

2008 Expert Roundtable on Canada's Experience with Pluralism

**Canadian Federalism and the
Recognition of Linguistic Diversity:
Seeking a Balance**

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Federalism has many qualities that ought to be fully examined and applied. Among these are the ideas that federalism can be depicted simultaneously as a conflict-management mechanism, as a shield to protect minorities and territorial interests, and as a facilitator of multiple manifestations of policy innovations. Naturally, one of the key objectives of federalism is its capacity to generate a proper balance between sovereign yet integrated political communities so that, on the one hand, no community can be taken for granted in the policymaking process and, on the other, making it impossible for a majority community to impose its political will on all other communities. As such, federalism makes it possible for different territorially based majorities to be formed over time, contributing to a meaningful flourishing of societal diversity. This can be measured in a variety of policy sectors, among which are found linguistic regimes.

In this presentation, my intention is to explore the implementation of language policies in Canada over the years through a series of creative tensions that have at once contributed to make the country more diverse and, at times, have led to significant challenges to Canadian unity. But as the Supreme Court of Canada noted, in its 1998 reference case regarding Quebec's right to secede, Canadian federalism rests on four central pillars: democracy, federalism, constitutionalism and the rule of law and, finally, the protection of minority rights. These pillars constitute the primary sources of tension between political actors while also emerging as elements of accomplishment.

Language policies in Canada represent an ideal domain from which to explore tensions within the federation. Starting in 1960s with the Quiet Revolution, language communities have increasingly made claims over linguistic rights and have demanded to be genuinely recognized as subjects of collective protection. This has been the case in particular in Quebec, where francophones had up to that time tended to play a secondary role, dominated as they were by anglophone Quebecers and, on a larger scale, by English-speaking Canadians. Frictions between these political communities led the central government to launch some key initiatives in the field of language rights that, in turn, contributed to making the Quebec state more aware of its own responsibilities.

In this brief analysis, I focus on three aspects. First, I compare and contrast territorial and personal bilingualism, and situate claims for both options in their political contexts. Second, I evaluate the emergence of linguistic regimes in Canada through a push-and-pull strategy based on the political mobilisation of linguistic minorities (within the rest of Canada [ROC] and Quebec [QC]) and a “tug of war” between the central government and Quebec. Third, I pay some attention to the impact of federalism on the advent of differentiated language regimes in some emerging territories, namely Nunavut and Catalonia.

Territorial and personality principles vs. institutional bilingualism and unilingualism

Canada can be depicted as having several co-existing language-rights regimes. Language rights are often mentioned in Constitutional provisions, including section 133 of the *British North America Act* of 1867; section 19 of the 1982 *Charter of Rights and Freedoms*, which confirms the validity of section 133 with respect to federal institutions and extends to them to include the province of New Brunswick; and section 23 of the *Manitoba Act*.

The presence of a federal system in Canada contributed to a differentiation with regards to the application of language rights across the country. Applications of language rights in the various member states vary according to their point of entry in the country. New Brunswick is definitely the province that best recognized language rights through formal constitutional entrenchment, though this has not automatically translated into an equal treatment of French and English inhabitants in the province. Moreover, throughout the country, people can use either official language in all courts that fall exclusively under federal responsibility.

Three main views have generally been used to depict various options with regards to language rights regimes, namely, unilingualism on one side as opposed to personal and territorial bilingualism on the other. Key tensions have been expressed from time to time between supporters of unilingualism (e.g., CORE in New Brunswick), defenders of personal bilingualism (ROC) and proponents of territorial bilingualism (QC). Since the mid-1960s, a general policy trend that has inclined towards bilingualism has taken hold in different parts of the country and has been instilled, in large part, by federal politicians.

Table 1: Population by Knowledge of Official Languages, by Province and Territory (Census, 2006)

	Total	English only	French only	Both English and French	Neither English nor French
Canada	31 241 030	21 129 945	4 141 850	5 448 850	520 380
Quebec	7 435 905	336 785	4 010 880	3 017 860	70 375
Ontario	12 028 895	10 335 705	49 210	1 377 325	266 660
Atlantic	2 257 555	1 803 710	74 900	375 870	3 055
West	5 343 715	4 911 020	4 615	373 855	54 230
British Columbia	4 074 385	3 653 365	2 070	295 645	123 305
Territories	100 575	89 355	175	8 275	2 760

Source: Statistics Canada, 2006 Census of Population

Table 2: Knowledge of English and French in Canada, 1951, 1971, 2001

	1951	1971	2001
Canada	12.1	13.4	17.7
Quebec	25.8	27.6	40.8
Rest of Canada	6.9	8.0	10.3

Source: L. Marmmen and J.-P. Corbeil, *Language in Canada. 2000 Census*, 2004, pp. 154-158

Kenneth McRae and Jean Laponce’s theoretical contributions are particularly relevant here as they distinguish between two types of bilingualism. Type 1, or personal bilingualism, refers to rights that an individual carries with her anywhere the person elects to live in a given country. In this case, it is up to the person to choose in which language she wants to receive her services. Type 2, or territorial bilingualism, establishes that rights will be exercised distinctly based on the territory where one resides. In the territorial model of language rights, minorities would need to adjust to the language preference of the majority group in a circumscribed territory.¹

In the case of a multinational federation, one would expect that languages spoken in different parts of the country would follow a certain sociological logic. For a variety of reasons, Type 1 is not fully enforceable in Canada and Type 2 does not fully apply due to the central government’s role in the field of language politics. Selecting one model over the other, however, is not inconsequential. It reveals a vision of the country that feeds distinct models of federalism. Personal bilingualism invites individuals to express their own preferences through their first language (e.g., mother tongue) as they are addressing (federal) institutions, while territorial bilingualism establishes linguistic frontiers within which individuals as well as institutions are required to operate.

In the Canadian case, we are faced with a hybrid type (Type 3) that brings together elements of personal and territorial bilingualism. In essence, we are witnessing a form of institutional bilingualism. With the implementation of the *Official languages Act, 1969*, the central government has sought to enforce a dual regime of language rights that crosses over provincial divisions in order to avoid abdicating full responsibility of this policy to the provinces. In so doing, the central government has undertaken a series of initiatives to enforce minority-language rights in the country (anglophones in Quebec, and francophones in other parts of the country). Entrenching language rights within the Canadian Charter of Rights and Freedoms was a clear statement in this regard.

The central government's initiatives have also resulted in some important repercussions in Quebec as allophones have consistently made claims to be served in English at the municipal and provincial levels, in effect acting against the spirit of Bill 101 (Charter of the French Language) which makes French Quebec's official language. Moreover, English corporations that have more than 50 employees often continue to maintain their correspondence with the Quebec state in English. Even though the Charter of the French Language was implemented 30 years ago to confirm the central place of French in Quebec, provincial institutions make it easy for everyone to get services in English from the state. These developments have prompted concerns by Revenu Québec, Investissement Québec, Autorité des marchés financiers and several other government departments and agencies. At the municipal level, similar conditions are also found at most points of service. In this sense, we are witnessing a situation of personal bilingualism. In addition, although institutional bilingualism is said not to prevail in the province, it remains that Quebec provincial institutions have a tendency to act in opposition to their own law by allowing the use of other languages in its dealing with citizens.² In other words, there is a large gap between the *de jure* enactment of language policies and their *de facto* application.

Language regimes: a “push and pull” strategy

It is extremely rare to find a situation in which language groups are treated equally or have similar social and economic opportunities. For this matter, Canada is not different from most other countries. Linguistic tensions between French and English Canadians led the central government to launch, in 1963, a Royal Commission on Bilingualism and Biculturalism (B&B Commission). It was revealed at the time that French Canadians, for a variety of reasons, were victims of discrimination and were found to be occupying positions at the bottom of the socioeconomic ladder in large numbers. It was also noted that within the civil service and armed forces, not only were they under-represented, they also played secondary roles.

To launch its major inquiry, the B&B Commission examined a variety of cases where bilingual structures had been implemented. Cases in point were Belgium, Finland, Switzerland, and South Africa. The case of South Africa, where a high percentage of the population could function either in Afrikaans or English, was studied with particular interest. In that case, the principle of personality applied, thus individuals could receive

services in their preferred language wherever they resided in the country. The cases of Belgium and Switzerland gave some resonance to the principle of territoriality due to a better fit between territory and the distribution of language groups. The official language of the majority in particular territorial demarcation determined the language used to receive services, with the exception of Brussels (city and region), where services can be received in the two languages. Finally, Finland, with its ten percent (with a minimum of 5,000 inhabitants) to total population regulation, for the designation of specific language districts (local government units), was considered to be the best model for emulation.

Confronted with important changes to its societal make-up, Quebec entered the discussion on linguistic regimes in the mid-1960s. Initially, culture was considered to be a privileged domain for action although few initiatives were undertaken at the time to consolidate the place of French. With the exception of the nationalisation of Hydro-Québec in 1963, little was done to seek fairer francophone representation in the business sector. With the tabling of the B&B Commission report, Quebec decided to launch its own Commission of Inquiry into the Situation of the French Language and Linguistic Rights in Quebec (Gendron Commission) to consider the range of options for corrective measures. This took place at a time of profound change in Quebec, as citizens were experiencing an identity surge, and as the state (after having been ignored when not criticized as potentially invidious) was becoming a key vehicle for national affirmation. Ironically, it is the very state that contained several of the answers francophones were seeking to get out of their dependency trap.

What complicated matters for francophone Quebecers is that immigrants had been attracted to learn English as it represented for them a language of socioeconomic mobility. This led to important tensions over the years. At first, immigrants did not constitute a linguistic threat since they had been coming to Quebec in small numbers. With the opening of international frontiers, immigrants settled in significant numbers and continued to be attracted by English as a dominant language.

The most structuring decision on the part of the central government was its implementation of a policy of official bilingualism in 1969, in an attempt to reverse a longstanding trend. The policy stated that English and French “possess and enjoy equality of status and equal rights and privileges as to their use in all the institutions of the Parliament and Government of Canada.”³ This contributed to increasing the legitimacy of the central government in the eyes minority language groups.

As a result, efforts to augment the proportion of francophones within the federal civil service were undertaken. Members of that community had been seriously under-represented in central institutions up to that point. The *Official Languages Act* has contributed to significantly increasing the presence of French-speakers in the federal civil service. From a feeble 12.25 percent of positions held in 1946, while making up 30 percent of the Canadian population, French-speakers’ participation rose to 27 percent of the positions in 2004, with approximately 23 percent of the total population.⁴ In 1978, bilingual positions accounted

for only 14 percent of the employment in the central government, with this number jumping to 38 percent by 2005. Indeed, the latter group was made up largely by francophones, at 78 percent, including an over-representation of francophones from outside Quebec.⁵

Among other recommendations, the B&B Commission suggested a vast array of initiatives, including the implementation of bilingual districts intended to provide services from central government offices and agencies in both English and French, where numbers warranted. That initiative failed for a variety of reasons. The main one was sharp provincial opposition to its implementation.⁶

In light of these changes, non-francophone and non-anglophone groups started to mobilize and demanded not to be neglected in the reshuffling of the cards. This “third force”, as it was called, exercised a strong influence to the point that they convinced the central government to drop the notion of biculturalism, and to replace it with a policy of multiculturalism (1971). This policy is still with us today and has continued to make significant inroads to the point that it was entrenched in the *Constitution Act of 1982*.

The Gendron Commission’s recommendations invited the Quebec state to play a more important role in the language-policy sector. Quebec felt that it needed to be proactive and to find ways to encourage immigrants to choose French instead of English as their language of study, work and communication; in short, as the language to be privileged in the public sphere. Following the tabling of the Gendron report, Quebec decided to designate French as its official language through the implementation of Bill 22 under Premier Robert Bourassa. After the Parti Québécois victory in 1976, the *Programme d’enseignement des langues d’origine* was implemented in 1978 following the adoption of *La Charte de la langue française* the year before. Designed to ease the integration of allophone children to their host society, the program offers them classes to learn the languages of their parents or grandparents. By enabling these children to learn the language often spoken at home, the program not only helps to preserve their cultural heritage but facilitates the learning of the language of the majority as well.⁷

The implementation of a policy of official unilingualism did not go unchallenged as the central government and, in particular, anglophone Quebecers, were determined to defend institutional bilingualism (within federal government institutions) for all, and to try to circumvent the spirit of Bill 101 through a series of court challenges. The latter legislative initiative by the Quebec government was seen as accentuating some elements of Bill 22, which was very unpopular, while going still further to open some new avenues for the acquisition of French. Discomfort with language policies in Quebec led some English-speaking as well as allophone Quebecers to elect to move to other parts of the country.

Immigrants at times have felt that if they have to learn English as newcomers to Canada, it is therefore unfair that minorities within Canada (read Quebecers and Aboriginal nations) should not also have to acquire the majority language. If this could be achieved, the argument goes, it would make Canada a better place to live and everyone could share a

common language. This argument, however, is of no comfort to defenders of a country that has come together as a multination.

Lessons learned from the Quebec/Canadian experience

The Canadian experiment remains an interesting one for many other liberal democracies. Linguistic mobilization in Quebec, in the context of a federal multinational state, has contributed to force the majority-language group to be more open to the institutionalization of language rights. As a result, several Canadian institutions, though far from perfect, have made some room for francophones within the armed forces, the civil service and parliamentary institutions. Following the patriation of the Constitution in 1981-82, the central government has even provided some support for minority-language groups (anglophones in Quebec and francophone minorities outside Quebec) by launching a Court Challenges Program to assist individuals in advancing language and equality rights (protected but inadequately defined) under the *Constitution Act* of 1982. This has contributed to the development of a body of jurisprudence that is used by minority-language groups in Canada, as well as strengthening institutional bilingualism and, to a much lesser extent, the personality principle.

With the entrenchment of the Canadian Charter of Rights and Freedoms, the status of English and French has acquired some importance through judicial interpretation, contributing to a more salient role in the field of language management for the central government. This has been received with some suspicion in some parts of the country, but especially in Quebec, where French, though a majority language, remains under stress due to the arrival of immigrants, a low birth rate, and the attraction of English as a language of higher social mobility. As a result, the place where francophones have shown more determination at imposing their political will in the field of language politics has been, without any surprise, in Quebec. Quebecers have been persistent in viewing Canada as a country consisting of two host societies, both capable of integrating newcomers and providing them with equal opportunities. Through a series of political initiatives (ex. political party programs, constitutional proposals, referenda, etc.), Quebec has acquired significant powers in the field of immigration. This contributes to easing some tensions with the rest of Canada, as Quebec is largely responsible for the selection and integration of immigrants, with the exception of refugees and those in the family reunification class. In an attempt to promote more cohesion in its own society, Quebec has developed a policy of interculturalism that invites immigrants to acquire the French language, to participate actively in society and to stand up for democratic values.

Success by francophone Quebecers in achieving some of their goals has had some immediate effects on other national groupings within Canada (e.g. Nunavut, Nunavik), in other federal states (Flemings in Belgium), as well as within newly federalizing states (Catalans in Spain). The cases of Catalonia and Nunavut are good illustrations of this ongoing process of empowerment for minority-language groups. We will turn to briefly examine the cases of New Brunswick, Nunavut, and Catalonia.

New Brunswick

In 1969, the province of New Brunswick adopted its first *Official Languages Act*. Today, all provinces and territories, with the exception of British Columbia and Newfoundland and Labrador, have “implemented measures to recognize the official languages or the provision of French language services.”⁸ The *Act* (reviewed in 2002) guarantees the population of New Brunswick the right to receive services from provincial institutions in the language of their choice. Over time, the government of New Brunswick dealt with language issues by enacting a series of Acts and implementing public policies such as *The Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* (1981), the 1997 *Education Act*, and the *Province of New Brunswick Official Languages Policy* (1988, revised in 2004). According to a recent Supreme Court decision (the Paulin case), language rights in New Brunswick appear to be much more encompassing than they are in Canada’s *Official Languages Act* since services “must be made available in both English and French everywhere in the province regardless of the number of people who speak either language in a particular area. Services in both languages, moreover, must be of equal quality.”⁹ In that sense, Canada’s *Official Languages Act* can be depicted as a threshold, serving as a stepping-stone for the enhancement of rights within individual provinces. However, and contrary to what we have seen in the Quebec case, it ought to be noted that although such rights are recognized at the *de jure* level they do not automatically translate at the *de facto* level as francophones often emerge as a disadvantaged community in the province that needs to fight for the full exercise of their rights. Again, there is a “push-and-pull” dynamic at play.

Nunavut

Since its creation in 1999, the government of Nunavut has simply applied the 1988 *Official Languages Act* of the Northwest Territories (its former legal identity) on its territory that had been amended in 1990 to give official status to six aboriginal languages (Cree, Slavey, Dogrib, Gwich’in, Chipweyan, and Inuktitut). This was enacted with a view to halting the decline of the use of aboriginal languages in the region. As such, Nunavut is currently undergoing a significant language revival. In June 2007, two Bills were tabled in the Legislative Assembly. Bill 6 is the new *Official Language Act* and, if enacted, would give the Inuit language equal status to French and English in the Courts, the Legislative Assembly as well in public service delivery. Bill 7, the *Inuit Language Protection Act*, is intended to protect, promote, and sustain the use of the Inuit language by making it an essential component of Inuit identity, culture and history.¹⁰ After more than twenty years under the NWT *Official Language Act* provisions, Nunavut is facing a situation that shows a lot of similarities with the one faced by francophone Quebecers more than 40 years ago. Taking advantage of new constitutional dynamics in Canada and a new international context, First Nations can more easily make their language claims known, and force majority groups to show more sensitivity toward their just cause. In this case, we move beyond the French and English dynamics that we find elsewhere in the country.

Catalonia

Let me stress that what matters most for language diversity is the political context. In post-Franco Spain, it has been possible for historical nations to regain the right to use their own languages. The Catalans are the ones that have achieved the highest success in this regard. This is in part due to the fact that they were able to obtain their own status of autonomy within Spain, but also because Catalonia has had a particularly strong economy, capable of penetrating markets worldwide, and Catalans have been proud to rejuvenate their own identity. The establishment of the European Union has also contributed some additional exposure to their language as the flourishing of minority languages has been welcomed at the supranational level. In other words, the new Spain, as a federalising state, and the European Union, as a federal setting, have both contributed to making Catalan an attractive and utilizable language. Catalan currently ranks eighth among languages spoken in the European Union. That being stated, in an effort to augment language diversity in Spain, Catalans have emulated some aspects of Quebec's language policy. In 1983, the Generalitat enacted its own *Law on Linguistic Normalization in Catalonia*, stating that Catalan is *al lengua propia de Catalunya* (Catalan is Catalonia's own language), followed in 1998 by its *Act no. 1 on Linguistic Policy*. Both policies were modeled on Quebec's language policy. Moreover, the Quebec government, in an attempt to sustain the place of minority languages, has been eager to exchange information with Catalan officials in areas of database management, providing language programs to immigrants and to implant an industry of film dubbing, among other areas. Considering the fact that the Catalan language is not as largely used at the international level, its future is surely under more stress than is the case for French in Canada.

To sum up

In Canada, francophones and First Nations have taken advantage of an emerging "language of rights" and have been able to gradually assert their place within a multinational Canada. In the Canadian case, the presence of a federal (multinational) society has contributed to give bases of legitimacy to minority nations/communities which, in turn, are trying to provide members of their respective societies a context of choice that allows for their self-realization. This does not mean that the situation is easy for such communities considering the presence of a commanding anglophone population on the Northern part of the continent, and the appeal of the English language internationally. Moreover, as Kenneth McRoberts has aptly stated it: "Canada more than ever is a multi-national state in terms of its underlying social and cultural reality. Yet, it's also more than ever a nation-state in its dominant discourse and political institutions."¹¹

Canada probably has a great future as multinational federation but many issues remain to be addressed. To what extent is the central state contributing in defending and nurturing the foundational principles of federalism? To what extent are member states capable of providing their citizens with a context of choice that allows them to pursue a genuine

conversation within their territory while adhering to political values shared by the entire country?

The years ahead will be crucial for minority languages as English has become the dominant language worldwide. Federalism constitutes, it seems to me, a necessary institutional mechanism for minority languages in order to be in a position to not lose too much ground to majority languages. However, this condition remains insufficient for at least a couple of reasons. First, although minority language groups possess some policy instruments with which to promote their respective languages, this is undertaken in most cases within a context where those languages are already dominated by a predominant language: English in the cases of Nunavut and Quebec, and Spanish in the case of Catalonia. Second, English remains the *lingua franca* at the international level. As a result, and quite ironically, in order to keep in touch and share their strategy of empowerment, Inuit, Quebeckers, Catalans and other members of minority nations will need to increasingly employ the English language in order to advance their respective causes.

Endnotes

¹ Kenneth D. McRae, “The Principle of Territoriality and the Principle of Personality in Multilingual States,” in *International Journal of the Sociology of Language*, vol. 4, 1975, pp. 35-54; Jean Laponce, *Language and their Territories*, Toronto, University of Toronto Press, 1987, pp. 165-166.

² Robert Dutrisac, “Québec bafoue la Charte de la langue”, *Le Devoir*, 17 avril 2008, p. A1, A8 ; Michel David, “ Une sinistre farce », *Le Devoir*, 17 avril 2008, p. A3.

³ Official Languages Act, 1968-69, *Revised Statutes of Canada, 1970*, c.O-2, s.2.

⁴ Office of the Commissioner of Official Languages, *Annual Report*, Special Edition, 35th Anniversary 1969-2004 (The Social Fabric of Canada), Vol. 1. The requirements are often modest. Available at: http://epe.lac-bac.gc.ca/100/201/301/ra_commissaire_langues/html/ra04/v1/2004_05_e.htm

⁵ Office of the Commissioner of Official Languages, *Annual Report*, Special Edition, 35th Anniversary 1969-2004 (The Social Fabric of Canada), vol. 1.

⁶ Kenneth McRae, « Bilingual Language Districts in Finland and Canada: Adventures in the Transplanting of an Institution, » in *Canadian Public Policy*, vol. 4, no 3, 1978, pp. 331-351.

⁷ Azzam, Simone and Marie Mc Andrew, *Évaluation des services offerts dans le cadre du PELO et de l'impact de ce programme sur les élèves et les écoles à la CECM*, rapport de recherche, Montréal, Commission des écoles catholiques de Montréal, 1987, p. 105-106.

⁸ Hudon, *Idem*, p. 1.

⁹ Conrad Sabourin and Julie Bernier, *Government Responses to Language Issues: Canadian Examples*, Office of the Language Commissioner of Nunavut, 2001, p. 62.

¹⁰ Mother tongue: Inuktitut 20 185 (69.54%); English 7 765 (26.75%); French 370 (1.27%); Inuinnaqtun 295 (1.02%). Source: Canadian Census 2006).

¹¹ Kenneth McRoberts, *Cultures, Language, and Nations: Conceptions and Misconceptions*, Paper presented to the Sixteenth Annual London Conference for Canadian Studies, Birkbeck College, University of London, February 26, 2000, p. 25. Available at: <http://www.mri.gouv.qc.ca/london/en/pdf/discours/McRoberts.pdf>