annual provincial funding provided to post-secondary institutions offering programming in English within Québec and in French outside Québec. These three 'formula payments' account for almost ninety percent of the total funds spent in the first decade (1981a, 17). In addition, the Bilingualism in Education Program also set aside funds for 'special projects' to those provinces that wanted to further develop their official language educational systems.

À la recherche du milliard formulates two main criticisms of the Bilingualism in Education Program. The first is in relation to the rationale governing the allocation of program funding. "What's at issue," the Fédération explains, "is the way in which the federal government proceeds to contribute to the development of education rights and services for the French-language population outside Québec" (1981a, 36). Funds destined for minority-language programming are allocated to provinces that already have established educational services for their official language minority or that seek to establish such services. Provinces that provide

instruction in the minority language are "rewarded" for their efforts at set formula rates (1981a, 22). But if formulas reward initiative, most provinces outside Québec, as the first section of this chapter makes clear, are short of initiative when it comes to French-language education. So yet again, the Fédération laments, French-language communities outside Québec are left to the good will of their provincial governments. Indeed, reviewing funds allocated through formula payments, *À la recherche du milliard* shows that approximately two-third of total federal assistance were invested into the English-language education system in Québec (1981a, 36). Put differently, the Anglophone minority in Québec, already benefiting from homogenous schools, school boards, colleges and universities, received close to three times more funding than Canada's Francophone minority communities.

The Fédération's second criticism concerns the lack of accountability for expenditures. Not only the Bilingualism in Education Program doesn't prescribe mechanisms for evaluating whether or not it was meeting its objectives, but it also, more significantly, doesn't include mechanisms for monitoring whether or not allocated funds are being used to fund minority- and second-language education programs. "At no time," the Fédération notes, "existing agreements on formula payments require that provinces report back to the federal government on how its using its funding" (1981a, 45). Of course part of the reasoning for the lack of evaluation or accountability provisions was to make federal support for bilingualism in education compatible with provinces' exclusive jurisdiction in education. Drawing from newspapers, local interest groups, politicians, and provincial associations, *À la recherche du milliard* argues that federal assistance allocated for specific purposes of French-language education outside Québec is at times put towards other educational programs or other programs altogether. The Ottawa-region newspaper *Le Droit*, for example, revealed that, in the first three years of the Bilingualism in

Education Program, the Ontario government invested only half of funds received for minority-language education in its French-language educational system.

In summary, *À la recherche du milliard* maintains that, ultimately, the federal government's billion dollar investment in bilingualism in education reinforces rather than resolves discrepancies that exist between official language minorities within and outside Québec in terms of education rights and services. If the federal government and provinces are serious about meeting French-language communities' long-standing demands for education rights and services, the Fédération argues that federal formulas should focus on "apparent needs" rather than rewarding initiative (1981a, 41). The report makes two main recommendations. It first demands that francophone communities, through their provincial associations or school boards, have the opportunity to ask for funding. A sort of power of initiative, to borrow from *Pour ne plus être… sans pays*, in the domain of education. It then recommends the adoption of a global strategy for the development of French-language education outside Québec. This strategy would help guide the allocation of funds. The strategy, it is suggested, could be modeled on the English-language education system in Québec: "if the federal government is short of ideas on what such a strategy could look like, allow us to recall that the Fédération has emphasized on a number of occasions that French-language communities outside Québec would gladly settle thank you very much for rights, services and institutions available to the English-language community in Québec" (1981a, 63).[29]

Seeking to explore links between culture and economy and, more specifically, formulate proposals in relation to economic development, the Fédération released, also in 1981, *Un espace économique à inventer*. The report covers a lot of ground. It recalls the historical evolution of the

[29] See Matthew Hayday (2005) for a more recent and more detailed analysis of the Bilingualism in Education Program and its impacts on official languages and national identity.

French-language population outside Québec, overviews the rise of liberal economics, examines how nine francophone companies have responded to changes in the economic structure, and articulates a philosophy of economic development tailored for Canada's Francophone minority communities. Ultimately, it charts a course that admits to the inescapability of capitalism, but aims to constrain its effects, to combine, for example, technological advances with community development. It states, "it is through promoting a number of practices, through simultaneously charging on all fronts that we will manage to create areas of autonomy" (1981b, 95).

The backdrop to the report is continental economic gigantism, which substitutes relations of sociability for relations of capital, replaces cultural and linguistic diversity with the English language, and, in due course, erodes francophone milieus outside Québec. In response, the Fédération suggests that francophone communities "create and discover" what it calls "economic tools that are compatible with their collective being" (1981b, 11). The objective is to articulate community-based economic proposals that would counterbalance the effects of liberal economic structures. "Here, it could entail the creation of a consumer association, elsewhere it could require the establishment of a regional credit union or still resistance to the selling of a local business to foreign capital" (1981b, 12). Such an approach to economic development, it concedes, is considerably less exalting than grand political projects on creating new political entities or overturning the economic system. However, demanding opportunities to work and live in French, and partaking in public debates and actions on the importance of local ownership are small steps towards creating and discovering societies that constrain economic logic with social values.

The underlying belief is that the closer local communities are to economic decisions that affect them, the more likely these decisions will be responsive to local needs and sensitive to

local particularities. As result, the Fédération suggests that French-language communities outside Québec aim to "reclaim certain collective and regional powers," "repatriate means of power that escape them," "control economic decisions that concern them," and "take charge, before long, of economic decisions that condition their collective lives" (1981b, 1, 12, 13, 28). Put simply, from *Pour ne plus être… sans pays*' power of initiative in the sphere of politics to *À la recherche du milliard*'s power of initiative in the sphere of education, *Un espace économique à inventer* advocates power of initiative in the sphere of economics.

These four research reports on issues of significance, taking their cue from the alarming assimilation rates evinced in *Les héritiers de Lord Durham*, culminate into *Pour nous inscrire dans l'avenir*. In contrast to previous reports that focus on historical and present struggles, this last report aims to uncover the global objectives that lie behind these concrete struggles. The aim is to "extract from our reality and our struggles the basic principles that ought to inform our future decisions (1982, 22). *Pour nous inscrire dans l'avenir* suggests that past struggles two such objectives: the pursuit of equality and the pursuit of identity

First, Canada's Francophone minority communities' historical pursuit of equality, the Fédération explains, "is about contesting the injustice, the discrimination, and the oppression that, as a collectivity, we have been and are being subjected to" (1982, 23). All struggles for rights and services have been and are directed at their unequal political or economic or legal status. In that sense, *Deux poids, deux mesures* and *À la recherche du milliard* would not have been were it not for considerable discrepancies in the treatment of the English-language community within Québec and French-language communities outside Québec. Or, if governments had committed themselves to providing rights and services to their respective French-language communities, *Pour ne plus être… sans pays* would never had seen light of day.

Decisions taken without their consent are virtually always at the root of their unequal status – from the 1890 Manitoba Official Language Act to the 1912 Ontario Regulation 17 to recent criticisms of health and legal services on offer. Answers to such conditions, however, will differ according to each community's sociological conditions – their demographic weight, their regional concentration, and their political resolve. Put differently, it the ultimate aim remains that of having equal status to the majority population, the means to achieve equality varies per community. "The diversity of situations in which Francophones outside Québec live and flourish," *Pour nous inscrire dans l'avenir* states, "supposes diversity in terms of models of development, of political intervention, and of community animation (1982, 1). Bringing about equality, then, can require involving Francophones in decision-making institutions or devolving such decisions to community-controlled institutions. Put simply, the pursuit of equality can entail participation or autonomy.

Second, past and present struggles also aim at recognizing and accommodating their cultural and linguistic differences. *Pour nous inscrire dans l'avenir* calls this the pursuit of identity. It states, "we must, of course, continue to produce about ourselves a discourse and practices that embody our identity and our specificity" (1982, 29). This then means that treating Francophones outside Québec equally may require treating them differently. In the area of education, for example, equal treatment requires establishing French-language schools, not providing French-speakers with full access to English-language schools. Or if for some communities equal status may involve regional or local autonomy in areas of concern, for others guaranteed participation in majority-controlled institutions will suffice. Put simply, defining what equality means for these communities requires evaluating how given concrete measures relate to their identity.

The Fédération has published two research reports since *Pour nous inscrire dans l'avenir*: a first in 1992 and a second in 2007. But a lot happened between 1982 and 1992 on constitutional and legislative fronts. Indeed, the two pillars of the federal government's recognition and accommodation of Canada's Francophone minority communities were put in place: Section 23 of the 1982 Constitution Act and Part VII of the 1988 Official Languages Act. The next chapter proposes a complete critical analysis of these two measures. It argues that if their administrative application has failed to properly respond to the demands of these communities, the normative logic that underpins them can account for both participation and autonomy. I believe that the Fédération's two latest reports are consistent with the comprehensive program of recognition and promotion outlined above, but the demands are articulated in reference to Section 23 and Part VII. And so to account for these reports here would require explaining constitutional and legislative developments. But filling in that context would take a lot of space and, more significantly, cover grounds that are to be covered in the next chapter. It then makes sense to deal with the Fédération's last two reports in the next chapter after having provided an overview of the important changes brought about by the 1982 Constitution Act and the 1988 Official Languages Act.

In summary, Canada's Francophone minority communities have presented an important number of political demands upon federal and provincial governments. As we've seen, some relate to participation, others to autonomy. On the one hand, several of the claims for rights and services are aimed at the bilingualization of public institutions so that Francophones can receive services in their mother tongue. Bringing about justice and equality for Canada's Francophone minority communities, the Fédération claims, requires having access to French-speaking doctors, nurses, and social workers, as well as being able to apply for employment insurance and to renew

your driver's license in French. On the other hand, the road to justice and equality also entails self-control. The most important demand for autonomy, historically speaking, has been in the area of education. The federal government finally acquiesced to that demand with the incorporation of minority language educational rights into the 1982 Constitution Act. But Canada's Francophone minority communities have demanded and are demanding community autonomy in other areas. In the next chapter, I show how existing constitutional and legislative dispositions relating to official languages can enable autonomy or what I also call community-based development.

Chapter 6

The Possible Federal Language Regime

> *"People are supposed to experience the realization of principles of justice through various concrete institutions, but they may actually experience a lot of the institution and very little of the principle" (Carens 1996-97, 117)*

This chapter begins where the previous ends in two equally important ways. On the one hand, temporally speaking, this chapter covers the period from the repatriation of the constitution to the present. The last chapter examined the historical development of federal and provincial legislation relating to French-language education rights and government services, as well as of Canada's Francophone minority communities' demand for a comprehensive program of recognition and promotion. It comes to a close, however, when the federal government was about to give constitutional status to minority language educational rights and commit itself to enhancing the vitality and encouraging the development of English and French linguistic minorities. Moreover, the last chapter also doesn't report on the Fédération des communautés francophones et acadiennes du Canada's most recent political demands, which were presented in *Dessein 2000* (1992) and the *Actes du Sommet des communautés francophones et acadiennes* (2007). And so, if the previous chapter offered an historical analysis of language politics outside Québec prior to 1982, this chapter analyzes post-Charter language politics with respect to the French-language population outside Québec.

On the other hand, logically speaking, this chapter carries out the second half of the Kymlickan approach to multiculturalism and minority rights. The Kymlickan approach, as outlined in the third chapter, requires spelling out the normative logic underlying both group

claims and state practices. Assessing reports and manifestos published by Canada's Francophone minority communities' main national association, the previous chapter argued that, behind claims for, for example, French-language education rights and public services, lie two basic normative goals: participation and autonomy. This chapter aims to articulate the normative logic that underpins federal government legislation vis-à-vis Canada's Francophone minority communities. Of particular interest are Section 23 of the 1982 Constitution Act and Part VII of the 1988 Official Languages Act. The underlying aim is to disentangle practices of official languages from principles underpinning them in order to expose the normative logic underlying the federal language regime.

In concrete terms, this chapter proceeds in three sections. It first provides an overview of the main legislative and constitutional dispositions of the federal language regime (s. 1). It then elucidates how these dispositions were instantiated and given effect leading to what is routinely called the horizontal management of official languages (s. 2). It shows how, through efforts to guide and coordinate programs and actions in the area of official languages, the federal language regime has evolved into an intensely bureaucratized set of committees and networks governed by directives and agreements and subjected to monitoring and evaluation mechanisms. In the process, the second section also reveals how the horizontal implementation of official languages policies and programs promotes the participation of French-language minority communities but stifles their autonomy or what I also call community-based development. The third and last section steps back from the complex, and at times confusing, official languages management structure in order to examine the normative logic that underpins the federal mandate to enhance the vitality as well as assist and support in the development of French (and English) linguistic minorities (s. 3). Uncovering and articulating this normative logic allows me to argue that the

failure to support and assist in the promotion of community autonomy lies with the given administrative application of legislative commitments not within the commitments themselves. Put simply, the promotion of a combination of participation and autonomy for Canada's Francophone minority communities can be made consistent with the federal language regime. I refer to this thesis as the possible federal language regime to emphasize how responding to these communities' claims for justice and equality is possible within existing institutional and legal parameters.

1. The Federal Language Regime

Prior to the 1969 Official Languages Act, federal language policy was limited to Section 133 of the 1867 Constitution Act, which stipulated that every person had the right to use English or French in the Parliament and in any pleading brought before federal courts (as well as in the legislature and courts of Québec). It also required that all legislation of the federal Parliament (and the Legislature of Québec) be enacted in the two official languages. As explained earlier, French Canadians believed that Section 93, which guaranteed the protection of previously established Protestant schools in Québec and Catholic schools in Ontario, provided education rights to the French-language population in Ontario insofar that a large proportion of them were Catholics. However, when the Ontario government prohibited instruction in French through the passage of Regulation 17, Section 93 proved ineffective for the court opined that it guaranteed rights on the basis of religion not language. Over the years, other federal efforts were undertaken to enhance the use and status of French, including printing bilingual postage stamps (1927) and bank notes (1936), creating a public broadcasting company with English- and French-language

networks (1936), introducing simultaneous translation services in the House of Commons (1959) and the Senate (1961), and issuing bilingual cheques for federal public servants (1962).

With the passage of the 1969 Official Languages Act, the federal government set itself on course for a major overhaul of the legal and institutional infrastructure governing the use and status of the English and French languages. Indeed, in the last forty-odd years, the country witnessed a number of major constitutional and legislative transformations in terms of how the federal government approaches the use and promotion of official languages. The 1969 Official Languages Act brought about two main changes. It first expanded upon constitutional guarantees set out in the 1867 Constitution Act. It gave equal status to English and French "in all matters pertaining to the Parliament and Government of Canada." Whereas the 1867 Constitution Act guaranteed the use of English and French in the Parliament and before federal courts, the 1969 Official Languages Act extended the constitutional guarantee to all federal institutions, including federal departments, agencies and Crown corporations. It also established the right of a person to receive federal services in the official language of his or her choosing where numbers warrant. "A central goal," as Kenneth McRoberts explains, "was to place French on an equal footing with English in the federal government's own institutions" (1997, 79). The second main change concerns the creation of the Office of the Commissioner of Official Languages. Its central tasks are to receive and investigate complaints, as well as to monitor and report to Parliament on federal institutions' compliance with the spirit and the letter of the Official Languages Act. In 2006, Graham Fraser became the country's sixth Commissioner of Official Languages when he replaced Dyane Adam.

In the 1970s, building on these new legislative bases, the federal government launched a series of initiatives in efforts to ensure the equal status of English and French within federal

institutions and to encourage their use in Canadian society. While the application of official languages policy within the federal government fell upon the Treasury Board Secretariat, the Secretary of State, the precursor to the Department of Canadian Heritage, was tasked with the coordination and promotion of official languages outside federal institutions. It carried out its mandate through two main promotional and developmental programs: a program concerned with official languages in education and another relating to community development among English and French linguistic minorities.

I have discussed the first of these two programs in the analysis of *À la recherche du milliard* in the previous chapter. The Official Languages in Education Program, formerly called the Bilingualism in Education Program, consists of federal assistance to provinces in order to help cover additional costs associated with offering minority- and second-language instruction. This program also includes, for example, bursaries for summer immersion programs, funding of language monitors available to schools to assist in improving speaking and writing skills, and support to post-secondary institutions to develop programs and assist in capital construction.

The second program promotes community action and development among the English-language population within Québec and the French-language population outside Québec.[30] This program provided direct financial support to associations representing these communities, helped in the establishment of representative associations in communities where there were none, and enabled, more generally, these associations to expand their cultural programming and lobbying efforts. It provided direct funding, for example, to the Fédération and its members, as well as to other community-based associations working in sectors such as economic development, arts and

[30] Some critics still refer to this as the Social Action Program/Programme d'animation sociale after the initial name it bore from 1969 to 1973. Ian Brodie (2001), for example, criticizes federal efforts at 'animating' activists and interests groups through providing financial help and creating institutional entry points for their demands.

culture, and youth engagement. In short, the community support program enabled official language minorities to consolidate and expand their networks and institutions.[31]

Beyond these two main support programs, the federal government also provided funding to provincial governments that wanted to offer French-language services in areas other than education, promoted the status and the use of the two official languages through supporting activities in the private and voluntary sectors, and created the Court Challenges Program. The last program played a crucial role in the clarification of language rights (and, for a time, equality rights guaranteed under Section 15 of the Charter). Created in 1978, the Court Challenges Program provides funding to citizens and groups believing that their language (and equality) rights had been violated. The federal government cancelled the program in 1992 and then restored it in 1994. It was cancelled again in 2006, but was then partly reinstated in 2008 following an out-of-court settlement with the Fédération. The newly titled Program to Support Linguistic Rights focuses on language-related cases and emphasizes dispute resolution.[32]

In the 1980s, building on the enactment of institutional bilingualism and the establishment of programs to support bilingualism in education and to promote official languages and the minorities communities that speak them, the federal government put in place two further measures that, taken together, have come to constitute the core of its recognition and promotion of Canada's Francophone minority communities. First, with the enactment of the Charter of Rights and Freedoms, which itself was entrenched in the 1982 Constitution Act, the federal government constitutionally enshrined institutional bilingualism and education rights for official language minorities. Second, through the passage of the 1988 Official Languages Act, the federal

[31] The inner workings and initial results of the first eight years of this program are thoroughly examined in Jean-René Ravault's massive government-commissioned report entitled *La francophonie clandestine* (1977).
[32] See Linda Cardinal (2000) for an in-depth analysis of the Court Challenges Program.

government committed itself to enhancing the vitality as well as supporting and assisting in the development of official language minorities everywhere in Canada. Let me speak to each in turn.

In 1982, along with enshrining the equality of status and the equal rights and privileges of the French and English languages in federal institutions, as well as in all provincial institutions in New Brunswick, the federal government acquiesced to francophone minorities' long-standing demand for education in their mother tongue. Section 23 of the Constitution Act grants minority language education rights where numbers warrant – "the right […] applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds." Minority language educational rights are also conditional on the parent meeting any one of three conditions: has French as his or her mother tongue, has received his or her primary school instruction in Canada in French, or has a child whom has received his or her primary or secondary school instruction in French in Canada. The incorporation of these constitutional guarantees, as Ron Graham makes evidently clear, is in no small part due to Prime Minister Trudeau's unfailing insistence during negotiations that led to the agreement on patriation of the Constitution with an amending formula and a Charter of Rights of Freedoms (2011).

The scope of Section 23, especially whether it guaranteed the management and control of educational facilities, would be clarified in courts. The question hinged on the interpretation given to 'have them receive instruction in minority language educational facilities/de les faire instruire dans des établissements d'enseignement de la minorité linguistique'. As Edmund Aunger explains, "the term 'facilities' appeared to refer simply to a physical site while the expression 'établissements de la minorité' seemed to imply a management structure" (1996,

201).[33] Of course both the French and English versions of the Constitution Act have equal legal authority. After years of legal struggles and court challenges, the Supreme Court of Canada, in Mahé v. Alberta (1990), opined that Section 23 not only contained the right to elementary and secondary instruction in the French language, but also the right to manage and control its publicly funded schools. It states, "where numbers warrant, s. 23 confers upon minority language parents a right to management and control over the educational facilities in which their children are taught" (1990, 4).

Since then, Section 23 has been further elucidated in two Supreme court rulings – Arsenault-Cameron v. Prince Edward Island (2000) and Doucet-Boudreau v. Nova Scotia (2003). The first decision concerns that of Francophone parents in Summerside (second city on Prince Edward Island) claiming that their children had the right to receive French-language instruction in a homogeneous facility in the city rather than being bused almost an hour away to the closest French school (École Évangéline in Wellington). The court gave reason to the parents, finding that the province had failed to appreciate the remedial character of Section 23 – affirmed in Mahé v. Alberta (1990) – as well as the importance of a school for the flourishing of the official language minority community. In the second decision, the court once again reminded the remedial nature of Section 23, this time in reference to Nova Scotia's delay in building French language schools. It found that the provincial government had to use its "best efforts" to

[33] Jean-Robert Gauthier, MP for Ottawa-Vanier from 1974 to 1994 (and Senator thereafter until 2004), played a crucial role in the wording of Section 23. During debates on the charter at the Standing Joint Committee of the Senate and the House of Commons on Official Languages, he suggested that 'installations d'enseignement' be replaced with 'établissements d'enseignement de la minorité linguistique'. According to his biographer, he had hoped that the latter formulation would lead judges to a more generous interpretation of minority language education rights (Faucher 2008).

provide homogenous school facilities to its Acadian population within a reasonable period of time.

In 1988, the federal government, having to adapt all legislation to the Charter, repealed the existing Official Languages Act and replaced it with an expanded Official Languages Act. The new Act's purposes were threefold: "to ensure equality of status and equal rights and privileges [of English and French] as to their use in all federal institutions," "to support the development of English and French linguistic minority communities and generally enhance the equality of status and use of the English and French languages within Canadian society," and "to set out the powers, duties and functions of federal institutions with respect to official languages" (1988, s. 2). Put simply, the federal government sought to give equal status to English and French throughout the federal administration and to confer broad legislative basis to the official languages directives and programs put in place since the passage of the 1969 Official Languages Act.

The Act has since gained further legal traction. On the one hand, in R. v. Beaulac (1999), the Supreme Court, building on a prior decision by the Federal Court of Appeal, ruled that the Official Languages Act "belongs to that privileged category of quasi-constitutional legislation" because it "constitute[s] an example of the advancement of language rights through legislative means." On the other hand, following a 2005 amendment to the Official Languages Act, the federal government is henceforth legally compelled to "take positive measures" to enhance the development of official language minorities, and citizens have recourse to legal remedy if these obligations are not respected. If a person believes that there has been a breach of obligations, she can, after filing a formal complaint with the Commissioner of Official Languages, seek a court remedy. Within 30 days of the amendment receiving royal assent, the Clerk of the Privy Council

and Secretary of the Cabinet wrote to all deputy ministers reminding them of their responsibilities with respect to official languages and tasking them to "review attentively the manner in which your organization carries out its responsibilities in this regard" (2005, 2).

In summary, within two decades, the federal government had completely overhauled legislative and constitutional dispositions governing the use of official languages within its own operations. It had also constitutionally enshrined the right of parents of official language minority communities to have their children receive their primary and secondary education in their mother tongue. Wanting to foster a broad acceptance and appreciation of both official languages within Canadian society, the federal government had also helped provinces fund minority- and second-language education programs and committed itself to enhancing the vitality and supporting the development of official language minority communities. Moving beyond an overview of major legal and institutional developments, the next section examines how the federal government has given effect to legislative commitments contained in Part VII of 1988 Official Languages Act.

2. The Horizontal Management of Official Languages

Amid the coming into force of the 1988 Official Languages Act, the federal government set out to give effect to its newfound commitments with respect to its own operations and with respect to the use and promotion of the two official languages outside federal institutions. Of particular interest for present purposes is how Canadian Heritage concretely set about to implement the federal government's newfound legislative mandate to support the development of English and French linguistic minorities (and to ensure the promotion of both official languages in society at large). After a brief review of the signing of intergovernmental agreements with each province

and territory, this section explains in some detail how Canadian Heritage chose to put in place, in stages, a complex horizontal structure involving federal institutions and the French and English linguistic minorities themselves. I shall note that even if I'm not so much interested in how the federal government sought to give equal status to English and French throughout the federal administration, I will be drawn to it, of necessity, for often clear distinctions are not made between the commitment to institutional bilingualism and the commitment to the development of official language minorities.

Of course the promotion of official languages outside federal institutions doesn't date to the late 1980s.[34] Efforts to promote the recognition and use of official languages in Canadian society ensued immediately following the passage of the 1969 Official Languages Act. If this original Act was strictly about recognizing English and French as official languages for all purposes of the Parliament and the Government of Canada, the federal government nonetheless set out to address the continued development of the two official languages outside its own institutions. As seen earlier, Canadian Heritage, then called the Secretary of State, was charged with the coordination of two main programs: the first promoting minority- and second-language education and the second aimed at consolidating and expanding official language minorities' institutional network.

The passage of the 1988 Official Languages Act, however, is commonly understood to break new ground for it sets out, for the first time in legislation, the federal government's

[34] Indeed, in an address to the House of Commons committee charged with reviewing the bill that was eventually became the 1988 Official Languages Act, then Secretary of State David Crombie noted how "many of the provisions of this bill concerning the Secretary of State merely entrench in the act what we have already been doing for some time now. The programs I named a moment ago, official languages, education, minority assistance and so on have been in existence for a certain number of years. The only area where we have not been substantially present in the past is the private sector" (cited in Asselin 2001, 7).

commitments to the recognition and use of official languages outside federal institutions. Put simply, it gives legislative basis to the promotion of the two official languages and the minority communities that speak them. Specifically, Part VII of the revised Official Languages Act commits the federal government to supporting the development of official language minority communities and, more broadly, to fostering the full recognition of the two official languages in Canadian society. It also entrusts Canadian Heritage with the responsibility to coordinate federal efforts, as well as to seek opportunities to cooperate with provincial governments, in the implementation of these two commitments. Part VII reads:

> 41. The Government of Canada is committed to
>
> (a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting in their development; and
>
> (b) fostering the full recognition and use of both English and French in Canadian society.
>
> 42. The Minister of Canadian Heritage, in consultation with other ministers of the Crown, shall encourage and promote a coordinated approach to the implementation by federal institutions of the commitments set out in section 41.
>
> 43. (1) The Minister of Canadian Heritage shall take measures as that Minister considers appropriate to advance the equality of status and use of English and French in Canadian society […]
>
> (2) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to ensure public consultation in the development of policies and review of programs relating to the advancement and the equality of status and use of English and French in Canadian society (1988, s. 41-43).

A bill aiming to strengthen Part VII was introduced in the Senate on four occasions between 2001 and 2005. An amendment finally received royal assent in late 2005. Since then, section 41 of Part VII reads (amendments *italicized*):

> 41. (1) The Government of Canada is committed to
>
> (a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and

(b) fostering the full recognition and use of both English and French in Canadian society.

(2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1). For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.

(3) The Governor in Council may make regulations in respect of federal institutions, other than the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer or office of the Conflict of Interests and Ethnic Commissioner, prescribing the manner in which any duties for those institutions under this Part are to be carried out.

43. (1) The Minister of Canadian Heritage shall take measures as that Minister considers appropriate to advance the equality of status and use of English and French in Canadian society […]

(2) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to ensure public consultation in the development of policies and review of programs relating to the advancement and the equality of status and use of English and French in Canadian society (2005, s. 41-43).

Aiming to give effect to these new legislative commitments, the federal government, through Canadian Heritage, carried on with the signing of agreements with provincial and territorial governments in order to facilitate the delivery of public services that relate to the daily life of official language minority communities, including health, justice and social services. Signing such agreements is crucial for the full implementation of bilingual services across the country, as Gerald Gold explains, for "provincial governments control the majority of the vital public services which French-speaking minority leaders wish to make bilingual" (1984, 107-108).

The content of these agreements varies because provinces and territories have given themselves differing responsibilities with respect to the French-language.[35] New Brunswick

[35] Indeed, as established in Devine v. Québec (1988), the power to legislate in matters of language belongs to the federal and provincial governments according to their respective

passed an initial Official Languages Act in 1969, key parts of which are enshrined in the 1982 Constitution Act. Ontario and Manitoba respectively legislated on the status and use of the French-language in 1986 and 1989. Over time, other provinces and territories also passed policy statements in order to guide their decisions and actions in the area of official languages – for example the 2000 Prince Edward Island French Language Services Act, the 2003 Saskatchewan French-Language Services Policy, and the 2004 Nova Scotia French-language Services Act. Today, all provinces and territories, with great discrepancies, offer French-language services, and seven of nine provinces outside Québec and all three territories have passed administrative or legislative frameworks on objectives relating to the French-language population (see Hudon 2011a).

Legislative commitments to promote the use of official languages and of the minority communities that speak them also led to the establishment of a complex administrative structure involving federal institutions and the official language minorities themselves. It involved the introduction of a still evolving set of mechanisms of coordination among federal departments and agencies, the creation of a number of committees comprised of governmental and non-governmental actors, and the signing of direct funding agreements with official language minorities. Put simply, the passage of the 1988 Official Languages Act set off the horizontal management of official languages.

Horizontal management is today seen as a crucial feature of the effective management of public affairs. In general terms, it refers to the pooling of expertise and the sharing of authority between different actors in the belief that the resulting policies and programs will be better suited for the challenges on hand. Or, as Herman Bakvis and Luc Juillet maintain, horizontal

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legislative authority established in the Constitution Act – "language is not an independent matter of legislation but is rather ancillary to the exercise of jurisdiction."

management refers to "the coordination and management of a set of activities between two or more organizational units, where the units in question do not have hierarchical control over each other and where the aim is to generate outcomes that cannot be achieved by units working in isolation" (2004, 8). It can helpfully be contrasted with vertical management, which refers to the hierarchical organization of the public service through departmentalization of mandates and top-down execution of control and responsibilities (Peters and Savoie 2001).

Horizontal management is not restricted to the federal government nor to the area of official languages. It is common to all liberal democracies and it encompasses a wide-range of issues. Its dominance follows from the fact that many of the most pressing issues in our societies are cross-cutting and thus often require the collaboration and cooperation of people and institutions from within and outside governments. To again cite from Bakvis and Juillet, "climate change, US-Canada relations, the skills and innovation agenda, the urban agenda, public security in the post-9-11 era, international trade agreements, for example, are all issues that by definition involve interests and the expertise of two or more departments" (2004, 10-11). That is then to say that horizontal practices, from informal networks to formal secretariats, are not derived from a general theory on horizontal management. Indeed, "to this date," Donald Savoie reminds us, "we have yet to define a theory on horizontal management, despite sustained efforts to do so by both the academic community and practitioners" (2008, 1). He then later writes that "we are still at the stage of improvising solutions and trying this and that to see what works" (2008, 5). In short, salient horizontal issues have brought about horizontal management.

Linda Cardinal (2006; 2007a; 2007b; 2001; 2005; 2008; 2009) and Éric Forgues (2007a; 2007b; 2010; 2005) have studied at length the horizontal management of official languages and its impacts on Canada's Francophone minority communities. Both draw a direct link between the

legislative mandate contained in Part VII of the Official Languages Act and the horizontal management of federal official languages policy – "because of its commitment to the vitality and development of the official language minorities, the federal government has put in place horizontal methods of coordinating actions" (Cardinal and Hudon 2001) and "the federal government's new [management] approach was markedly apparent in the application of Part VII of the 1988 Official Languages Act, which aims to foster the flourishing and the development of official language minorities" (Forgues and Paris 2005, 161). What follows builds on Cardinal and Forgues as well as on my own analysis of relevant federal government and French-language community reports on the topic.

The horizontal management of official languages occurred in stages. Cardinal, in two articles published with Stéphane Lang and Anik Sauvé, has helpfully distinguished three broad periods in its coming about (2008; 2009). The first extends from the coming into force of the 1988 Official Languages Act to the 1993 election of the Liberals and the major revision of government programs that ensued.[36] Indeed, the revised Official Languages Act included provisions for horizontal cooperation. As mentioned, the Act states that Canadian Heritage "shall encourage and promote a *coordinated approach* to the implementation by federal institutions of the commitments set out in section 41." Specifically, two concrete horizontal measures were introduced during this initial period.

First, in 1988, Canadian Heritage signed a framework for cooperation with the communauté fransaskoise (see Denis 1994). Community associations and the federal government became partners in community development. The agreement established the community's

[36] To be fair, the authors claim that the first stage begins with the repatriation of the Constitution Act and the enactment of the Charter of Rights and Freedom, but then say that the first formal horizontal measure resulted from the passage of the 1988 Official Languages Act.

development priorities and guaranteed funding to minority associations in order for them to carry out programming related to these priorities, which includes, for example, the promotion of language and culture, economic development, and relations with the provincial government and the broader society. It committed a total of 17 million dollars in federal funding over a five-year period. In 1989, similar agreements were signed with the communautés franco-manitobaine and franco-albertaine.

The second horizontal measure introduced during this first period consists in the establishment of a network of provincial and territorial public servants responsible for French-language issues – the Intergovernmental Network on the Canadian Francophonie (formerly called Officials Responsible for Francophone Affairs). The network also included representatives from Canadian Heritage and, on occasion, from Québec. Their initial meetings allowed for participants to draw ideas and to share best practices in the delivery of French-language services. (This Network eventually led to the creation of the Ministerial Conference on the Canadian Francophonie in 1994, which, similar to other ministerial conferences, brings together federal and provincial ministers to discuss common files and to foster the development of initiatives and services.)[37]

The coming to power of the Liberals following the 1993 Federal Election set off the second period in the horizontal management of official languages. At the top of the new government's agenda with respect to official languages was the fact that almost nothing had been done concretely to implement the legislative commitments contained in the 1988 Official Languages Act – "sections 41 and 42 only began to be applied in 1994" (Cardinal and Hudon 2001). Over the next decade, the federal government will try to follow through on these

[37] See Daniel Bourgeois et al. (2006) for an overview of the work undertaken by the Ministerial Conference on the Canadian Francophonie.

commitments through two basic categories of measures: interdepartmental mechanisms that often include the consultation of official language minority communities and partnerships with these minorities (Cardinal and Juillet 2005, 162).

Of note in terms of interdepartmental cooperation and community consultation are four main initiatives. In 1994, the government established an accountability framework for the implementation of sections 41 and 42 of the 1988 Official Languages Act. This framework sought to promote interdepartmental cooperation in the area of official languages. It commits upwards of 30 federal departments and agencies to supporting and assisting in the development of English and French linguistic minorities. Each institution is charged with developing an action plan in consultation with official language minority communities and then report to the Minister of Canadian Heritage once a year on results attained. In 1997, Canadian Heritage signed a memorandum of understanding with the Treasury Board Secretariat, which afforded it with central agency support in its coordination of the accountability framework and more broadly with the implementation of Part VII of the Official Languages Act. In 1999, the federal government created the Committee of Deputy Ministers on Official Languages. It is of particular significance because it includes high-ranking officials and so is enabled to set strategic objectives for all federal institutions with respect to institutional bilingualism and the development of official language minority communities. It is presided by the Deputy Minister of Justice and also includes Deputy Ministers of the Privy Council Office, the Treasury Board Secretariat, and Foreign Affairs and International Trade. Finally, in 2002, the Treasury Board Secretariat included requirements to consult minority communities in its Policy on Alternative Service Delivery, which sets out guidelines into the delivery of government programs and services.

As noted earlier, this second period also witnessed the establishment or the renewal of a number of partnerships between federal institutions and official language minorities. Building on the initial round of Canada-community agreements signed with the three French linguistic minorities in the Prairies, Canadian Heritage sought to expand the model to all other French minority communities. Agreements were signed between 1994 and 1996, following at times difficult negotiations that lasted up to three years. Since their expiry in 1999, new rounds of agreements have been negotiated and signed at five-year intervals. Totals for all agreements combined have gone from 59 million (1994-1999) to 138 million (1999-2004) to 152 million (2004-2009). Since 2004, these agreements are called collaboration accords.[38] I return to these in the third section of this chapter.

A further number of agreements and protocols were signed during this second period of the horizontal management of official languages. In 1999, Canadian Heritage announced the creation of the Interdepartmental Partnership with the Official Language Communities, through which it transfers funds to other federal departments and agencies for creating programs that support the development of English and French linguistic minorities. Of course it aims to provide funding to official language minority communities, but more importantly it creates opportunities of contact between communities and a number of federal institutions. Moreover, from 1998 to 2001, four multipartite cooperation agreements were signed between federal institutions and official language minorities. These are agreements on artistic and cultural development and on French-language publishing and theater, and then memorandums of understanding on human

[38] Canadian Heritage has recently negotiated or is currently negotiating new agreements with territorial and provincial official language minority communities (see: http://www.pch.gc.ca/pgm/lo-ol/entente-agreement/comm/index-eng.cfm).

resources development in French-language communities outside Québec and in the English-language community within Québec.

In 2001, the Prime Minister charged the President of the Privy Council Office and Minister of Intergovernmental Affairs with the responsibility of proposing a new interdepartmental framework for coordinating government actions with respect to official languages, including the development of English and French linguistic minorities. The underlying aim was to improve the coordination of the federal government's Official Languages Program – all activities related to the status and use of the two official languages within and outside federal institutions. It followed from uncompromising criticisms from community leaders, the Commissioner of Official Languages, and a handful of Federal Members of Parliament. These critics charged that the implementation of Part VII undertaken until that point was on the whole inefficient and that not enough was being done in terms of enhancing the vitality and assisting and supporting the development of minority communities (see FCFA 1998; Fontaine 1999; OCOL 1998; Savoie 1998). Put simply, all of what I have thus far described wasn't bringing about desired results from the perspective of Canada's Francophone minority communities.

In 2003, after almost twenty-four months of consulting with official language minorities and other governmental and non-governmental actors, the Minister announced The Action Plan for Official Languages. The announcement of this five-year plan marks the beginning of the third period in the horizontal management of official languages because it further, and systematically, integrates minority communities into the federal language regime and in particular into the business of designing and implementing Part VII commitments. What is more, with the Action Plan, the federal government begins to speak, for the first time, of the horizontal coordination of

official languages. The Action Plan establishes a new accountability and coordination framework and identifies three main areas of intervention: education, community development, and the federal public service.

This accountability framework constitutes the "cornerstone" of the Action Plan. It is designed "to strengthen horizontal coordination for the [Official Languages] Act as a whole" (2003, 69). It complements federal institutions' existing statutory responsibilities relating to official languages with two further responsibilities: to work together with other federal departments and agencies and to consult with English and French linguistic minorities at least once a year. The Action Plan comes with a financial commitment of 751 million over five years, with about two thirds allotted to education (previously discussed minority- and second-language education programming) and health. A further 59 million were later added for economic development, health and language training (Hudon 2011b, 11).

In promoting the horizontal management of the Official Languages Program, the Action Plan specifies that all federal departments and agencies will need to "consult affected publics as required, especially representatives of official language minority communities, in connection with the development or implementation of policies or programs" (2003, 66). These efforts are to be overseen by the Minister responsible for Official Languages, whom will be supported in her role by the Privy Council Office's newly created Official Languages Branch. In 2005, in an effort to coordinate their respective efforts, the ten federal institutions funded through the Action Plan unveiled the Horizontal Results-based Management and Accountability Framework. This accountability framework's overall objective is to ensure "coherence between priorities, programs and progress reporting" (2005a, 3).

Since then, federal institutions have invested into the creation of consultative committees and other such mechanisms of consultation whereby representatives from English and French linguistic minorities are asked to, for example, comment upon proposed programs and recommend ways to ameliorate the delivery of French-language services. Provincial and national associations representing the interests of official language minorities have been "systematically mobilized to participate in a multiplicity of instances of consultation" (Cardinal et al. 2009, 166; personal translation). Sectors include justice, economic development, health, immigration, adult literacy, early childhood and arts and culture. Most of these consultative mechanisms include shared representation between community and government actors.

In 2006, the Official Languages Branch was moved from the Privy Council Office to the Department of Canadian Heritage and became the Official Languages Secretariat. As Savoie explains, "the government decided to transfer some of the responsibilities for official languages to Canadian Heritage because it concluded that the Privy Council Office needed to streamline its operations and return to its more traditional role in its dealings with line departments and agencies" (2008, 14). Also during that period, the federal government disbanded the ministerial committee affected to issues of official languages and replaced the Committee of Deputy Ministers on Official Languages with the Committee of Assistant Deputy Ministers on Official Languages. As explained earlier, the latter committee was of particular significance because it included high-ranking official and so was perceived to be able to set objectives for the whole of the federal administration.

In 2008, the Minister of Canadian Heritage unveiled the next phase of the action plan – the *Roadmap for Canada's Linguistic Duality 2008-2013: Acting for the Future*. It was elaborated following broad consultations of minority communities and other stakeholders,

facilitated by Bernard Lord, on issues of importance relating to the status and use of official languages (see Lord 2008). The Roadmap announced that the federal government, in collaboration with provincial and territorial governments as well as with minority communities, will focus its efforts on five main areas of concern: health, justice, immigration, economic development, and arts and culture. Of course governments and community associations were already active on all these fronts, and so rather than reinventing the wheel the Roadmap "enhances and expands" on a number of existing initiatives within these five areas (2008, 7). In financial terms, it commits 1.1 billion to the Official Languages Program for a five-year period. As with the initial phase of the action plan, about two thirds of overall investments are destined to consolidate education- and health-related services.

The Roadmap also wants to ensure "horizontal governance and coordination," as well as "effective accountability mechanisms for all federal institutions" (2008, 9). Canadian Heritage, the Treasury Board Secretariat, the Canada Public Service Agency, and Justice Canada are identified as the four institutions that are to play a leadership role in the coordination of federal efforts in the area of official languages. However, the Roadmap lacks concrete details on how exactly these four institutions will coordinate their respective activities as well as those of all federal departments and agencies. Indeed, as announced in passing, an updated accountability framework was to follow. And so, in 2009, Canadian Heritage unveiled the new Horizontal Results-based Management and Accountability Framework that is to ensure the efficient implementation of different initiative and the overall coordination of the Roadmap. As its predecessor, the new accountability framework establishes a multilayered governance structure, which, consistent with the 1988 Official Languages Act, tasks the Minister of Heritage Canada with the overall coordination of the Roadmap. A committee comprised of Assistant Deputy

Ministers from the 14 Roadmap federal partners supports the Minister in her role. The governance structure also provides for "dialogue" opportunities with provincial and territorial governments, minority communities, and the academic community. The accountability framework also announces that a "horizontal summative evaluation" will be carried out during the last year of the Roadmap in order to evaluate results achieved and to identify the road ahead.

In summary, the two decades that have passed since the coming into force of the 1988 Official Languages Act have witnessed the establishment of a complex, at times confusing, horizontal coordination of federal efforts in the area of official languages. More significantly, this horizontal management of official languages responds to the demands of Canada's Francophone minority communities for participation but not those for autonomy. Participation has been ensured through the establishment of committees that involve these communities into the design and implementation of policies and programs, as well as through directives that compel federal institutions to consult with them in the process of developing their action plans with respect to official languages. Demands for autonomy, for their part, have been ignored. As I show in the balance of this chapter, the failure to enable autonomy is not inherent to the constitutional and legislative dispositions of the federal language regime. Uncovering and articulating the normative logic that underpins Part VII, the next section allows me to show how the existing federal language regime can in fact account for Francophone minorities' longstanding demands for a combination of participation and autonomy. Put differently, it argues that enabling autonomy and promoting participation is logically consistent with the normative logic embedded in Part VII of the Official Languages Act.

3. Stepping Back and Moving Forward

In June 2007, over 750 people gathered on the campus of the University of Ottawa for the Sommet des communautés francophones et acadiennes (Summit hereafter).[39] The event brought together community leaders from each province and territory, as well as elected officials and civil servants. An initiative of the Fédération and its members, the Summit's objectives were to measure the progress achieved over the past fifteen years and identify pressing challenges that lie ahead. A period of fifteen years made sense because that is the time that had elapsed since the Fédération had released a comprehensive picture of the realities and needs of Canada's Francophone minority communities – *Dessein 2000* (1992). Indeed, if the Fédération published a series of reports and manifestos from its creation in 1975 to the repatriation of the Constitution and the enactment of the Charter of Rights and Freedoms in 1982, the long period thereafter was for the most part spent pressuring governments to give effect to constitutional obligations and legislative mandates relating to official languages and the minority communities that speak them. The Fédération and its members were and still are deeply involved in struggles to ensure that provinces and territories establish homogeneous schools and school boards and that the federal government enhances the vitality and promotes the development of French language minority established across the country.

With *Dessein 2000*, the Fédération sought to establish a comprehensive plan that would guide and structure its actions and those of its members for the next ten years. A series of commissioned research reports and consultations, as well as input from members of the Fédération, preceded its release. In line with the comprehensive program of recognition and promotion articulated in the late 1970s and early 1980s, *Dessein 2000* also prescribes a

[39] I should note that I was a participant as a member of the Summit's Strategic Committee.

combination of participation and autonomy. It writes, "the future of Francophone and Acadian communities rests upon a twofold course of action: community development and participation in political institutions" (1992, v).[40] It suggests in particular that Francophones endeavor to assume control of geopolitical and institutional "spaces," all the while investing into political structures at the municipal, provincial, and national levels.

Dessein 2000 first suggests that French-language communities consolidate the spaces over which they already exert control and then expand their control to other spaces of importance either through creating new institutions or partnering with existing ones. A space here is meant to encompass a range of institutions and activities – "a family, a neighborhood, a city, a parish, a diocese, a region, a school, a school board, a radio, an adult literacy group, a theatre company, a business, an online network, a festival, a literary or music competition, a workplace, a credit union, a farm, a fish boat…" (1992, 9-10). The Fédération reminds itself and its members that Acadians and French Canadians across the country have historically ensured their survival through giving themselves their own institutions, including parishes, schools, and hospitals. Achieving *Dessein 2000*'s comprehensive plan requires in part reestablishing self-control and autonomy at the heart of French-language communities' reflections and actions. As it writes, "it is imperative that our communities come to be as autonomous as possible" (1992, 12).

But *Dessein 2000* also prescribes participation. If participation can take on a number of forms in several realms of society, the Fédération is especially concerned with participation in political structures "for politics relates to all facets of daily life" (1992, 16). On one level, participation here denotes running for office because French-language communities need some of their own on the municipal budget committee, at the provincial Legislature, and on the House

[40] All citations from *Dessein 2000* (1992), *Actes du Sommet des communautés francophones et acadiennes* (2007), and *Plan stratégique communautaire* (2008) are personal translations.

of Commons Standing Committee on Official Languages. On another level, participating in political structures also refers to the fostering of community leadership and mobilization in order for minority communities and their associations to effect changes within their cities or towns, provinces, and the country as a whole.

As for the Summit, both a final report and a strategic plan ensued from the three-day event. The final report, entitled *Actes du Sommet des communautés francophones et acadiennes* (2007), reports on strategic objectives endorsed at the Summit. These are divided into five areas of concern: demographic weight, French-language spaces, community governance, collaboration and cooperation with governments and other actors, and community development. It also contains the declaration signed at Summit's end by 33 leading community associations and institutions. This final declaration "morally commits" these associations and institutions to follow through on strategic objectives agreed upon for each area of concern (2007, 117).

In June 2008, almost exactly a year to the day from the Summit, the signatories unveiled the *Plan stratégique communautaire* (2008). Still lacking in terms of concrete measures and specific targets, it nonetheless sets out principles of collaboration and, more significantly for present purposes, lists ten common strategies through which associations and institutions purport to give effect to the strategic objectives agreed upon at the Summit. These ten strategies reveal that once again Canada's Francophone minority communities are demanding a combination of participation and autonomy. On the one hand, the *Plan stratégique communautaire* speaks to the importance of "strengthen[ing] relations and dialogue with all sectors of Canadian society" as well as of "expand[ing] the active participation of Francophones into Canadian political life" (2008, 5-6). On the other hand, signatories recognize the importance of autonomy when they

identify the importance for minority communities to "assume control of the governance of strategic institutions and key sectors" (2008, 9).

Returning to the federal language regime and its implementation, on the face of it, the federal government is respecting its legislative obligations vis-à-vis Canada's Francophone minority communities. Every year, it carries out a range of programs and initiatives in an effort to promote the status and the use of the two official languages as well as to give minority communities that speak them access to a range of services and cultural activities. Several of these have been in place for a number of years. Shortly following the passage of the 1969 Official Languages Act, for example, programs were created to develop minority- and second-language educational opportunities and to provide support to French and English linguistic minorities. In collaboration with provinces and territories, the federal government has managed to extend the delivery of French-language services, particularly in areas of justice and health, to a number of French-language communities outside Québec. Over the years, these efforts have gained constitutional or legislative basis. Section 23 of 1982 Constitution Act enshrined minority language education rights and Part VII of the 1988 Official Languages Act mandated all federal institutions to enhance the vitality of French (and English) linguistic minorities and to support and assist in their development. Since 2005, federal institutions are compelled to take positive measures in giving effect to Part VII, failure of which can be subjected to court remedy. Canadian Heritage has also put in place three separate accountability frameworks – 1994, 2005, and 2009 – in an effort to follow through on its legislative mandate to coordinate federal efforts to enhance the vitality and promote the development of official language minority communities. All of these institutional developments, coupled with jurisprudence from Mahé v. Alberta (1990), R. v. Beaulac (1999), Arsenault-Cameron v. Prince Edward Island (2000), and

DesRochers v. Canada (2009), have contributed to dramatically alter the status and treatment of the two official languages and the minority communities that speak them. To again cite from Savoie, "what is important here is that progress has been made and continues to be made in the promotion of official languages within the federal government and the development of official language minority communities in Canada" (2008, 22).

But if significant advances have been made in terms of policy development and program delivery, as well as in terms of symbolic recognition and legal protections, the current official languages management structure fails to fully address Canada's Francophone minority communities' claims for justice and equality for it doesn't enable self-control in areas of key concern. Put simply, the horizontal management of official languages fosters participation but stifles autonomy. As mentioned, critics ranging from the Commissioner of Official Languages to the Parliamentary Standing Committee on Official Languages to academics to the Fédération and its members have repeatedly expressed dissatisfaction with first how it took too long to give effect to Part VII obligations and then how horizontal management has deeply bureaucratized community work and contributed to disempowering minority associations.

Enabling autonomy or community-based development matters because, as per the argument developed over the course of this thesis, fostering justice and equality for ethnocultural minorities requires adopting targeted measures that will satisfy, within liberal parameters, their expressed political claims. As evidenced above, as well as in the chapter preceding this one, Canada's Francophone minority communities have demanded and are demanding a combination of participation and autonomy. French-language minority communities settled across the country have simultaneously demanded the bilingualization of public institutions, including an increase

in French-language public services, and self-control in areas of key concern, including education, culture, and health.

The failure to enable or to allow for autonomy rests with the horizontal management of official languages not with the federal language regime. Or so I want argue. I specifically want to argue that promoting both participation and autonomy is consistent with the legislative and constitutional dispositions of the federal language regime outlined in the first section of this chapter and in particular with Part VII of the 1988 Official Languages Act examined in the second section. That is, ensuring community-based development is consistent with the normative logic that underlies Part VII obligations. And so if the federal government has not, until now, supported and assisted in the promotion of community-based development, that failure lies with the given administrative application of legislative commitments not within the commitments themselves. Articulating my reasoning first involves introducing a conceptual distinction between *internal* horizontal management and *external* horizontal management and then reimagining collaboration accords signed between the federal government and minority communities. Let me discuss each in turn.

It has become commonplace to speak of the almost natural relationship between horizontal management and official languages. Savoie writes, for example, "the horizontal nature of the Official Languages Act is rooted in law" (2008, 11). One comes with the other. Indeed, as cited earlier, Part VII of the 1988 Official Languages Act directs the Minister of Canadian Heritage to coordinate federal departments and agencies in their efforts to enhance the vitality of the official language minority communities and to support and assist in their development. The Treasury Board Secretariat also has a coordination role to play. Part VIII confers it the legislative mandate to coordinate the implementation of policies and programs relating to the delivery of

public services in both languages and to language of work provisions. What is more, it is in an effort to give effect to these legislative mandates to coordinate implementation, by all federal institutions, of the commitments to the advancement of the two official languages and the minority communities that speak them that the federal government introduced the Action Plan for Official Languages in 2003 and the Roadmap for Canada's Linguistic Duality in 2008, as well as accountability frameworks in 1994, 2005 and 2009. The Roadmap, for example, intends to make sure "that federal institutions, particularly those with specific responsibilities under the Official Languages Act, ensure better horizontal governance and coordination" (2008, 13).

I thus seem to come at an impasse: positing that horizontal management has stifled autonomy, but then at the same time arguing that Part VII, which mandates horizontal management, can enable autonomy. Distinguishing between internal horizontal management and external horizontal management allows me to overcome this apparent puzzle. This conceptual distinction is actually borrowed from Cardinal et al. (2008). They write, "horizontality is internal or external, that is to say that it can be restricted to forms of coordination that are internal to the machinery of government. It will be of an external kind if it involves coordination with groups that are outside government or in the area of intergovernmental relations" (2008, 210; personal translation). For Cardinal et al., the distinction is a descriptive tool. Indeed, their underlying objective is to account for the evolution of the horizontal management of official languages through an overview of the range of measures that have been created and implemented over the years. "Our article," they clearly state in the introduction, "aims above all to inform and to point to a reality that seems to have eluded most commentators at the time" (2008, 212; personal translation).

But the distinction between internal horizontal management and external horizontal management can also be an analytical tool. If a descriptive tool allows accounting for or making sense of a reality, an analytical tool enables the researcher to shed new light on the given reality. And so, for example, in operating a distinction between ethnic groups and national minorities, Kymlicka was able to shed new light on the rights and accommodations that should be afforded to ethnocultural minorities. Another telling example is how Charles Taylor was able to offer a fresh perspective on the scholarship on equality when he contrasted equal dignity with equal respect. Distinguishing coordination between two or more federal institutions and coordination between federal institutions and associations from civil society can pay similar dividends.

Coming to the Official Languages Act with the above analytical distinction in hand, it becomes readily apparent that Part VII mandates internal horizontal management not horizontal management tout court. It directs Canadian Heritage to coordinate federal efforts to promote the two official languages and the minority communities that speak them – "the implementation *by federal institutions* of the commitments…" Put differently, Part VII doesn't state that to enhance the vitality of official language minority communities and to support and assist in their development federal institutions are required to create horizontal mechanisms that involve these communities into the design and implementation of policies and programs. It merely directs federal institutions to coordinate their efforts with respect to French (and English) linguistic minorities. This is a significant breakthrough because it reveals that it is possible to conceive of an institutional option whereby federal institutions would horizontally coordinate the federal language regime all the while French-language communities would enjoy autonomy in areas of concern. The logical implication, then, is that 'to enhance the vitality' and 'to support and assist in their development' could entail encouraging and even enabling autonomy. Put simply, the

horizontal management of official languages can coexist with the autonomy of Canada's Francophone minority communities.

So the failure to enable autonomy or community-based development doesn't reside with the normative logic that underpins Part VII. This insight has implications not only for the possible conceptual coexistence of the horizontal management of official languages and community-based development but also for our interpretation of the collaboration accords signed between the federal government and the minority communities. In the mid-1990s, following agreements signed with the communauté fransaskoise in 1988 and the communautés franco-manitobaine and franco-albertaine in 1989, the federal government sought to negotiate analogous agreements with each provincial and territorial official language minority community. As mentioned, such agreements were signed between 1994 and 1996. Since their expiry in 1999, new rounds of agreements have been negotiated and signed at five-year intervals. Since 2004, these agreements are called collaboration accords. Of course accords differ slightly from one another since each resulted from distinct negotiations involving federal officials and community leaders, but let me try to draw out their main structural features.

A collaboration accord is the result of a bilateral agreement reached between Canadian Heritage and an association or structure representing a provincial or territorial official language minority community. In most cases the accord is negotiated with the association in each province and territory that is a member of the Fédération, but in some cases communities have established separate structures to coordinate activities and decisions related to the accord. All accords set the amount of federal funding guaranteed to the minority community and specify strategic objectives that are to be attained based on a global development plan that reflects the priorities of the community as a whole. Global development plans are specific to each community and are

adopted by an assembly that includes all associations working towards community development following a series of meetings in local communities. The budget envelope is divided into two categories: "programming," which refers to recurring programs, and "projects," which denote innovative activities that do not require permanent funding. At least twenty percent of annual financial resources must be earmarked for projects. All accords also establish a resource allocation structure ("committee" or "table" or "working group") that is tasked with evaluating how associations' proposed programming and projects will contribute to their community's global development plan and then suggesting to Canadian Heritage how the available budget should be distributed. In short, "what were traditionally called the 'Canada-community Agreements" are a series of collaboration accords between the Department of Canadian Heritage and the community organizations that support the development of official language minority communities" (Standing Committee on Official Languages 2008, 1).

But instead of enabling autonomy, collaboration accords have rather deeply bureaucratized the network of community associations and, more importantly, have transformed community leaders into community civil servants – what Maurice Basque, in reference to New Brunswick, has ironically termed "les Acadiens d'État" (see Savoie 2009, 248). Collaboration accords do not enable autonomy for two underlying reasons. First, Canadian Heritage ultimately administers financial resources. Collaboration accords set the amount of funding the official language minority community will receive over a five-year period. Each accord calls for the establishment of a resource allocation structure that evaluates proposed programming and projects in relation to the community's global development plan and then makes recommendations to Canadian Heritage on how funds shall be spent. Once recommendations have been forwarded to Canadian Heritage, civil servants and the Minister can accept community

recommendations or can decide to allocate available funds in a different way. So if community associations carry out the programming and report back the Canadian Heritage on results achieved, final decisions on which programs will be supported and which associations will implement them remain in the hands of the federal government.

The second reason for which collaboration accords do not enable or allow for autonomy is that their administration has evolved into a serious obstacle to community development. Accountability requirements, which have increased significantly over the years, make the administration of federal funds a central activity of each community association. Moreover, allocated funds are distributed in four (or five) installments, each installment dependent upon satisfactory justifications of prior funding. And so instead of developing new initiatives or delivering programming and services, community associations invest considerable human and financial resources into filling out applications and reports. As the Société de l'Acadie du Nouveau-Brunswick explained to the Standing Committee on Official Languages,

> When we devote 25% of our time to applications and filling out reports, we are unable to do anything else during that 25% of the time. If an organization has 50 people, it is a minor issue, as five of them will look after the work. But when there are two or three people in an organization and they must devote 25% of their time to filling out those documents, many things in the field are not done (2008, 18).

But similar to horizontal management, the failure of collaboration accords lies not with the concept but with its administrative application. Put differently, burdensome administration and bureaucratized leadership are not inherent to collaboration accords. Signing such direct funding agreements with Canada's Francophone minority communities could have fostered community-based development. Transferring financial resources to minority communities could have, for example, enabled community associations to develop and deliver programming and services according to strategic objectives set by French-language populations. It could have also

served to empower community associations and minority communities as a whole by allowing for them to carry out their own projects from design to implementation to evaluation.

Perhaps another way to frame this is to turn to the text of the round of collaboration accords signed in 2004-2005. After acknowledging that "best practices across the country have shown that a community-based process of resource allocation can become a great strength for community cohesion," each accord states that the resource allocation structure "make[s] proposals to the Department of Canadian Heritage regarding the distribution of funds" and that "it is the responsibility of the Department to analyze requests, examine them critically in a broader context, make final recommendations to the Minister of Canadian Heritage and manage the decisional and administrative process." Put simply, the accord acknowledges that self-control matters a great deal for the community but then entrenches a funding allocation mechanism that grants control to Canadian Heritage.

In summary, supporting and assisting in the development of French (and English) linguistic minorities, as legislatively mandated by Part VII, entails fostering community-based development as much as involving minority communities into the design of government policies and programs. This chapter has shown that enabling autonomy, in parallel to participation, is consistent with the normative logic that underpins Part VII of the 1988 Official Languages Act. The federal government should move towards responding to the normative aims that underlie the claims of Canada's Francophone minority communities as a matter of justice but also because dynamic and solid networks of community associations and institutions enhance the vitality of official language minority communities.

Chapter 7

Conclusion

My objectives in this thesis were to at the same time place Canada's Francophone minority communities within the political theory of multiculturalism and offer a normative perspective to l'étude des minorités francophones. The thesis first explored the political theory of multiculturalism and endorsed what I termed the Kymlickan approach to the politics of multiculturalism and minority rights. The focus then turned to the status and treatment of Canada's Francophone minority communities where I uncovered and articulated the normative logic that underpins these communities' claims for justice and equality and federal measures in the area of official languages. Overall I suggested that if the federal government fails at present to adequately respond to their claims for a combination of participation and autonomy, the normative logic embedded in the federal language regime holds the promise for their just recognition and equal treatment.

I developed this argument in the five following steps. Chapter 2 explored recent debates within the political theory of multiculturalism and defended the crucial importance of analytically defined principles for theorizing about ethnocultural justice. Chapter 3 reconstructed Kymlicka's approach to the politics of multiculturalism and minority rights. Chapter 4 showed how Kymlicka and his main critics have failed to apply, as it were, the Kymlickan approach to the recognition and accommodation of Canada's Francophone minority communities. The last two chapters carried out the Kymlickan approach with respect to these communities. Chapter 5 tried to show that demands for justice and equality formulated in their main national associations' reports and manifestos are embedded in a twofold normative logic of participation

and autonomy. Chapter 6 considered the normative basis of the federal language regime and suggested that its failure to respond to these communities' claims for autonomy lies with its given administrative application of legislative commitments not within commitments themselves.

Contributions of this thesis are perhaps best understood when viewed in relation to four recently posed challenges. First, François Rocher recently revealed that English-language scholarship on Canadian politics and society widely ignores scholarship produced by French-speaking scholars in Canada on the same topic. Studying a sample of 84 English-language books published between 1995 and 2005 at a number of Canadian and international presses, he observed that "francophone Canadian scholars made up around *five per cent of* bibliographical references" (2007, 843; emphasis in original). After running through a number of control variables, he concludes by provokingly suggesting that the "production of knowledge about Canada is both limited and biased" and that francophone Canadian scholars experience "an absence of recognition of their contribution to the advancement of knowledge, especially when it deals with Canadian politics" (ibid, 849-850). This thesis I believe contributes to the kind of work about Canadian politics and society that Rocher would have hoped to fall upon but feared he wouldn't. Building upon the predominantly English-language political theory of multiculturalism and the French-language l'étude des minorités francophones, this thesis has built an albeit modest bridge between Francophone and Anglophone working on Canada. More significantly I believe that the thesis opens up, and perhaps even paves the way to, new avenues of research that would also require operating with one foot in each linguistic universe.

Second, every year the Commissioner of Official Languages reports to Parliament on federal institutions' compliance with the spirit and the letter of the Official Languages Act. In 2009, on the fortieth anniversary of the passage of the initial Official Languages Act,

Commissioner Graham Fraser acknowledged that the progress made was "impressive on many levels" but maintained that "links and connections in Canada's language policy are often missing." He opined more precisely that efforts in coming years should be directed at "eliminating the contradictions in the implementation of Canada's language regime" as well as "achieving coherence in language policy" (2009, vii-xi). In many ways this thesis corroborates the Commissioner of Official Languages' verdict on the federal language regime and more importantly takes up his challenge by clearing a path to justice and equality for Canada's Francophone minority communities. Indeed I believe that arguments and ideas developed in Chapter 6 form the basis of a fresh perspective on the federal language regime and the horizontal management of official languages. Future research in this area will require giving institutional form to the normative work undertaken in this thesis.

Third, writing recently on new developments and enduring challenges within l'étude des minorités francophones, Joseph Yvon Thériault et al. observed that the scholarship had failed to reflect on the moral status of Canada's Francophone minority communities within the country and within their respective provinces (2008, 22). Drawing from the Kymlickan approach to the politics of multiculturalism and minority rights, this thesis has taken up Thériault et al.'s challenge by uncovering and articulating the normative logic that underpins these communities' claims and state measures in the area of official languages. I have shown that their moral status, from a Kymlickan perspective, rests on an understanding of their political demands for justice and equality. "Each group's claims," Kymlicka notes, "can be seen as specifying the injustices that majority nation-building has imposed on them, and as identifying the conditions under which majority nation-building could cease to be unjust" (2001b, 32). More broadly I believe that this thesis opens up l'étude des minorités francophones hors Québec to important

international research on ethnocultural minorities and their institutional accommodation. An examination of the status and treatment of analogous minorities in Europe, for example, could provide them with interesting normative insights and potential institutional designs.

Fourth, Jocelyn Maclure has in recent years aimed to show how normative theorizing and democratic resolution ought to complement each other in the pursuit of ethnocultural justice suggesting in the process that this "bifocal approach" requires description and perhaps more importantly justification (2007, 62). He has himself articulated and practiced such work. He has for example highlighted the merits of combining Tully's "thicker description of the activity of struggling for recognition" with normative recommendations that "play a crucial, albeit limited, role in the always fallible resolution of ethico-political problems" (2007, 52-53). He has also argued that critics of multiculturalism have failed to grasp the "principle of respect of reasonable cultural diversity" which has "gradually weaved its way into the fabric of our political morality and modified what we see as the requirements of social justice in culturally diverse societies" (2010, 53-54). Trying to incorporate this principle into a wider conception of justice, he has in a recent book with Charles Taylor reflected on the institutional implications of fundamental liberal democratic principles (2010).

I believe that this thesis has contributed to that same endeavor by emphasizing and demonstrating the importance of engaging with concrete demands for justice and equality all the while not shying away from normative theorizing. On the one hand, Chapter 2 defended political theory as a normative enterprise from exponents of the deliberative resolution of issues relating to the respect and recognition of ethnocultural minorities. It has specifically shown how establishing the content of principles prior to deliberation is inevitable even if all agree on the importance of giving voice to affected minorities. On the other hand, I have revealed that the

failure to explore the political demands of Canada's Francophone minority communities has resulted into a blind spot whereby multiculturalists knew little about what principles of justice required with respect to these communities. This thesis has filled that gap by way of uncovering and articulating the normative logic embedded into the reports and manifestos of their main national association.

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