COMPETING VISIONS OF EQUALITY AND IDENTITY: QUEBEC'S BILL 101 AND FEDERAL LANGUAGE POLICY

by

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Abstract

Language has become a central feature of the debate surrounding Canadian identity. The Canadian project is an example of a state struggling to find a means of accommodating linguistic difference. This struggle is epitomized by the language legislation in Quebec as well as by federal bilingualism. Language legislation is ultimately aimed at promoting and protecting identity.

An examination of language legislation as promoted by Quebec and the federal government reveals a different orientation toward the concept of equality. Language policy thus presents both a vision of community and a political argument. Federal language policy promotes a vision of Canada in which English and French are juridically equal. Politically, this vision of community denies Quebec is distinct.

Quebec’s language policy, on the other hand, asserts the importance of protecting Québécois culture against the majoritarian impulses of a larger Canadian identity. As a result, Quebec’s language legislation incorporates Quebec’s different position in Canada into a definition of equality. Recognition that Quebec has a right to protect its language is tantamount to an acknowledgement that Quebec is a distinct society in Canada. The language debate thus embodies competing visions of equality that relate to a specific identity.

The national unity issue plaguing Canada cannot be resolved through a commitment to equality as similar treatment. The problem of language planning, in Canada, revolves around finding a way to acknowledge and promote the local aspirations
of the Québécois, without creating an inequitable language environment for the English linguistic minority in Quebec.
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Introduction

The ongoing political acrimony between Quebec nationalists and the federal government of Canada stems in large part from the inability of the Canadian federation to engender a definitive Canadian identity capable of reconciling the cleavages between French and English cultures. Language policy has become the central symbol of the difficulty of reconciling different visions of society within a common framework. The language debate in Canada can be characterized as a conflict that incorporates competing notions of equality and competing visions of what constitutes a Canadian identity.

Thus language policy can be seen to represent the tangible result of the philosophical difference between Quebec and Canadian nationalists. The version of equality forwarded by federal language policy differs from the equality presented in Quebec’s language legislation. In the first case, equality is presented as similar treatment. The latter example demonstrates the importance of considering how difference can be incorporated into a definition of equality.

In addition to these philosophical distinctions, language policy represents an important political tool for advancing a vision of society. Federal language policy seeks to structure a Canadian political environment in which local identity does not overwhelm a larger Canadian identity. Conversely, Quebec’s language legislation asserts the importance of recognizing the distinct status of both the French linguistic group and the province of Quebec. In sum, the language debate re-visits the Canadian conundrum of reconciling distinct cleavages with a federal structure.
I. Quebec’s Language Policy and Québécois Identity

The Charter of the French Language (Bill 101) was enacted in Quebec by the separatist Parti Québécois on 26 August 1977. Bill 101 represented a determined effort on the part of the Quebec government to assert the importance of language as defining Québécois culture. Accordingly, Bill 101 sought to satisfy a practical and symbolic/theoretical objective. C. Michael Macmillan has characterized this type of legislation as a “strong promotion” of rights in that the government of Quebec seeks to “ensure that individuals can live their lives in their own language.” By characterizing Bill 101 as strong promotion, Macmillan accurately captures the vigor with which the Quebec government pursued the protection and promotion of the French language.

In general, Bill 101 outlines the means through which the Quebec government aims to protect and promote the French language. A more specific examination of Bill 101 reveals the following: Chapter I establishes French as the official language of Quebec. Chapter II outlines fundamental language rights, which include the right to have social services provided in French (section 2); the right of workers to carry out their activities in French (section 4); consumers’ rights state that information pertaining to commercial activity must be provided in French (section 5); finally, education rights are guaranteed allowing individuals access to education in French (section 6).

Generally, Chapters II, IV, V, and VI stipulate the use of French in the courts, civil administration, labour relations and semipublic agencies. Chapter VII deals explicitly with the

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1 Quebec, National Assembly, Charter of the French Language, Bill 101 (1977). Bill 101 was not the first piece of language legislation in Quebec. It was preceded by Bill 63, in 1969, and Bill 22 in 1974, which declared for the first time that French was the official language of Quebec. See Quebec, National Assembly, An Act to Promote the French Language in Quebec, Bill 63 (1969) and Quebec, National Assembly, Official Language Act, Bill 22 (1974).

language of commerce and business. Of the sections contained in the bill, section 58 has generated the most controversy and discussion. Section 58 of Bill 101 legislates that all commercial signs must be in French only. A fuller discussion of this section and the debate it has generated in the courts and the political arena will be pursued at greater length throughout the thesis.

Chapter VIII deals with the language of instruction. Section 72 stipulates that kindergarten to secondary school instruction must be in French. Section 73 allows for exceptions to the aforementioned section. The importance of structuring an educational system around a commitment to the French language is salient. Bill 101 protects the current status of French in the education system and incorporates non-English speaking immigrants into the French linguistic fold. The remainder of Bill 101 establishes the bureaucracy needed to enforce the regulations of Bill 101.

I now turn to the most salient reasons given for language legislation in Quebec. These reasons provide an avenue into understanding the practical and philosophical motivation informing Bill 101. The government of Quebec argued that certain demographic and economic factors fostered an environment in which the French language was under significant threat. As a result, the Quebec government contended, legislation was needed to protect the French language in Quebec. This represents the practical “why” behind the legislation, and speaks, in part, to a model of linguistic survival as its justification. Alison d’Angeljan outlines four factors that prompted the Quebec government to intervene in the area of “language planning.” These include: 1) the decline of the French Canadian population outside Quebec; 2) demographic changes in Quebec brought about by a sudden decline in the province’s birth rate in relation to that of English Canada; 3) the increasing tendency of immigrants to integrate into Quebec’s minority English-speaking community via the educational system; and finally 4) the control of
the important decision-making power in Quebec's business and industrial sectors by English-speaking interests.³

Debating the validity and importance of demographic trends represents an important element of the language conflict in Quebec. The philosophical/symbolic reasons for enacting legislation, however, speak to the salient concept of identity and the importance of maintaining cultural integrity. In other words, although the practical reasons given for language legislation must be acknowledged, the philosophical implications of such legislation, in many respects, epitomizes the larger issue of a Québécois identity struggling against and competing with a Canadian national identity. According to Camille Laurin, the architect of Bill 101: "The French of Quebec have never believed that their language could be dissociated from the destiny of the entire nationality, of its economy and of its culture."⁴ By implementing specific legislation, the Quebec government sought to codify the connection between language and national identity.

In addition, the use of language as a definitive characteristic of identity fostered a more heterogeneous definition of Québécois. Responding to the influx of different cultures, Quebec nationalists, especially since the Quiet Revolution of the 1960s, sought to promote a liberal and inclusive ethos as definitive of Québécois identity. Raymond Breton has argued that both English Canada and Quebec moved from an ethnic to civic nationalism. In the case of English-Canada, the emphasis on British culture and tradition was replaced by a more culturally nebulous definition of a Canadian citizen. Quebec nationalism, in turn, has embraced the liberal emphasis on tolerance and incorporated minority cultures within a definition of Québécois.⁵ The common

denominator of the French language allows different religious and ethnic groups to be counted as legitimate participants in the Québécois experience.

In many respects, Quebec society differs very little in theoretical terms from the rest of Canada. Liberal rights and freedoms are advocated as essential to a just society, and the term Québécois now encompasses different ethnic groups. The key unifying element remains the French language. It could be argued that the definitive characteristic of Québécois nationalism and identity is the French language. Language provides both a connection to history and a means with which to confront contemporary political and social problems. Joshua Fishman writes: “under secular-nationalist auspices, language becomes part of a secular religion, binding society together and mobilizing it to face...challenges...”

For Quebec nationalists, Quebec’s language legislation is framed in terms of cultural rights, both as a means of situating Quebec nationalism within a theory of rights, and as a way of separating the “cultural” aspirations of the Québécois from the “acultural” nationalism of Canada. Language becomes the sole cultural characteristic which Quebec can assert to differentiate itself from the rest of Canada. René Lévesque argued: “The central fact of language makes Quebec the one Canadian province out of ten which is radically (in the root sense of the word) different from the rest of Canada.” The importance of the French language to the Québécois identity is exemplified by the tenor and specific language of Bill 101. A closer consideration of Bill 101 will highlight the central aim behind the legislation, and provide a means of discussing some of the philosophical and political consequences that have emerged as a result of the Quebec government’s promulgation of language legislation.

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6 Philip Resnick makes a similar point. See his Thinking English Canada (Toronto: Stoddard, 1994), 22.
8 Quoted in Chevrier, Laws and Language in Québec: The Principles and Means of Québec’s Language Policy, 16.
In its preamble, Bill 101 states: “Whereas the French language, the distinctive language of a people that is in the majority French-speaking, is the instrument by which that people has articulated its identity.” By addressing the issue of language rights in this manner, the Quebec government established two crucial elements: the importance of language was central to the well-being of a defined group—namely French-speakers, and this group constitutes a majority within the territorial boundaries of Quebec. Moreover, the preamble also recognizes the “right of the Amerinds and the Inuit of Québec, the first inhabitants of this land, to preserve and develop their original language and culture.” Thus, a third element emerges: majority status is not a requisite for language rights, although the English-speaking minority receives no such rights.  

Quebec’s language legislation, aimed at ameliorating the status of the French language in Quebec, inevitably created a basis for uniting French-speaking citizens of Quebec. It, however, also separated groups according to linguistic characteristics. Language unites a specific group and creates divisions between groups. Of primary importance is the antipathy between English and French speakers. Bill 101 affected the environment in which inter-group relations would be conducted.

Donald Taylor and Lise Dubé-Simard have shown that Bill 101 separated groups according to linguistic lines, with English speakers opposing the legislation and French speakers, although supportive of the government’s actions, still feeling “culturally threatened and exploited.” Language becomes a vehicle through which nationalist aspirations find articulation. French-speakers argue that their minority status in Canada justifies government intervention in the area of language legislation. English speakers, in turn, can claim that this type of intervention violates their rights as a linguistic minority in Quebec. The claims of each group has resonance beyond

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simple language planning. A political element emerges in respect to the relationship between
French and English languages in Canada.

The fact that Bill 101 recognizes the languages of the aboriginal populations to the exclusion
of the English language further exacerbates the animosity between French and English speakers.
It also demonstrates the political importance of establishing the supremacy of the French
language in Quebec over the dominant language spoken in the rest of Canada. By doing so, Bill
101 overlooks an important moral component to language rights: “As long as our moral concern
is with the speakers of languages the claims of minority groups cannot be brushed aside. The
interest of English speakers in speaking English is no less real, or urgent, than the interest of
French speakers in speaking French.”

Bill 101 rightly establishes the importance of French to the Québécois identity. As a result,
the French language is deserving of protection because it must be assured a secure environment
within a predominantly English speaking setting. Bill 101, however, neglects a moral component
in that it fails to provide a secure linguistic environment for its minority English-speaking group.
In part, this is a reflection of the political animosity between Quebec and Canada.

Competing Visions of Equality: Official Bilingualism and Bill 101

Michael Hartney argues that rights can be separated as either legal or moral. For our
purposes, the most salient “legal” definitions of rights include claim-rights and liberty-rights.12
Claim-rights refer to a legal duty, whereas liberty-rights refer to the absence of a duty. Thus,
when discussing language rights it is necessary to define how these rights will take shape in a
practical sense. Do language rights require the intervention or absence of government? Further,
what type of equality do they support? Is it equality based on similar treatment or is it an equality that recognizes that different groups in society require different rights.

Official bilingualism is committed to equality based on similar treatment. Federal language legislation reflects the larger project of engendering a Canadian identity that rejects the territorial specificity of local identities. Equality as sameness seeks to endow all individuals with similar language rights regardless of their cultural or historical background. As a result, the two speakers of the two major languages—French and English—are given equal legal status.

Bill 101, on the contrary, can be seen as a rejection of the equality guaranteed by official bilingualism. Instead, Bill 101 acknowledges that equality as sameness cannot adequately address the concerns of a national minority struggling against a majority culture. Quebec’s language policy counters official bilingualism by explicitly promoting the French language as the only official language of Quebec. The identity of the Québécois (local identity) is thus promoted against a larger Canadian identity.

The fact that alternate visions of equality are offered reflects the ongoing Canadian dynamic in which the aspirations of local identities clash with a larger national identity. Official bilingualism and Bill 101 each promotes a type of equality that seeks to address the cleavages between French and English cultures. Federal language policy falls short of accomplishing a reconciliation between the French and English linguistic groups because it focuses on individual speakers rather than on language groups. In its attempt to promote a Canadian identity, official bilingualism dismisses the aspirations of the Québécois by intentionally ignoring the distinct status of the French (or any other) linguistic group.

Bill 101, on the contrary, establishes the importance of the Québécois identity in opposition to a larger Canadian identity. Equality as sameness is rejected in favour of equality that recognizes that the precarious status of French in Canada requires different rights. These
rights, in part, circumscribe the language rights of the English minority in Quebec. To some extent the different rights afforded to French speakers are justified considering the minority status of French in Canada. However, aspects of Bill 101 place egregious limits on the English linguistic group. The problem of language planning, in Canada, revolves around finding a way to acknowledge and promote the local aspirations of the Québécois, without creating an inequitable language environment for the English linguistic minority in Quebec.

In 1969 a Royal Commission on Bilingualism and Biculturalism recommended that the federal government institute a program of systematic language planning so as to equalize the status of French and English. The report defined a linguistic right as:

a specific legal protection for the use of a given language. It involves the use of a language in the conduct of public affairs; in the parliamentary process; in the day-to-day administration of government; in the rendering of justice; and in the public school system. It may also involve private activities.\(^\text{13}\)

The report led to the enacting of federal legislation making French and English the official languages of Canada. The 1969 Official Languages Act embodied the liberal commitment to equality.\(^\text{14}\) Thus, an individual, regardless of region, would be able to access educational and government services in either official language. French and English were given equal legal status as the two major linguistic groups in Canada.

Some may contend that the status given English and French necessarily violated the language rights of other legitimate cultural entities in Canadian society. The Canadian context demonstrates that a language right requires the presence of a sizable linguistic community: “The significance of size thus lies in the simple fact that the French and English constitute currently


\(^{14}\) Official bilingualism was subsequently entrenched in the Canadian *Charter of Rights and Freedoms*. In general, Sections 16-22 adumbrate language rights related to the provision of government services and the use of either French or English in the federal government. Section 23 relates to minority language education.
viable language communities able to sustain for its members a reasonably full cultural life.”

Thus, English and French represent the major linguistic groups in Canada. Legislation aimed at providing language rights must, at the least, recognize both these groups.

Macmillan has characterized official bilingualism as a “weak-promotion” right in that the federal government “expresses a commitment to support a particular language.” The language rights guaranteed in the federal legislation represent claim-rights in that X is seen to have a right (to communicate in either official language with the federal government and the right to bilingual education), and this right is seen as central to the well-being of the individual to the extent that Y is under a duty. The Y in this case would represent the federal government, and its duty to provide government services in either language, and provide funds for second language education across Canada. No apparent duty was imposed in terms of a group having their rights restricted for the benefit of bilingualism. Thus, federal legislation was philosophically neutral in that English and French were given equal legal status: “Equality of status means that in its expression of itself as a country...Canada will reflect the heritage and culture of its French speaking community as well as the heritage and culture of the English speaking community.”

The type of liberalism promoted by official bilingualism is what Charles Taylor calls the ‘politics of equal respect’, whereby the liberal society seeks to inculcate an emphasis on the

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15 Réaume, “The Constitutional Protection of Language: Survival or Security,” 54. Will Kymlicka also makes the useful distinction between national and ethnic minorities. The former require special rights so as to protect their distinct status within a hostile majority culture. The latter hope to maintain their cultural integrity, but are more amenable to assimilating into the majority culture. Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (New York: Oxford University Press, 1995), 10-17. The English language group represents a national majority, whereas French speakers can be seen to occupy the position of national minorities. Each can make a claim for language rights. An argument can be made that the language rights of Aboriginal populations should also be recognized by federal legislation. They represent a constitutive dimension of the Canadian project on par with the English or French. In this sense, Aboriginals have grounds for extending the language regime. As Réaume contends: “That others should be admitted to the club is no reason for revoking the membership of those already in, or in any way limiting the protection to which they are otherwise entitled. The moral entitlements of others provide only an argument for constitutional amendment to recognize their claims.” Réaume, “The Constitutional Protection of Language: Survival or Security,” 55.


universal application of individual rights against an acknowledgment of diversity: "the principle of equal respect requires that we treat people in a difference-blind fashion."\(^{18}\) A non-recognition of difference speaks to the liberal notion of universalism, and to an equality based on the explicit rejection of difference as a meaningful political and social orientation.

The "politics of equal respect" is premised on the belief that individuals, regardless of gender, disability or ethnicity should access rights and be afforded similar treatment as juridically equal citizens. Language rights as defined by federal legislation are no different. They represent a form of individual rights that eschews territorial restrictions. Theoretically, an individual can request government services in either French or English regardless of the province in which the request is made.

Jean Laponce has characterized federal language policy as a personal solution to language planning: "Personal solutions seek to establish language as a right equally portable as the right to vote or the right of religious expression."\(^{19}\) A "personal solution" to language planning in Canada is significant in two respects. First, it emphasizes the portability of language rights, thereby limiting the extent to which a provincial government can influence language matters. Second, language rights are conceived as individual—on par with voting and freedom of religion. An emphasis on the individual nature of language rights undermines the importance of group affiliation.

The language rights defined through official bilingualism are conceived, primarily, as individual rights aimed at undermining the aspirations of Quebec nationalism. As Robert Vipond suggests, Trudeau intended language rights to be conceived as individual: "the argument was in effect: if you support the constitutional protection of individual rights then,\textit{mutatis
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\(^{19}\) Jean A. Laponce, \textit{Languages and their Territories}, translated by Anthony Martin-Sperry (Toronto: University of Toronto Press, 1987), 165.
mutandis, you should support the constitutional protection of language rights, for they are cut
from the same cloth.”

However, some of the language rights in the Charter represent group rights. Section 23 of
the Charter deals with minority education rights. The exercise of these rights is contingent on
there being a sizable language community to warrant service. So although Trudeau had intended
language rights to be seen as individual, the Charter does recognize the importance of groups to
securing these rights. This does not detract from the fact that federal language policy still sought
to undermine the territorial aspects of language planning as forwarded by Quebec nationalists.
The language rights embodied in the Charter and official bilingualism maintain the salience of
language rights as portable entities that are not influenced by a specific territory or region.

Language policy directly relates to a specific political goal. Federal language legislation
undermined the appeals made by Quebec nationalists. Removing a territorial basis for language
planning reduces the importance of the Quebec government, and invigorates the federal
government’s role in linguistic matters. This in turn forwards a vision of Canadian society
committed to promoting a national identity against the nationalist project of the Québécois.

Language legislation at the federal level creates a moral community “emphasizing the
equal dignity of all citizens, and the content of this politics has been the equalization of rights
and entitlements.” The equalization of language rights explicitly embodies a vision of society
based on the equal status of individuals. Implicitly, a dimension emerges in respect to the federal
nature of the Canadian political system. By advocating the equal worth of all individuals in
respect to language rights, federal language policy denies the distinctness of the French (or any


other) linguistic group. In terms of federalism, the equalization of linguistic groups is tantamount to the non-recognition of Quebec as a distinct society within Canada.

Some commentators do not feel federal legislation promotes a theory of language rights. Much of the rationale behind federal language policy, according to Macmillan, was based on political compromise rather than on a definition of language rights: "the federal rationale was based not on any theory of language rights, but on grounds involving principles of equality, pragmatism, and considerations of national unity."22 This may capture an aspect of language planning at the federal level. But the reality exists that even though federal language policy was not explicitly based on a theory of language rights, the result has yielded an explicit characterization of what type of society should be constructed in order to accommodate language rights.

The society in question is defined by its emphasis on universal dignity, and it places a premium on individual rights as a means of establishing this dignity. As a result, a theory of language rights is implicitly included. Language rights, like most rights within the "politics of equal respect," are structured around the individual rather than a collectivity. What this theory of language rights promotes is a national linguistic community committed to the "politics of equal respect."

Characterizing language rights as individual does not necessarily mean that a specific communal interest is not promoted. On the contrary, Trudeau's definition of a language right, and his espousal of a charter of rights and freedom, was aimed at undermining a vociferous Quebec nationalism. Trudeau explicitly defined community in the political rather than cultural sense. Commonality would be based on juridical equality guaranteed by rights. This definition of community was inevitably linked to the promotion of language as an individual right:

22 Macmillan, The Practice of Language Rights in Canada, 73.
“...every Canadian can use his or her own language or, for that matter, no language at all in his or her own personal life and pursuits.”

By advocating language rights for the good of the individual, Trudeau implicitly promotes a vision of community: “The claim is that the supposedly neutral set of difference-blind principles of the politics of equal dignity is in fact a reflection of our hegemonic culture.” Language rights defined as individual rights promote the majority culture and in this respect define a specific community. This community (defined primarily in political rather than cultural terms) in turn provides a means through which individuals prosper. The definition of community employed here escapes the traditional conception of community as related to a specific cultural or ethnic component. Nevertheless, the presence of a political community committed to the “politics of equal respect” characterizes English Canada. The majority (French) political and linguistic community in Quebec appeals to a different set of values.

Although official bilingualism sought to codify the equal status of both French and English, it neglected the concerns of many Quebec nationalists: “...the real country is altogether different from the legal country...Bilingualism, the official policy of the federal government, is an ambition more than a reality, and many in Quebec question its validity.” In short, official bilingualism did not engender a substantive equality between the English and French languages in Canada. Francophone populations remain precarious minorities in Canada, and the status of French outside of Quebec can be characterized as marginal at best.

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26 Chevrier writes: “Francophone minorities have marginal weight elsewhere in Canada. They comprise barely 1.5% of the population of British Columbia, 4.4% of Manitoba and 0.5% of Newfoundland. Social and economic life is almost exclusively in English except in some isolated communities. There is some bilingualism in federal institutions across the country—government services, postal services, airports, etc.—but only 30% of federal public servants are bilingual and most of them work in the Ottawa region, the federal capital.” Ibid., 8.
Defining equality simply in terms of individual juridical equality is not enough in the case of the French language. Thus, the issue of linguistic security alerts us to the fact that federal legislation does not provide a secure linguistic environment for French-speakers. Equality defined as sameness cannot address the linguistic situation in Canada: "Unrestrained competition between languages will not bring about linguistic harmony, but a subordination of the minority languages to the dominant language, and a subordination of the minority community to the dominant community."27

For Quebec nationalists what is at stake is the integrity of their culture and national identity. Language plays a salient role in maintaining and promoting this national identity. The affirmation of rights aimed at protecting the French language sees the full exercise of individual autonomy as connected to a cultural structure. Rather than emphasizing universal dignity, Quebec appeals to a "politics of difference": "...what we are asked to recognize is the unique identity of the individual or group, their distinctness from everyone else. The idea is that it is precisely this distinctness that has been ignored, glossed over, assimilated to a major identity."28 Quebec language legislation epitomizes a commitment to the "politics of difference."

As opposed to the personal solutions to language planning offered in federal legislation, Bill 101 represents a territorial solution. Laponce explains:

The territorial solution...provides a geographical translation of consociationalism; it seeks to separate the languages in contact by giving them exclusive geographical areas, tied together, at the level of political elites, by a small amount of individual and territorial bilingualism.29

Quebec's language legislation explicitly asserts French as the official language within the territorial boundary of Quebec. Quebec's language policy thus serves two complementary

28 Taylor, "The Politics of Recognition, 38.
political purposes. In the first case, it establishes the importance of language to Québécois identity. Second, the territorial specificity of the French linguistic group forwards the premise that Quebec is distinct from any other province in Canada.

If Canada were to pursue a purely territorial solution to language it would afford local government the power to legislate in areas of linguistic matters without encroachment from the central government. The emergence of the Charter, however, has entrenched a personal approach to language in conflict with the territorial variant offered by Bill 101: "...the constitutional revision of 1982 has given the central government the upper hand by making it responsible for the protection of a citizen’s linguistic rights..."\(^{30}\)

Bill 101 structures its philosophy around an understanding that, "Most such rights are not about the primacy of communities over individuals. Rather, they are based upon the idea that justice between groups requires that members of different groups be accorded different rights."\(^{31}\) Language legislation in Quebec responded to the inefficacy of federal legislation by completely rejecting political compromise as a solution to language conflicts. By doing so, language legislation in Quebec, in one sense, ultimately paved the way for a conception of language rights that did sanction the imposition of the French language group over the rights of the English language group. Thus, unlike federal legislation, that sought a political compromise the legislation proffered in Quebec emphasized

that language rights are based on membership in a language community and on the contribution of that language to personal and cultural identity. The problem rests primarily in the particularistic application of the principle, restricting it to the French language group.\(^{32}\)

\(^{30}\) Ibid., 167.  
\(^{31}\) Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights, 47.  
\(^{32}\) Macmillan, The Practice of Language Rights in Canada, 103.
Bill 101 presented language rights within the context of the affirmation that French is the official language of Quebec. Thus, sections 2 through 6 of Bill 101 outline “fundamental language rights” in respect to the French language only. These rights represent claim-rights, and are situated within a context that does not recognize English language rights. The duty aspect falls to the government of Quebec to facilitate French language rights. Yet this duty extends beyond simple neutrality. Instead, the Quebec government takes an active stance in promoting the French language. Language policy in Quebec is not only aimed at the promotion of French. Instead, the provincial government takes an active role in restricting the use of other languages in the public sphere.

Trudeau articulated language rights as individual. This required the presence of a political community committed to equal respect and justice. This political community has come to define itself in respect to the English language. Thus, in the practical sense Quebec and Canada are separated by language. In the philosophical sense, each offers a competing vision of society. English Canada promotes language rights aimed at facilitating the juridical equality of all citizens. Quebec nationalists promote language rights that recognize the importance of cultural integrity and group affiliation to individual freedom. Equality is conceived not simply as sameness, but rather in terms of difference. These competing visions inform the language debate: the politics of equal respect defines English Canadian linguistic policy against the politics of difference epitomized by Quebec’s language legislation.

In respect to federalism, a politics of equal respect privileges the federal government over provincial governments. Language rights are seen as portable entities that defy geographical boundaries. The equality of individuals translates into the equality of linguistic groups. A strict equality between linguistic groups means that Quebec cannot claim a distinct status in Canada.
Quebec’s language policy, structured around a commitment to a politics of difference, asserts the importance of territory as a defining feature of linguistic security. Bill 101 rejects the equality defined in federal legislation by promulgating a vision of equality that recognizes the distinct status of both the French linguistic group and the province of Quebec. As a political mechanism, Bill 101 affirms the importance of provincial identity and seeks to de-centralize the decision-making process in the area of linguistic matters.

It must be stressed that the distinction between the politics of difference and the politics of equal respect does not necessarily mean these orientations are completely irreconcilable. Both are situated within liberal theory. Taylor demonstrates how the politics of difference is built on and related to the politics of equal respect. A community could be structured on a commitment to both a politics of universal dignity and difference. The task would require emphasizing the equal moral worth of individuals while at the same time recognizing that substantive inequalities between groups cannot be ameliorated simply by an appeal to juridical equality. Even if such a community existed, a palpable tension would still exist between the competing visions. The tension between these two visions reflects the larger problem of establishing a Canadian identity within a framework that continues to include a vociferous Québécois identity. This may call into question the success of Taylor’s effort.

Lapointe has characterized federal language legislation as “dysfunctional” because it fails to promote a territorial solution to language. A territorial solution to language would privilege Quebec’s provincial government over the federal government. Quebec’s status in Canada and the French language would be affirmed as distinct. The fact that this has not occurred speaks to the unwillingness of the federal structure—embodied especially by Trudeau’s vision of Canada—to recognize the special character of Quebec and its distinct identity in Canada. In turn, aspects of Quebec’s language legislation are explicitly intransigent. This intransigence speaks to Quebec
nationalist’s affirmation that the French language requires different measures to protect it within a hostile linguistic environment. The unwillingness of Bill 101 to recognize the linguistic rights of English speakers furthers the political argument that Quebec will continue, through whatever measures, to protect its cultural integrity, which it sees as distinct from the rest of Canada.

Quebec’s Language Policy and the “Politics of Recognition”

By arguing for a conception of language rights, one could argue, for the sake of consistency, that the group rights of English speakers in Quebec need also to be acknowledged: “Bill 101...resolved this dilemma in philosophically unacceptable ways, by effectively denying that English-residents have any language rights...there is no internal conflict of equal language rights because one party to the conflict simply has none.” By addressing language rights in terms of a collective interest, Quebec’s language legislation embraced a politics of difference and invoked the necessity of endowing different rights to the French-speaking group as a means of facilitating a just outcome between the Francophone and non-Francophone populations of Canada. In this sense, group rights affirm the importance of what Charles Taylor has called a “politics of recognition.”

Taylor argues that withholding this recognition can be tantamount to discrimination and serves only to reinforce the status quo of the dominant society: “The projection of an inferior or demeaning image on another can actually distort and oppress, to the extent that the image is internalized...the withholding of recognition can be a form of oppression.” Treating the Québécois in Canada like every other group, falls into the realm of the “politics of equal respect” discussed above and withholds recognition of their differences. The difference between federal and provincial language legislation is epitomized by the “weak promotion” of federal legislation

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33 Ibid., 105.
against the “strong promotion” of Bill 101. Clearly the Quebec government felt that federal legislation did not adequately address the inequalities between the French and English languages.

In response, Bill 101 sought to establish the connection between language and identity, and endow French speaking Quebec citizens with language rights that would protect and perpetuate the Québécois identity. Group rights seek to ameliorate an inequitable political and social environment. Implicated within this dynamic is an acknowledgment of difference and a requisite “politics of recognition.” The Quebec government, in its use of language legislation, implored the Canadian state to recognize the importance of Quebec’s culture and position in Canada. In this respect, group rights appear justified.

However, the non-recognition of English language rights in Quebec speaks to the worst fear of liberals who argue that group rights are necessarily egregious constructions that impinge on individual autonomy and undermine the equal status of all citizens. In terms of Bill 101, the rights of French speakers have negated the rights of English speakers to the point where English language rights are almost non-existent within the legislation. Thus, Bill 101 can be critiqued on the grounds that it lacks a consistency of recognition. By not recognizing English language rights—even in the weakest sense—Bill 101 opens itself up to the liberal critique regarding the equal worth and dignity of every individual. Bill 101 can thus be challenged on the grounds that it creates an inequitable language environment within the territory of Quebec. Moreover, by not consistently recognizing English language rights, Bill 101 inevitably damages its own normative appeal to a politics of recognition because it denies the substantive recognition that the English linguistic group does in fact represent a minority in the province of Quebec.

Only in the area of education and the provision of government services is the use of English permitted. These sections may be aimed more at withstanding challenges made by an

34 Taylor, “The Politics of Recognition, 36.
appeal to the *Official Bilingualism Act* and serve more a political purpose than a normative acknowledgment of English language rights. Moreover, although English may be permitted in these areas it occurs within a context that recognizes only French as the official language of Quebec.

It may be argued that the non-recognition of English language rights only confirms the majority status the English language occupies in Canada. Thus, a politics of recognition need not apply to English-speaking Quebeckers because they belong to the dominant linguistic group in Canada. Leslie Green describes this line of thinking in terms of relative power, in which minority groups, like French speakers in Canada, are seen as relatively weak in relation to their own internal minorities—English speakers. Green, however, refutes this line of thinking by arguing that it cannot be taken for granted that the English speakers in Quebec will necessarily be more powerful than the French speakers. Instead, the opposite may be true, in that the French speakers in Quebec may be stronger, and thus in a position to circumscribe the rights of English speakers.35 This in fact has occurred with respect to Bill 101.

Bill 101 would not necessarily create an egregious environment for English language rights if it only affirmed the group rights of French speakers over English speakers. English language rights, however, are not acknowledged. As Macmillan states: "...there are no recognized rights to the English language with which Bill 101 might conflict."36 The non-recognition of English linguistic rights points to the ongoing political antipathy between Quebec nationalist and English Canada. The politics of language in Quebec seeks to convey to those in the rest of Canada that a non-recognition of Quebec's distinct status will be challenged by legislation that offers a commensurate non-recognition of the English minority in Quebec.

The following sections explore the jurisprudence that Bill 101 has generated. An examination of the jurisprudence will consider how the Supreme Court has ruled in regard to the competing visions of equality discussed above.

II. Bill 101 and the Charter

The Canadian Constitution, successfully patriated as of 17 April 1982, includes the Charter of Rights and Freedoms. Then Prime Minister Pierre Trudeau hoped that the Charter would undermine the strength of Quebec nationalism and further a Canadian nationalism, thereby solving the problem of national unity that had plagued Canada for its entire existence.

Trudeau promoted the liberal notion that the individual must be seen as the key social and political actor, and that a rights-based document would provide the best means of ensuring that the individual would be protected from the encumbrances of the state:

>a constitutional charter is in keeping with the purest liberalism, according to which all members of civil society enjoy certain fundamental, inalienable rights and cannot be deprived of them by any collectivity (state or government) or on behalf of any collectivity (nation, ethnic group, religious group or other).37

The adoption of a charter of rights and freedoms emphasizes rights. It is this emphasis on rights that yields a new political environment in Canada. For Trudeau, a moral component was tied to the relatively more mundane task of vitiating Quebec nationalism. This moral component seeks a common identity based on the ideal of a just society, rather than appeal to primordial characteristics like ethnicity and culture.38

It is within this new “Charter context” that the language debate finds itself, and in which Bill 101 faced a significant legal challenge. The Charter provides a substantive touchstone from which to articulate specific interests and agendas. In terms of the language debate in Quebec, the

arrival of a federally codified set of rights and freedoms provided a means to challenge provincial legislation by appealing to a document that afforded inalienable and universal rights to all Canadian citizens. As John Richards notes: "the Charter poses a significant threat to the historic compromise whereby [the Québécois] could effectively legislate over cultural linguistic matters within their own province." In this sense, the rights generated by Bill 101—some may argue the epitome of provincial rights—faced a challenge grounded in a rights-based document aimed at promoting a national identity.

The Charter also makes the judicial process more relevant and accentuates the articulation of political demands in terms of rights and freedoms: "...the addition of a charter of rights and freedoms to the constitution widens the focus of judicial review from a preoccupation with the powers of government to a concern for the rights of citizens." These rights define the relationship of citizens to government and implicitly structure relations between the federal and provincial governments.

In addition, one cannot ignore or underestimate the importance of the political environment in which the Charter emerged when discussing how language rights are interpreted. As a result, the political acrimony between Quebec and Canadian nationalists, exacerbated by the emergence of the Charter, will continue to affect the tenor of the language debate. Whatever judicial precedent is rendered by reference to the Charter will only reinforce Trudeau's vision that the Charter’s very existence is dedicated to the eradication of Quebec nationalism.

41 For an account of Quebec’s disapproval of both the constitutional process and the aim of the Charter as a document embodying Canadian nationalism see Guy Laforest, Trudeau and the End of the Canadian Dream,
Quebec’s language legislation seeks to ensure that its cultural survival will be protected within Quebec through specific rights and freedoms. The Charter aims to promote a Canadian society in which a Québécois identity is overwhelmed and eradicated by the emergence of a strong Canadian nationalism. Although the Charter seeks to promote a Canadian identity, it does not completely dismiss other collective aspirations. Namely, sections dedicated to aboriginal treaty rights, multiculturalism and the notwithstanding clause all point to elements of group rights. Despite the collective tendencies, the Charter does not afford recognition to Quebec as a distinct entity within the Canadian project. The fact that other collective entities are recognized, to the exclusion of the Québécois identity, further exacerbates the political acrimony between Quebec and Canadian nationalists.

The argument thus far has framed the language debate within the nascent context of Charter politics. As a result, rights-discourse has become an increasingly salient feature of Canadian politics. The Charter ostensibly allows individuals to challenge federal and provincial legislation and ultimately weaken federal and provincial jurisdiction in certain areas.

Philosophically, the Charter was intended to promote a specific vision of Canadian nationalism.

translated by Paul Leduc Browne and Michelle Weinroth (Kingston: McGill-Queen’s University Press, 1996). For an account detailing the difficulty in affixing the Charter into the political culture of Quebec see Alan C. Cairns, 

It is beyond the scope of this paper to analyze and comment fully on the various interpretations of the Charter. What must be emphasized is the difference of opinion that exists as to whether or not the Charter embodies a philosophical commitment to group rights, thereby facilitating, at least at a theoretical level, a means of recognizing the cultural aspirations of Quebec. This lack of consensus speaks to the larger question of facilitating a workable solution to the Quebec-Canada dilemma. Commentators like Ramsay Cook argue the Charter contains both individual and collective rights. What Cook does not sanction are types of collective rights that assert a cultural imperative. Thus, the collective rights Cook refers to do not speak explicitly to the issue of Quebec and the French-Canadian claim of distinctness. See Ramsay Cook, Canada, Quebec and the Uses of Nationalism, 2nd edition (Toronto: McClelland & Stewart, 1995), 241. David J. Elkins makes a different claim. Elkins argues that the notwithstanding clause and linguistic rights represent the Charter’s commitment to collective rights, and hence its commitment to ensuring the cultural survival of the Québécois. Elkins affirms the importance of cultural rights as a means of securing distinctive ways of life. Cook, on the other hand, sees cultural rights as anathema to the functioning of a liberal-democracy. See David J. Elkins, “Facing Our Destiny: Rights and Canadian Distinctiveness,” Canadian Journal of Political Science 22 (December 1989): 699-716. For an interpretation of the Charter as an anti-collectivist document see Charles Taylor, Reconciling The Solitudes: Essays on Canadian Federalism and Nationalism, Guy Laforest, ed. (Kingston: McGill-Queens University Press, 1993), 165. Taylor
According to McRoberts, the Canadian nationalism Trudeau espoused contradicted the historical and moral basis upon which the Canadian state was based: "None the less it was nationalism and, moreover, it was Canadian. As such, this Canadian nationalism directly contradicted the vision of a federal, dualist Canada with distinct societies and multiple identities, which had been so important to generations of Quebec francophones." The non-recognition of distinct societies constitutes an element of the language debate.

The politics of language reflects the struggle between Quebec's aspirations to promote a distinct society against a Canadian nationalism unwilling to sanction local identities. The jurisprudence that emerged following Bill 101 had to deal with these different visions by considering how equality would be conceived in respect to language matters.

contends that the Charter promotes a vision of society "suspicious of collective goals. It can only countenance [group rights] if they are clearly subordinated to individual rights and to provisions of non-discrimination."

The Court’s Decision: Equality and Competing Moral Claims

In 1988 the Supreme Court of Canada ruled, among other things, on the constitutionality of sections 58 (French as the exclusive language for commercial signs) and 69 (firm names must be in French only) of Bill 101. At issue in *Ford v. Quebec (A.G.)*[^44] was whether the sections related to commercial signs and firm names violated specific rights and freedoms as articulated by both the Canadian *Charter of Rights and Freedoms* and the Quebec *Charter of Human Rights and Freedoms*. Specifically, the decision related to whether or not Bill 101 violated the freedom of expression as guaranteed in section 2(b) of the Canadian Charter and section 3 of the Quebec Charter. The Court made an important political gesture with its reference to the Quebec Charter: Quebec’s language policy would be scrutinized with reference to a document not aimed at promoting a Canadian identity, but one conceived by the government of Quebec. In doing so, the Court created the impression that its ruling would be politically neutral and not favour a specific identity.

One of the exceptions to the restrictions in Bill 101 on commercial signs allows advertising in news media that publishes in a language other than French, and messages related to a “political, ideological or humanitarian nature, if not for a profit motive.”[^45] Exempting signs that deal with a political or ideological message signals a willingness to allow the use of other languages for certain *types* of speech. In this case, Bill 101 is not willing to restrict speech typically associated with traditional liberal civil and political rights. Thus, the right to express a political opinion or disseminate an ideological message remains sacrosanct even within the context of legislation aimed at promoting a “French face” in Quebec. These exemptions speak to

[^45]: Chapter VII, Section 59.
fundamental liberal rights emphasizing freedom of expression as articulated in both the Canadian and Quebec Charters.\textsuperscript{46}

Thus, at issue was the protection of negative rights and the proper role of government within the commercial arena. The Court's ruling would also have to appreciate the significance of competing linguistic groups. Each of these issues relate to the larger concept of equality and the contested nature of what equality truly means within Quebec society.

Bill 101 clearly established the importance of creating a "linguistic face" that reflects Quebec society. So much so that restrictions are placed on the use of languages other than French in commercial advertising. In theory, the justification centres on the fact that French is a language under threat and deserves the utmost protection. Coulombe argues: "The rationale for forbidding languages other than French on commercial signs in the first place is that a plurality of languages\textit{does} have a differential impact insofar as the English language has a stronger power of attraction than French, especially in Montreal."\textsuperscript{47} The rationale informing this viewpoint rests on a definition of equality that eschews "sameness" as a central criterion.

Achieving equality between French and English seems predicated on establishing a different set of rights that speak to the distinct position of each language within the Canadian project. Because French occupies a distinctly more threatened position in Canada, Bill 101 recognizes this reality by advocating a restriction on other languages—most notably English. This is not seen as a form of discrimination that violates the liberal ethos, but rather as an alternative project to ensure the survival of the French language within Quebec. The problem

\textsuperscript{46} Section 2 of the Canadian Charter reads: "Everyone has the following fundamental freedoms: (b) freedom of thought, belief, opinion and expression, including freedom of press and other media of communication." Quoted in Ford, 587. The Quebec Charter reads: 3. "Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association." Quoted in Ibid., 586.

\textsuperscript{47} Coulombe, \textit{Language Rights in French Canada}, 122. Emphasis in original.
with this project lies in the reliance on rights as a means of protecting the French language. As a result, Bill 101 opens itself up to the liberal criticism that it violates the criterion of equality.

The type of restrictions Bill 101 places on language use can be seen to violate the liberal commitment to ensuring equal respect for all individuals. Some commentators have argued that Bill 101 places egregious limits on the English language, and these are not justified simply by appealing to the precarious status of the French language. Macmillan contends that although protecting the cultural and linguistic apparatus of the Québécois constitutes a legitimate goal, it must be done without violating the rights of other cultural groups within Quebec. In short, the rights claimed by one group must be afforded to other groups so as to maintain an equality of respect for all individuals.\(^4^8\) In its decision, the Court maintained a liberal commitment to equality, but coupled this definition of equality with an explicit recognition that the French linguistic group occupied a special place within the Canadian dynamic. As a result, the Court’s ruling established the rights of the French linguistic group as well as individual speakers of other languages. This balance accords with the inclusion of individual and group rights in the Charter.

First, the Court ruled that commercial expression was deserving of constitutional protection:

Over and above its intrinsic value as expression, commercial expression which, as has been pointed out, protects its listeners as well as speakers, plays a significant role in enabling individuals to make informed economic choices, an important aspect of individual self-fulfillment and personal autonomy. The Court accordingly rejects the view that commercial expression serves no individual or societal value in a free and democratic society and for this reason is undeserving of any constitutional protection.\(^4^9\)

As a result, the Court ruled that s. 58 of Bill 101 did violate the freedoms guaranteed in s. 2(b) of the Canadian Charter and s. 3 of the Quebec Charter. The individual right to freedom of expression was substantiated by the Court. The ruling also spoke to the context in which this

\(^4^8\) Macmillan, The Practice of Language Rights in Canada, 114.
right would be exercised and the importance of language to its application. In striking down a particular provision of Bill 101 the Court affirmed the need to recognize the right of individuals to use languages other than French in commercial advertising. Yet it balanced this recognition with an assertion that the Quebec government did have a right to intervene within the commercial arena.

The Quebec Attorney General argued that commercial expression does not warrant constitutional protection: "To extend freedom of expression beyond political expression, and possibly artistic and cultural expression, would trivialize that freedom and lead inevitably to the adoption of different justificatory standards under s. 1 according to the kind of expression involved."  

Other commentators have argued, in accordance with the respondents in the sign case, that commercial speech constitutes an important element in the functioning of a liberal-democratic society. Michael Tilleard contends that economic exchange within liberal society must be facilitated by a theory that allows an individual to make informed economic choices. These choices can only be made if the speaker (disseminated through commercial advertising) is protected with reference to fundamental freedom of expression. Thus, political and commercial speech must be afforded similar protection.

The Court weighed the right to freedom of expression with the Quebec government’s stated objectives regarding the status of the French language in Quebec. On ruling the sign law unconstitutional, the Court nevertheless affirmed the importance of language to cultural integrity, and sanctioned the actions of the government in promoting and protecting the French language:

The aim of the language policy underlying the *Charter of the French Language* was a serious and legitimate one. They indicate the concern about the survival of

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49 *Ford*, 618.
50 Ibid., 573.
the French language and the perceived need for an adequate legislative response to the problem. Moreover, they indicate a rational connection between protecting the French language and asserting that the reality of Quebec society is communicated through the 'visage linguistique.'

To a certain extent the role of the government within the commercial arena is thus sanctioned. The linguistic integrity of the Québécois is seen as an important objective. The Court thus allowed certain restrictions on language but limited the extent to which the government could restrict other languages.

As a result, the Court validated the importance of protecting the French language but did not sanction the exclusive use of French on commercial signs. The exclusive use of French was judged disproportionate to the stated aims of the Quebec government and did not “reflect the reality of Quebec society.” The solution, according to the Court, would be to allow other languages but require that French have greater visibility.

The Court seems to have achieved the following in ruling the sign law unconstitutional. It established commercial speech as an aspect of the individual right of freedom of expression that had a significant effect on linguistic integrity. The right to choose one’s language of communication was deemed essential to maintaining cultural integrity. English (and other) language rights were thus affirmed within the context of Quebec society. These rights, however, were not placed strictly on par with the right of the French-speaking group. Instead, the government was allowed the right to define the parameters in which languages other than French could be permitted. Robert Yalden contends that the Court found an “appropriate balance between community and individual interests, and [ensured] they would explore issues concerning dignity and equal respect.”

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52 Ibid., 627-628.
53 Ibid., 629.
Some have contended that Ford represents a case of individual trumping group rights. Claude Galipeau sees two types of bilingualism: one territorial and the other personal. Territorial bilingualism is a “collectivist policy” which aims to assimilate anglophones and immigrants in accordance with the French language. Personal bilingualism, as defined above, emphasizes the portability of language rights. Galipeau sees Bill 101 representative of territorial bilingualism in conflict with the personal bilingualism proffered by the Court: “...a liberal vision of justice, founded on individual dignity and the virtue of inter-personal recognition, trumped the democratic yet exclusionary linguistic policies of the Quebec National Assembly.”

Galipeau rightly points to the importance of individual dignity in the Court’s decision. Yet his analysis neglects to appreciate the fact that the Court allowed an aspect of territorial bilingualism to persist.

By allowing the Quebec government the right to legislate within the commercial arena, the Court advocates an aspect of territorial bilingualism. Moreover, asserting the importance of the French language within the context of Quebec society goes beyond simply maintaining a commitment to individual dignity. The Court’s decision seems to have incorporated territorial and personal bilingualism into the ruling. Territory was not seen as completely irrelevant because maintaining the ‘visage linguistique’ of Quebec was seen as a normative goal. Language rights were judged to be more than individual rights protected by negative freedoms. The Court’s decision reflects what Coulombe has argued about language rights:

Canadians’ language rights are...not only an expression of how they ought to be treated as citizens in a liberal polity, bearers of individual language rights against undue interference and discrimination on the basis of language, but can also be the expression of how they ought to be treated as members of a linguistic community, bearers of stronger community rights.56

Yalden is correct in arguing that a balance was struck between competing claims. But instead of presenting these competing claims in terms of individual and group rights, the Court appears to have used individual rights to find a balance between communal interests. Thus, claims between competing groups were weighed without removing an emphasis on individual (freedom of expression) language rights. The type of equality affirmed was based on the differential status of French and English within Canada. As a result, the government was permitted to limit other language groups to facilitate the protection of the French language. Linguistic groups were thus afforded different rights. The English linguistic group was allowed to advertise in English so long as French predominated. The equality between linguistic groups was not based on a "politics of equal respect," in which all linguistic groups are afforded similar treatment. Instead, the different and precarious status of French was affirmed by allowing the government an ability to limit the use of other language in public sphere activity.

Avigail Eisenberg argues similarly that the Court appealed to a "politics of difference" in its ruling: "The sort of politics that celebrates difference attempts to protect identity-related differences, or at least those differences, that are most central to the identities of the people within society."57 Eschewing the dominant liberal perspective that casts these conflicts in terms of individual and group rights, Eisenberg maintains that a difference perspective allows for an improved understanding of Canadian jurisprudence as it applies to, among other things, the language debate in Quebec.

The key feature of Eisenberg's analysis centres on the fact that a rights-discourse often presents competing claims in terms of incommensurable values: "...rights must be viewed as devices to protect the underlying identity-related differences. Unlike rights, differences can be

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compared to and weighed against each other to determine, in cases of conflict, which differences are more crucial than others to the identities of individuals and groups."\(^{58}\) Eisenberg’s analysis is significant in that it allows differences to be articulated without necessarily having this degenerate into a zero-sum game of politics. As a result, she accurately captures an aspect of the Court’s ruling. The Court affirmed the importance of recognizing difference and did not articulate these differences in terms of incommensurable values that could not be reconciled. In fact, the Court did attempt to reconcile the competing claims of both major linguistic groups in Quebec.

**Private Ownership and Negative Freedom: The Case Against Bill 101**

Let us consider the liberal position on private property. John Gray argues: “The central argument linking private property with self-ownership appeals to the character of private property as an institutional vehicle for decentralized decision-making.”\(^{59}\) In this sense, autonomy or freedom from outside interference (ensured by private property) is seen as a key component to ensuring individuality. For private property to be ensconced within the fabric of society, the liberal paradigm focuses on civil and political rights as a means to ensure individual exercise of private property without undue interference from the state or other individuals.

Thus, certain civil and political rights are seen as essential to guaranteeing the protection of private property. These rights are akin to negative freedoms (freedom from) in that they prevent the state from interfering in the private spheres of individuals, especially in regard to private property.\(^{60}\) The language legislation in Quebec speaks to the promotion of the French language

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\(^{58}\) Ibid., 11.


and advocates active state participation to ensure these ends. Thus, rather than withdrawing from any influence in the area of commercial activity, Bill 101 allows the state to restrict a business from advertising in languages other than French.

Section 58 of Bill 101 specifies that “signs and posters and commercial advertising shall be solely in [French].” Bill 101 clearly establishes the importance of creating a commercial environment that symbolizes the predominance of the French language in Quebec: “Commercial signs involve the most visible and symbolic aspects of language use in a society. Business firms and advertisements give the public space a ‘linguistic face’ that is more or less the reflection of the society.” The overriding concern, then, of Bill 101 is the promotion and protection of the French language, even if this means a restriction of other languages.

Creating a zone in which government can legally intrude risks violating the aforementioned liberal orientation toward protection of the private sphere. Where language is involved a negative right can be claimed by individuals who feel that the right not to be intruded upon must be respected in a liberal society. Its restriction of English in commercial activity makes Bill 101 vulnerable to the liberal attack that government restrictions should not be so extensive within the private sphere. This in fact captured an aspect of the argument against Bill 101.

In *Ford* the respondents argued:

The respondents seek to be free of the state imposed requirement that their commercial signs and advertising be in French only, and seek the freedom, in the entirely private or non-governmental realm of commercial activity, to display signs and advertising in the language of their choice as well as that of French. In this sense the respondents are asserting a freedom, the freedom to express oneself in the language of one’s choice in an area of non-governmental activity, as opposed to a language right of the kind guaranteed in the constitution.  

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61 Chapter VII, Section 58.
63 *Ford*, 607.
The respondents petitioned the Court to recognize that the rights they sought did not place a duty on the government akin to the constitutional requirement of the state to provide government services in both French and English. The explicit issue appears to deal with the proper role of government in society, and the rights of individuals within the private realm. The question emerged as to whether the government could constitutionally impose restrictions on language use.

By arguing against government intervention in the private sphere it could be maintained that the respondents were appealing to traditional individual rights: "They were not claiming a communal language right as members of the anglophone community, but a negative language right as members of a liberal polity."64 This interpretation is in keeping with the traditional liberal view regarding the sanctity of the private sphere, but ignores the significance of language to group identity. Articulating the appeal only with reference to negative rights favours individual rights over group rights: individual rights (negative rights) conflict with the communal rights of the Québécois. Accordingly, an argument can be made that maintaining the integrity of the Québécois requires a restriction of individual rights. The appeal to negative rights does capture an aspect of the debate. The respondents do wish to be left alone. But the benefit of this right accrues to more than just an individual in isolation, and the "cost" of this right seems to fall on a particular linguistic group.

The Court recognized this fact and did not only affirm the importance of the negative rights to be left alone, but also sanctioned government intervention in the private sphere. Thus, achieving a substantive equality between French and English linguistic groups was premised on allowing the Quebec government to limit the use of other languages.

64 Coulombe (1995), 118.
III. Quebec’s Response to *Ford*: Bills 178 and 86

In response to the *Ford* decision the Quebec government amended Bill 101 and passed Bill 178. The new legislation permitted bilingual signs indoors so long as French was more prominently displayed, but maintained the French-only policy for outdoor signs.\(^{65}\) The amended legislation was followed by the political bombshell from then Premier Robert Bourassa that Quebec would use s.33 of the Charter to fend off any court challenges to Bill 178.\(^{66}\)

Bourassa’s use of the override to protect the amended legislation sparked an acrimonious political debate within and outside Quebec. In terms of Quebec’s domestic politics, Bourassa had to accept the resignation of three anglophone ministers and was barraged with criticism from English-speaking Quebeckers, who argued that the amended legislation continued to violate their rights. Hard-line Quebec nationalists saw the new legislation as an attack on the cultural integrity of the Québécois and condemned Bourassa for capitulating too quickly to demands from English Canada. Most importantly, the actions of Bourassa’s government created a serious impediment to eliminating the constitutional strife between Quebec and the rest of Canada.

The Meech Lake Accord, with a clause recognizing Quebec as a “distinct society”, was seriously threatened by Bourassa’s actions. Consequently, the actions of the Quebec government fuelled an anti-Meech sentiment among the anglophone community in Quebec and created a backlash against Quebec in the rest of Canada.\(^{67}\)

New Brunswick, which had approved the distinct society clause, rescinded its approval because of Bourassa’s actions. In addition, following the actions of the Bourassa government,

\(^{65}\) An Act to Amend the Charter of the French Language, S.Q. 1988, c.54, s.1.

\(^{66}\) S. 33 of the Charter reads: “33(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.” Quoted in *Ford*, 587. The use of the override is valid for only five years, but can be renewed.
then Premier Gary Filmon of Manitoba suspended legislative consideration of Meech. This all
but signaled the end of Meech Lake and stalled any constitutional settlement between Quebec
and the rest of Canada.

From a political standpoint, Bourassa’s actions proved both controversial and ineffective. Neither English speakers nor hard-line Quebec nationalists approved of the legislation. In addition, Bill 178 did not embody the balance of group interests articulated by the Court, and proved a difficult piece of legislation to defend. Macmillan has contended that Bill 178 represents an intolerant language policy “that cannot be shared by other language groups in the society.”

As a result, Bill 178 can best be characterized as a partial rebuke to the Ford decision. This rebuke, however, proved unsatisfactory for those in Quebec who viewed Bourassa’s actions as an innocuous response to English Canada’s encumbrance in Quebec’s domestic affairs. Why Bourassa chose to amend Bill 101 in this respect and use the notwithstanding clause speaks to the ongoing conflict between Canadian and Quebec identities. The Quebec government chose a politically intransigent piece of legislation to assert its identity against what it felt was an encroachment on its provincial right to determine language policy. Quebec asserted its own vision of the Canadian community and explicitly promoted itself as a distinct province in Canada.

Following Bourassa’s decision, municipal governments in Ontario declared themselves unilingual English; the governments of Saskatchewan and Alberta repealed the linguistic provisions of the law governing the Northwest Territories and replaced them with more restricted guarantees; francophones in Manitoba were denied the right to administer their own schools.

according to the Manitoba Court of Appeal. In short, the actions of other provinces explicitly rejected the vision of community offered by the Quebec government. Coulombe argues that the aftermath of Bourassa’s actions “reflected more than a disagreement about language planning, but a real moral failure. Each side had failed to understand the impact of their actions on the moral contract between French and English.”

In 1993, Bill 178 was amended and became Bill 86. Bill 86 offered a compromise between the English and French linguistic groups in Quebec. Bill 86 accepted the Court’s argument in Ford to allow bilingual signs both inside and outside establishments, so long as French is “markedly predominant.” The law gives the government the right to determine, “by regulation, the places, cases, conditions or circumstances where public signs and posters and commercial advertising must be in French only, where French need not be predominant, or where such signs, posters and advertising may be in another language only.” It would seem that the balance of rights offered in Bill 86 would be sufficient to satisfy English speakers while maintaining a commitment to the preservation of the French language.

Commentators critical of Bill 178 conceded that Bill 86 “represented a more acceptable accommodation of the respective priorities of the two major language groups in Quebec.” The Quebec government seemed to support the decision in Ford by allowing for the promotion of the French language without a severe restriction on the use of other languages. For a time being, a tentative linguistic détente was reached

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In some respects, Quebec's language legislation has resulted in a tolerance of linguistic difference and recognition on the part of most Quebeckers that the French language is deserving of protection. A poll conducted in November 1999 showed that 79% of all Quebeckers felt that the French language still needs to be protected by law in Quebec. Not surprisingly, 86% of Francophones agreed that the French language needs to be protected in conjunction with 52% of non-Francophones. Although there still exists a large non-Francophone population that does not support the legal protection of the French language, the majority of Quebeckers (anglophones included) feel the signs laws are justified.

The fact that most Quebeckers feel laws are needed to protect the French language does not detract from the reality that a substantive disagreement remains regarding identity and contested notions of equality. Many still do not believe protecting the French language requires adherence to the type of equality outlined in Bill 101. Because Quebec is not seen as a distinct entity within the Canadian federation, an equality that promotes sameness is viewed as a normative means of structuring English-French relations. Thus, even Bill 86, which aims at compromise, could find itself under threat from English language advocates. On the contrary, advocates of Bill 101 argue that protection of the French language requires equality aimed at recognizing the distinct status of the Québécois identity. Any legislation that is seen to violate this recognition—be it federal or provincial—will certainly arouse criticism from ardent Quebec nationalists. The language environment in Quebec must be seen as a volatile situation.

Evidence of this volatility can be found in the recent challenge to Bill 86. The owners of a retail store in the town of Knowlton were charged by the Quebec government for contravening

Bill 86. The sign outside the defendants’ store carried French and English in equal lettering.\textsuperscript{74} The defendants were first acquitted by Quebec Court Judge Danielle Côté. Côté ruled that the Quebec government did not provide updated evidence to prove the French language was still under threat and therefore could not impose the restrictions adumbrated in Bill 86.\textsuperscript{75}

The case is significant. First, the sign law was overturned. This in itself creates an avenue to re-visit the constitutionality of the sign law. Second, the case provides political capital for both English-rights activists and sovereigntists. The striking down of Bill 86 was a symbolic victory for English language advocates in Quebec. It also provided the provincial government with a forum to re-visit the language issue and thus could be used to rekindle thoughts of sovereignty in Quebec. As argued above, polls suggest that a majority of Quebeckers do not disapprove of the current language legislation. This fact will not necessarily dissuade Quebec’s political élites from using the language issue to polarize the larger debate regarding Quebec’s status in Canada. Jean Charest argued trenchantly, “This judgement gives the people on the extremities of the language debate a soapbox.”\textsuperscript{76}

Inevitably, the Quebec government appealed the decision. The case was sent to the Quebec Court of Appeal. The defendants sought protection under section 15 (1) of the Charter, which protects individuals, amongst other things, from discrimination based on race, national or ethnic origin. What is interesting is that defendants chose to articulate their demands in terms of equality rights. At issue would be the competing visions of equality offered in Quebec and English Canada. In the judicial sense, a politics of difference would be weighed against a politics


\textsuperscript{75} Ibid.

of equal respect. The Quebec Court of Appeal chose to articulate its ruling in terms of a politics of difference and ruled against the defendants by overturning Judge Côté's decision.

According to the Quebec Court of Appeal, the defendants would have to demonstrate the Anglophone community is deemed in the law or through its application to be less worthy of respect and consideration. In sum, Judge Paul-Marcel Bellavance ruled that the defendants did not have grounds to appeal to section 15(1):

Pour réussir dans une demande sous les clauses d'égalité de l'art. 15(1) de la charte canadienne, il faut faire la preuve qu'il y a discrimination avec un traitement mauvais et inopportun et non pas simplement un traitement différent. On n'a pas fait une telle preuve dans ce dossier.

Judge Bellevance affirmed the right of the Quebec government to legislate on issues related to culture along lines of difference rather than sameness. Judge Bellevance ruled in accordance with the Ford decision maintaining the principle that language equality for English speakers in Quebec does not mean similar treatment. Thus, a politics of différence was affirmed.

It is very likely that Judge Bellevance's ruling will be appealed in the Supreme Court of Canada. If that does occur, Quebec's language legislation will again become a central feature of the Canadian debate. How the debate is conducted and what emerges from any decision at the Supreme Court level remains to be seen. The only certainty may be that the language debate will continue to be conducted against the backdrop of a larger debate dedicated to resolving the issue of Canadian identity. The language debate can be characterized as a conflict between competing visions of a Canadian identity. These visions seek articulation within a common federal

78 Ibid., 55.
structure. Yet it is this commonality—federalism—that has generated problems for Canadian unity.

Accordingly, the language debate must be placed within a specific historical and political context. In many respects, the arguments made regarding identity and equality were raised prior to Confederation. The federal system which Canada chose to adopt has thus contributed to the language conflict.

**Language Rights and Federalism**

The Canadian project has been preoccupied with finding a means of accommodating differences within a common political structure. Federalism was seen as the best means of establishing a Canadian state that could accommodate ethnic cleavages. The federal structure engendered by the early leaders of Canada has played an important role in shaping how the language debate is conducted. Quite simply, Quebec's language policy is a means of asserting its identity within a federal structure that does not explicitly recognize Quebec's distinct status within Canada.

Prior to Confederation, English and French cleavages were reconciled by the theoretical foundation of dualism. Kenneth McRoberts contends that although the Constitution Act of 1791 granted representative institutions to the British colony and divided it into Lower and Upper Canada strictly on the basis of territory, the underlying rationale was aimed at accommodating cultural dualism. The recognition of a dualist principle, McRoberts contends, would remain a salient component of the French Canadian orientation toward the Canadian state, into and beyond Confederation.79

A primary consideration in the negotiations leading to Confederation dealt with the allocation of powers between the provinces and federal government. At stake was the issue of

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allowing provinces autonomy apart from the federal structure. Thus, the concept of federalism was invoked to allow provinces a share in the power to legislate: “The existence of French Canada, and of a strong regional sentiment in Atlantic Canada, and subsequently in the west, further ruled out a unitary form of government, introducing despite Tory sentiment, a federal feature that was foreign to the British constitution.” Theoretically, the division of powers, between provinces and the federal government, guarantees that issues pertinent to local interests will be legislated and administered under the auspices of provincial governments. In other words, the existence of Quebec meant that a national minority could exercise power as a local (provincial) majority.

In other words, certain powers to legislate would be given to the provinces, but the question remained as to how extensive these powers would be in relation to the central government. Thus, the debate focused on what Robert Vipond calls a “political federalism” against a “constitutional federalism.” Vipond argues that the former was promulgated by John A. Macdonald, leader of the Conservative party, as a means of ensuring that, although provinces would be free to legislate on local matters, the central government would remain sovereign over the provinces. The latter conception of federalism, articulated primarily by George Brown and the Reformers, sought a compromise that would allow for a powerful central government and legally secure provincial legislatures. What emerged from these debates was a federal principle based on the notion of a strong central government, combined with the principle that provinces would have “exclusive” power to legislate within their sphere of jurisdiction.

After Confederation, provincial leaders, asserting their right to autonomy, declared the existence of a compact theory. According to provincialists, the compact theory assured that

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changes to the Constitution could not be made without the consent of the provinces because this would represent a violation of the treaty or contract between the provinces and the federal government. French Canadian élites espoused a “double compact”: “Thus, beyond a ‘political’ contract, to which all the provinces were party, there was a ‘national contract,’ which was the exclusive product of the United Canadas. Apparently the national contract guaranteed French-English duality....” When the federal principle and the compact theory are conflated with the need to accommodate ethnic differences, there emerges a complex dynamic in which territory becomes equated with cultural survival.

Dualism can be conceived in the sense of complementary halves acting within a common structure. Dualism is thus consistent with the notion of a “double compact” in which French Canadians are seen as “partners” in the formation and perpetuation of the Canadian state. The moral implication being English Canada must recognize the salience and presence of French Canadians as a legitimate component in the character of the Canadian state. This recognition may have to be achieved through the concept of federalism, thus allowing the government of Quebec to represent the interests of French Canadians. But it can also take the form of creating legitimate roles for French Canadians within the central structure. If dualism and federalism are seen as complementary, then there may exist a reconciliation of cultures at all levels of government.

Thus, in the case of French-English relations, federalism seemed to assure the recognition of dualism in the sense of combination. Peter Russell writes:

[the Great Coalition between Brown, Cartier and Macdonald] was a recognition that if English Canadians and French Canadians were to continue to share a single state, the English majority could control the general or common government so
long as the French were a majority in a province with exclusive jurisdiction over those matters essential to their distinct culture.83

Thus, the territorial importance of Quebec was affirmed by the concept of federalism. French Canadian leaders took this to mean that dualism remained an essential component of English-French relations.

Specifically, George-Étienne Cartier, the leader of the French Canadian Bleu party, argued that federalism would be the “best means to cultural survival...That is, they equated their distinctive identity as a people with a specific territory in which they formed a majority.”84 Cartier allowed for the fact that cultural differences would have to be kept separate and distinct if the Canadian state was going to survive. But this separation was not intended to imply that Quebec and French Canadians would be dis-engaged from the central government. Dualism meant the functioning of a federal state based on the existence of complementary, yet distinct halves.

In conjunction with a dualism that stresses combination, the federal system also isolated French Canadians. Federalism thus represents the existence of two different and oppositional entities: the “double compact” was abrogated by the fact that the central government did not adequately acknowledge the importance of French Canadians. Pierre Trudeau illustrates the nullification of French Canadian interests at the federal level:

the French-Canadian denizens of a Quebec ghetto, stripped of power by centralization, were expected to recognize themselves in a national image which had hardly any French traits, and were asked to have the utmost confidence in a central state where French Canada’s influence was mainly measured by its not considerable nuisance.85

84 Vipond, Liberty and Community: Canadian Federalism and the Failure of the Constitution, 17.
Trudeau was correct in pointing to the fact that French Canadians had been excluded from the national image of Canada. Trudeau’s analysis points us toward a greater understanding of how federalism has exacerbated the problems between Quebec and the rest of Canada. A national identity was inculcated within the province of Quebec. Québécois identity asserted itself against the national image of English Canada. Federalism became the only means by which the Québécois were able to articulate their concerns. Thus, there emerges a dynamic that pits the provincial government against its federal counterpart. Where the protection and perpetuation of a particular culture is involved—as is the case with Quebec—the federal-provincial dynamic becomes more than a relationship between different levels of government. Instead, the provincial-federal relationship is symbolic of a struggle between competing identities aimed at determining the very essence of a state.

Even though federalism strengthened the government of Quebec, French Canadians were further disassociated from acting within the federal structure. On this point, McRoberts writes: “The organizing of the new federal government clearly showed that for Quebec, and its French Canadians, the price of gaining its own provincial government was to lose any claim to dualism in the organization of the common government.” As a result, the maintenance and perpetuation of the French culture was left to those within the territory of Quebec. Territory became associated with cultural preservation, and the federal government became representative of English Canada.

Trudeau’s characterization of an isolated Quebec population speaks, in part, to the role of French Canadians prior to the Quiet Revolution. Trudeau hoped that identification with the Quebec government would end and be replaced by identification with the Canadian state. Following the introduction of official bilingualism, French Canadians were theoretically

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86 McRoberts, Misconceiving Canada, 14.
incorporated into the larger Canadian state. This incorporation, however, has not significantly reduced the substantive tension between Quebec and the rest of Canada. Despite the access French Canadians have to positions in the federal government this has not mollified Quebec nationalism.

Quebec nationalists continue to associate the survival of their culture with the strength of their provincial government. In respect to many Québécois, a Canadian nationality did not emerge to challenge Quebec nationalism. The issue of Quebec and its claim for special status persists to the point where the mantra of “distinct society” is being drowned out, or replaced, by a call for sovereignty.

The language debate in Canada represents the existence of competing identities within a common federal structure. Language has emerged as the central element that unites Quebec nationalists and differentiates Quebec from the rest of Canada. The Quebec government has assumed a role within the federal structure as protector of the French language, and as a result, as defender of the Québécois identity. Ramsay Cook argues: “...the rise of the positive state in Quebec has been a major factor in the crisis the Canadian federal system has been experiencing during the past dozen or so years... identification has been made between ‘nation’ (i.e., Francophone Quebec) and state.”

Protecting the French language has become the central focus for Quebec nationalists. As LaSelva notes: “When their language is perceived as most threatened, Québécois are most receptive to political demands for sovereignty.” Bourassa made the following statement after invoking the notwithstanding clause to protect Bill 178 from further legal challenges:

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87 Cook, *Canada, Quebec and the Uses of Nationalism*, 218.
At the end, when a choice had to be made between individual rights and collective rights, I arbitrated in favour of collective rights, by agreeing to invoke the notwithstanding clause.

I repeat that I am the only head of government in North America who had the moral right to follow this course, the only political leader of a community which is a small minority.

Who can better, and who has more of a duty to protect and promote the French culture if not the Premier of Quebec?89

Judging by his comments, Bourassa exercised the notwithstanding clause to protect the collective rights of the Québécois. These collective rights, according to Bourassa, were threatened by individual rights. The Quebec government interpreted the Ford decision as affirming individual over collective rights.

Bourassa’s use of the notwithstanding clause was not only an affirmation of group over individual rights, but also a case of a majority group in Quebec asserting its political will against the major linguistic group in Canada. Bourassa’s actions confirmed the role of the Quebec government as the protector of Québécois culture. Cairns suggests that because the Quebec government did not appeal to a similar override in its own provincial Charter of Human rights this “indicated that its objection was more to the manner of the Charter’s imposition on Quebec than to the rights it contained.”90

Quebec seeks equality within the context of a federal structure which recognizes their distinct status in Canada. This type of arrangement is often seen by those outside Quebec as a violation of equality, and a commitment to upholding a federal structure aimed at strengthening Quebec at the expense of other provinces. But the fact that Quebec seeks an arrangement to protect issues related to culture, like language, makes its claims for a different type of equality a necessary feature of a federal structure capable of accommodating both English and French speaking Canadians. Taylor argues: “…Quebec needs powers that other provinces do not, to

cope with problems and a vocation that other provinces do not have...this point could be seen as a move toward equality (to each province according to its tasks), not away from it." The fact that this type of federalism, and equality, has yet to be officially recognized in Canada has led to intransigence on both sides of the language issue.

Thus, Bill 178 and the use of the notwithstanding clause involved an explicit refusal on the part of the Quebec government to recognize the moral claims of other linguistic groups—most notably English-speaking Quebeckers. The actions of the Quebec government engendered a feeling of unity amongst the English-speaking minority: "[the English minority] was a population that now could be politically mobilized to defend what is perceived as its collective interests." Just as French was used by Quebec nationalists to differentiate themselves from Canada, English has become a unifying force for English-speaking Quebeckers.

The unwillingness of English-rights advocates to accept the type of compromise offered in Bill 86 signals a belief that the French language in Canada is not deserving of protection beyond official bilingualism. English Canadians' inability to see that Quebec is a distinct entity in the Canadian federal system buttresses their claim that Bill 101 represents an egregious restriction on their linguistic rights. From that perspective, language policy that makes French the sole official language of Quebec can be seen to violate the equality specified by federal language policy.

The claims made by English-rights advocates and Quebec nationalists are a result of a Canadian federal system and a political tradition based jointly on accommodation and conflict. According to LaSelva, federalism contains a moral commitment to the notion of accommodating

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90 Cairns, Charter versus Federalism, 121.
91 Taylor, Reconciling The Solitudes, 180.
differences within a heterogeneous state. LaSelva argues that George-Étienne Cartier established the basis for a Canadian federalist theory by arguing for "political nationality":

What the Canadian fraternity did suppose was that peoples with distinctive ways of life could possess goodwill toward each other, participate in common endeavours, develop and sustain common allegiances and common sentiments, and operate political institutions for the welfare of all.93

The moral component LaSelva refers to is underpinned by an inherent conflict. On the one hand, distinctive ways of life must be allowed to grow and flourish. On the other hand, common forms and allegiances must also be nourished. The conflict arises when these common allegiances are perceived as threats to distinct cultures. LaSelva writes: "Canadian federalist theory also contains a tension. The Canadian tension relates not to liberty but to identity and to the relation (or clash) between local identities and national identity."94 The challenge centres on reconciling local and national identities without eliminating either one. The language debate epitomizes the struggle between the local aspirations of the Québécois against the larger national identity of English speaking Canada. The language issue raises the question: can Canada accommodate two major national cultures?

It is doubtful that the philosophical position informing official bilingualism will convince Quebec nationalists that their language will be protected by adhering to a strict legal equality between French and English. Moreover, the vision of community widespread in English Canada does not recognize the distinct status of Quebec and threatens the foundations of Canadian federalism which were intended to accommodate different cultures. Those foundations recognized the importance of protecting the interests of local culture against the encumbrances of a national majority. Similarly, the Quebec government's initial refusal to allow advertising in

94 Ibid., 39.
other languages and Bill 178 reflect the unfulfilled potential of the Canadian dynamic as articulated by Cartier's "political nationality."

Conversely, the Ford decision and Bill 86 offer signs that accommodation of linguistic differences is possible within the Canadian project. Sustaining these compromises and inculcating them into the Canadian political psyche will inevitably be dependent upon the outcome of the constitutional and federal crisis currently confronting Canada.

**IV. Conclusion**

Canada has long struggled with a means of reconciling different identities. The fathers of Confederation were forced to choose a system that would best accommodate serious ethnic cleavages between English and French cultures. The federal system Canada adopted created a relationship between Quebec and the rest of Canada in which the province of Quebec became responsible for the cultural preservation of a people. Questions related to identity did not disappear after Canada became a country.

Language has emerged as the most salient difference between English Canada and Quebec. Québécois identity has been closely linked to the protection and perpetuation of the French language. As a result, language both differentiates Quebec from Canada and unites French-speaking Quebeckers. The French language serves as a defining feature of Québécois identity.

Language also plays a role outside of Quebec. A larger Canadian identity is based on the English language. Yet there exists a tension within the Canadian identity. On the one hand, English represents the dominant language and is representative of Canada outside of Quebec. On the other hand, the Canadian identity is burdened with recognizing the French language as a
constitutive feature of the Canadian project. Federal language policy has attempted to reconcile this tension by promulgating legislation which seeks equality based on similar treatment. As a result, the languages of French and English are given equal legal status through official bilingualism.

The type of equality promoted through official bilingualism, however, does not provide a substantive equality between the two languages. English remains the dominant language in Canada as French-speakers continue to live primarily within the borders of Quebec. Federal language policy has not shaped a bilingual national identity. Federal language policy, structured on a commitment to similar treatment, has in fact promulgated a vision of Canada in which the French language exists in isolation from the majority identity. French remains a language that has yet to fully penetrate the fabric of Canadian society and assert itself as legitimate dimension of the Canadian identity.

Accordingly, the Quebec government has taken steps to ensure that its culture and identity are protected. Protecting the French language is seen as tantamount to protecting the culture of the Québécois. Quebec’s language legislation has presented a vision of equality that compensates for the minority position of the French language in Canada. Bill 101 represents a determined effort on the part of the Quebec government to ensure the survival of the French language. As a result, Bill 101 explicitly affirms French as the official language of Quebec and does not assign a similar position to English. Quebec’s language legislation serves a practical purpose in that it attempts to compensate for its minority position in Canada.

From a philosophical perspective, Quebec’s language legislation affirms the need to recognize alternative identities within the Canadian national image. French is theoretically recognized as an important feature of the Canadian identity through official bilingualism. Yet this theoretical recognition has not translated into a substantive recognition of the importance of
the Québécois identity for Canada as a whole. Quebec’s language legislation challenges the Canadian project to accept that local identity must not be overwhelmed by a national image. Instead, a Canadian identity must be true to the original spirit of federalism in which English and French cultures were incorporated into a common dynamic without a forced assimilation of the French minority.

The different versions of language policy provide tangible evidence that competing visions of what should constitute a Canadian identity still exist. Language policy asserts both a vision of community and a political argument. Federal language policy parallels the federal status quo in its non-recognition of Quebec as a distinct society. Quebec’s language legislation offers a vision of Canadian society in which its culture and identity must be recognized as different, but not less legitimate than the majority English identity. Recognition that Quebec has a right to protect its language is tantamount to an acknowledgment that Quebec is a distinct society in Canada.

In terms of national unity, an acceptance of the philosophical premise underpinning official bilingualism will not assuage the claims made by Quebec nationalists. Instead, a commitment to equality as similar treatment only confirms the minority position of French-speakers and promotes the dominant English culture. A Canadian identity conceived in this respect cannot sustain itself so long as Quebec constitutes a part of the Canadian identity.

On the other hand, a commitment to equality as presented in the Ford decision articulates a Canadian identity that does not only promote a majority culture, but instead allows for the recognition of the Québécois identity. This recognition in turn reflects the importance of Quebec to Canadian society and incorporates the Québécois identity into the larger Canadian nation. Whether or not the reconciliation offered in Ford can implant itself into a new federal vision remains to be seen. In the final analysis, Quebec’s identity will not capitulate to a Canadian
identity that does not, in some respect, recognize its distinct status. The language debate symbolizes the different visions of identity offered and the problems of reconciling these visions within Canada.
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