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Official Language Policy in Canada and Switzerland:
Language Survival and Political Stability

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Abstract

The official language policies and their basic concepts, the principle of personality in Canada and the principle of territoriality in Switzerland, are critically analyzed. The two democratic federations are compared as two multination states since 'nation' is defined in cultural terms. Language survival is justified in liberal theory through minority rights. The principle of territoriality that assures the dominance of the linguistic majority over a territory within the federation is in accordance with liberal democracy if fundamental rights are protected. The principle of territoriality contributes thus to political stability within a multination federation. There is no movement in Switzerland that is fed by a language-based grievance despite the existence of three linguistic minorities: Switzerland accommodates successfully linguistic diversity. In Canada, the perception that the survival of the French language might not be sustained fuels a secessionist movement threatening the unity of the federation.

Résumé

Il s'agit d'une analyse critique de deux notions théoriques qui régissent les langues officielles de deux fédérations démocratiques: le principe de personnalité tel qu'il est pratiqué au Canada et celui de territorialité en Suisse. Les deux Etats fédéraux peuvent être vus comme deux Etats-multinations si le concept de 'nation' est défini en termes culturels. La survie d'une langue s'établit à travers les droits des minorités. Le principe de territorialité, qui gère la domination de la langue majoritaire sur un territoire à l'intérieur d'une fédération, est légitime dans une démocratie libérale si les droits fondamentaux sont protégés. Le principe de territorialité contribue ainsi à la stabilité politique à l'intérieur d'une multination. La Suisse ne connaît pas de revendications linguistiques malgré l'existence de trois minorités en son sein: elle réussit à s'accommoder d'une diversité linguistique. Au Canada, en revanche, la perception que la survie du français n'est pas assurée alimente un mouvement sécessionniste qui menace l'unité de la fédération canadienne.

Contents

1.Introduction

The University of Geneva scholar, François Grin, took in 1997 a Swiss look at how Canada was dealing with linguistic and cultural diversity (Grin 1997). Based on a comparison of the two multination[1] federations, he made three recommendations. First, linguistic minorities appreciate if the linguistic majority exercises restraint. Only then feel minorities linguistically secure. Second, language survival is a difficult task and it renders policy intervention through language legislation necessary. Third, he criticizes the link between language, nation, and identity. A framework for language policies should never be couched in nationalistic terms. Thus, the debate on language survival should be separated from the debate on independence for minority nations. I agree with the first two recommendations. The Swiss case demonstrates that the principle of territoriality is conducive to linguistic, cultural and political stability. There is no language based political movement threatening the unity of the federation. The application of the principle of territoriality minimizes conflict in a multination state. However, the third recommendation, the separation of the language debate from the debate on independence, is implausible. Empirical evidence shows that support for the independence movement relies on the Québec population's perception of linguistic insecurity. As long as the dominance of the French language in Québec is not recognized in the Canadian federation, the survival of the French language can always be questioned. The federal policy of official bilingualism treating English and French equally across the country sustains uncertainty about the continuity of

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[1] I will discuss the accuracy and usefulness of the term 'multination' applied to Switzerland in the following two sections.

the French languagge in Québec. Since this perception of linguistic insecurity is at the basis of support for the independence movement, the language debate will remain connected to Québec's independence debate.

This thesis argues that the failure to provide for policies that facilitate language survival creates political instability. The question is then how can the liberal state help language groups to maintain themselves and respect individual rights without discriminating against other groups? Language policy is crucial to citizens' right since it is here that the state quite visibly distributes advantages and disadvantages. The framers of state language policy have two basic options to deal with the linguistic diversity of its citizenry: one is based on the principle of territoriality and the other on the principle of personality.

Switzerland opted for the principle of territoriality to ensure that each of the four national languages, French, Italian, German and Romanche have a territory within which each language is dominant[2]. Territoriality seems to be the logical consequence of cantonal autonomy. Swiss cantons are primarily responsible for language policy and they have the legal means to protect their language.

In Canada, the principle of personality allows individual speakers of both official languages to use the language of choice wherever they are within the federation. The two official languages, French and English, are to be treated equally across the

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[2] According to federal census return of 1990, Switzerland was composed of the following language groups: 63.6% German, 19.2% French, 7.6% Italian, 0.6% Romanche and 9% non-national. Quoted in (Grin 2000).

country. However, this policy of official bilingualism has not calmed fears among the Francophone majority in the province of Québec concerned with the continued existence of their language. This insecurity about the future of the French language translates into support for an independence movement and political instability threatening the unity of the federation. The current official language policy does not seem to diminish the threat of Québec secession to stability and national unity.

1.1. For a Cultural Definition of 'Nation'

Why comparing Canada and Switzerland? As a starting point, one recognizes quickly that both are Western democracies that were founded upon constitutional, federal government in the nineteenth century. They unite people of cultural and linguistic diversity in one single state. Both found some ways to accommodate peacefully such diversity. Will Kymlicka looks upon them as liberal states that came to successfully respect cultural minorities. He takes Switzerland (and Belgium) as an example where it was recognized that national minorities' language rights and self-government claims must be respected (Kymlicka 1995: 22). For him, Switzerland and Canada are multination states. This claim is controversial, especially with regards to Switzerland (Meadwell 2000). Traditionally, Switzerland is looked upon as a political nation, a "Willensnation" (a nation formed by will) that had molded different cultures and languages into a shared and unique Swiss nationality. Benedict Anderson indicates some admiration for such an achievement since nationhood based on an imagined community was achieved

despite the presence of four distinct languages (Anderson 1993). Furthermore, the existence of language communities did not translate into political representation, and the Swiss cantons as administrative units cut across the territory of the linguistic communities. Thus, there is the possibility to define Switzerland as a nation state based on the concept of the civic nation which is uniting linguistic groups in a shared, political and constitutional framework.

The claim to Swiss multinationality rests upon a complex definition of 'nation'. For Kymlicka, the definition of nation is equal to a culture or a people, "an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history" (Kymlicka 1995: 18). Furthermore, nation or culture defined in his terms is a societal culture, "a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language" (Kymlicka, 1995: 76). They are institutionally complete by containing a full range of social, educational, economic, and political institutions. A nation is thus explained through culture, political and social institutions. Kymlicka's definition of nation includes, as we have seen above, a civic and ethnic definition of the nation. In addition, political recognition of control over a territory is not required by a cultural definition of 'nation'. Thus, Switzerland's four linguistic communities can

be defined as nations despite the absence of political borders running along cultural and linguistic frontiers.

In contrast, Swiss observers take this absence as a reason to decline to use the term 'nation' when referring to Swiss linguistic communities (Labrot 1998; Bernhard 1998). The lack of congruence between linguistic borders and political borders is taken as an indication for the absence of nations. They prefer to conceive of a definition of nation based on the dichotomy of an ethnic and a civic nation, ignoring the common cultural aspect of both these concepts[3]. Therefore, their view that it is conceptionally impossible to talk of the existence of three, perhaps four nations in Switzerland. Laurent Labrot is willing to talk of the Suisse Romande (French-speaking Switzerland) as a cultural nation, but he never the less concludes that no Swiss-French nation does exist. He may differentiate between regions in Switzerland based on culture, but he stops short of calling them nations. He concedes to the existence of a cultural nation based on "an exclusive cultural and linguistic framework" (Labrot 1999: 140)[4] or he even detects "constant references to an original political culture and literature" (Labrot 1999: 135). Furthermore, he writes that the people of the Suisse Romande have certainly "a particular identity" (Labrot 1999: 140). I suggest the reason for his reticence to talk of the linguistic and cultural groups as nations is the absence of a politically recognized territory. In his historical exposition he describes how the leadership of French speaking cantons at the federal assembly in Berne managed to successfully suppress

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[3] For a more detailed discussion of this issue see (Kymlicka 1999).
[4] Labrot's passages are all my translations.

political mobilization based on a regional, cultural identity. Since his definition of nation requires the existence of political mobilization and borders, the absence thereof is equal to the absence of a nation. In comparison, Kymlicka's definition of nation does not require the congruence of a cultural nation with political borders. Given his focus upon the individual and the 'context of choice' provided by cultural and identity-forming institutions, the political achievement of recognized borders is not instrumental to a cultural definition of nation.

Under closer scrutiny, Labrot's reticence to talk of the Suisse Romande as a nation is unfounded. The cultural definition of 'nation' can be seen as an alternative to the civic or ethnic definition, a dichotomy that harks back to the abyss opened by ethnic nationalism. He himself insists upon the cultural distinctiveness of the Suisse Romande. Only the absence of officially recognized political boundaries seems to be his motivation not to refer to 'nations' with regard to Swiss linguistic communities, besides the possible dark deviation of nationalism.

The cultural definition 'nation' does not require the existence of a nationalist movement struggling for national independence. Kai Nielsen argues that what imports is some form of self-government over a given territory (Nielsen 1999). In addition, the existence of a cultural nation does not require the full-fledged trappings of statehood in order to be recognized as a nation. Consequently, successful political recognition (by other than members) is not required. However,

as is present among Swiss linguistic communities, cultural nations "must have a pervasive public culture" (Nielsen 1999: 124).

2. Language Survival and Political Stability in a Multination State

2.1. The Traditional Explanation of Swiss Stability: Cross-Cutting Cleavages

The political stability of Switzerland has traditionally been explained by the absence of crosscutting cleavages. However, a cleavage along linguistic lines emerged on the issue of European integration. A political cleavage coincides now with different social characteristics. This does not mean that Switzerland is no longer politically stable, but it draws our attention to policies that are being implemented to accommodate linguistic diversity. John Meisel conceives of two different kinds of crosscutting cleavages. He states that generally, cleavages refer first, to political divisions, and second, they may define "distinctions between populations with different social characteristics, say Catholics and Protestants" (Meisel 1973: 5). Meisel adds that crosscutting cleavages can be understood in two ways. They can take the meaning that differences in religion and race do not coincide or that political alignments are not the consequences of socio-economic differences. Both cases of crosscutting cleavages do apply to Switzerland.

According to political scientists, since the foundation of the Swiss federation in 1848, religious and linguistic cleavages were overcome through the development

of a political culture of tolerance and pluralism (Froidevaux, 1997; Linder, 1994; McRae, 1983). Enduring political stability is the result of wise policies and the presence of crosscutting cleavages: the non-coincidence of language and religion and the absence of political alignments based on socio-economic differences. Linguistic territories do not coincide with political and administrative units and religious borders. Furthermore, it is argued that political interests of the cantons derived from differences in language and religion, as well from opposites between rural and urban cantons, rich and poor ones, always make for shifting alliances. On one issue of public debate a canton will be in the minority, on another in the majority. Thus, according to traditional explanation, there is no permanent social or political cleavage that divides Switzerland. However, macro-political changes that have taken place in Europe since the end of Cold War in 1989 challenge the country's traditional identity formation and opened a political cleavage along linguistic lines (Kriesi 2000). They demand a new orientation since the concept of neutrality according to which Switzerland by remaining independent and non-aligned was best served, turned into a political and economic liability in a globally integrated and multipolar world. Especially increasing pressures of European integration force the Swiss to rethink their multination federation. The issue of European integration, which, in the Swiss polity, turned out to be an issue of self-definition, brought a new political cleavage with a linguistic base to the forefront. Thus, a cleavage appears that is no longer crosscutting. It is probably too early to evaluate what its effects are on Swiss political stability, but it seems that a more fundamental division emerged based on the existence of cultural nations with their

own public cultures and discourses. In accordance with these developments, I argue that Swiss political stability is not only based on cross-cutting cleavages, but also on policies that respect diversity.

The development of a new cleavage in Switzerland points towards the existence of not only culturally distinctive spheres, but also different public and political spaces. In Switzerland, Kriesi et al. observe, the public space is strictly segmented along linguistic borders. Consequently, a different electoral behavior and a distinctive group consciousness based on the linguistic community emerged (Kriesi et al. 1996: 7). Since the media are largely segmented by language, political deliberation takes place within the boundaries of the language group (Kriesi et al. 1996: 19). Traditionally, crosscutting cleavages have softened the divisiveness of the linguistic cleavage. However, a new political cleavage between the traditional, inward looking Switzerland and the modern, outward looking Switzerland divides the country along linguistic lines. For Kriesi, based on the analysis of polls[5], a majority of French speaking Swiss is in favor of European integration whereas a majority of German speaking Swiss is against participation in European integration. He adds that "as a result equally of the lack of national closure of the public space and of the diverging sensibilities with regard to the politics of identity, the political debates about foreign policy have developed in different directions among each of the major language groups" (Kriesi 2000: 11). There is now a major political cleavage along linguistic lines about the future

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[5] Kriesi refers to the polls regularly conducted by the Gfs Institute.

orientation of foreign policy and consequently about the identity of the country. Switzerland has not only crosscutting cleavages, but also a substantial division between the two major linguistic groups. Within these two groups, distinctive public debates were taking place and the majority in each group came to opposing conclusions.

That linguistic groups form distinctive political communities is a long established observation with regards to Canada. According to Jeremy Webber, language defines the boundaries of political community (Webber 1994: 200). The English speaking and the French-speaking community constitute autonomous, "linguistically defined political debates" (Webber 1994: 204) that attract substantial allegiance. The same holds true for Switzerland.

The existence of two or more cultures and public discourses in one state is sometimes thought to coincide with ethnic divisions (Altermatt 1997). In Switzerland, Urs Altermatt claims that the principle of territoriality and a decentralized federation led to the propagation of ethnic and linguistic group thinking. Following Benedict Anderson, he observes that increased reliance upon media and the printing press made the Swiss to look at themselves as linguistic groups. These four linguistic groups see themselves now as imagined communities. Community, solidarity and identity are being directed towards a single, linguistic-cultural group. Furthermore, he deplores that there is a major cleavage based on two distinctive political discourses: one in French speaking

Switzerland, the other in German speaking Switzerland. He believes national cohesion is in danger because the existence of a political community is threatened and replaced with communities based on ethnic-linguistic identities. I agree with his observation that in Switzerland communities based on language groups do exist. Altermatt is none the less mistaken by taking a linguistic community for an ethnic community. A community can form a distinct public debate based on a specific culture and language without upholding an ethnic identity. A nation based on culture is not equal to an ethnic nation[6]. Hanspeter Kriesi et al. provide a more nuanced view which confirms the existence of two distinctive discourses within two linguistic, not ethnic groups.

This is not to say that the coincidence of opposing political views with linguistic communities brings nations into existence. But it questions whether the traditional explanation of Swiss stability based upon crosscutting cleavages is still sufficient.[7] And leads to a careful observation of active measures taken by governments to accommodate diversity in a multination state. The issue of Swiss stability is not only about cross-cutting cleavages, but how cultural and linguistic diversity has been accommodated. How do we explain the absence of language based political mobilization?[8] The application of the principle of territoriality as language policy

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[6] see Kymlicka (1999).

[7] For a recent example, see 'Foderalismus – oder die verschmahte Liebe'. *Neue Zurcher Zeitung*, 23/06/2000, NZZ Online.

[8] I do not discuss the successful movement for the separation of the French-speaking Jura region from the German-speaking canton Berne because it addresses different issues of political stability in a federation. The movement for an independent Jura did not intend to leave the entire federation and did not threaten its continuity.

has been such a measure. Hence it is difficult to see why one should not refer to Switzerland as a multination state if 'nation' is defined in cultural terms.

2.2. Language and Political Mobilization in Québec

In Canada, the threat of Québec independence causes political instability. Provincial referendums in 1980 and 1995 reminded Canadians that far-reaching political change might be in the offing. At the source of the secessionist claim to independence is the perception that the French language in North America might not survive. For Stéphane Dion, professor at the Université de Montréal and minister of intergovernmental affairs, it is clear that "the main reason why nationalist feeling has fueled a powerful secessionist movement in Québec is the fragility of the French language in North America" (Dion 1992: 88). For Dion, there are basically two feelings that motivate a secessionist movement: the feeling of fear to disappear as a distinct people and a feeling of confidence that one is better off on one's own. The feeling of fear relies on the threat to linguistic survival.

Canada has become more polarized along linguistic lines despite the linguistic policy of official bilingualism. As the proportion of French speakers in the Canadian population outside Québec is dropping[9], French is increasingly accepted as the official language of Québec. Québecers came to look at the province and the provincial government to protect the French language. Dion argues that the

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[9] Francophones as percentage of the population outside Québec decreased from 7.3% to 4.8% between 1941 and 1991. From 1991 to 1996, they decreased by 0.6%. Quoted in O'Keefe (2000).

French-speaking population of Québec has a special loyalty to provincial institutions and accepts that they have the role to protect the French language (Dion 1992: 89). In addition, the importance of the language issue was heightened through the federal policy of bilingualism which treated French and English as equals despite the majority of Québecois' perception that French would need protection as an endangered language (Dion 1992: 96). Language became thus a primary nationalist cause as it fell to the provincial government to protect the French language against federal (and English) encroachment.

The preservation of French language and culture featured as a primary issues in both referendums and will be of importance in a future one. A recent poll by Léger and Léger indicates that three out of five Québecers believe the French language is threatened or in retreat (Nadeau and Léger&Léger 2000). Furthermore, support for independence increases as the feeling of linguistic uneasiness persists (55% of those who believe the French language is threatened would vote for independence whereas 33% with the same opinion would vote against). Those who see the French language as not threatened but in retreat are more even (46% against 43%) and the optimistic voters with regards to the future of the French language would vote for sovereignty with only 24%; 66% would vote against. Now, strategically, the language question is crucial. Support for independence increases from 41% to 53% if independence is to preserve the French language in Québec. The authors are thus right in pointing out that if a connection between sovereignty and the long-term survival of the French language

can be made during a referendum campaign, Québecers might vote for independence. On the other hand, if the independence camp fails to make this point, they lack a serious argument. In conclusion, as long as a feeling of linguistic insecurity persists among the Québec public, support for independence will be significant. Québec politics does not permit the separation of the language debate from the independence debate.

3.Historical Developments

3.1. Cantonal Autonomy in Switzerland

Switzerland is a politically stable multination state. Public policies accommodate linguistic diversity. There is no grievance based on linguistic and cultural insecurity fuelling a secessionist movement that threatens the unity of the country. Language policy is a competence of the cantons and they decide locally about the language of public usage. Cantonal autonomy and the principle of territoriality ensure that the linguistic majority in a canton is able to practice and maintain its language. During the formation of the Swiss state, cantonal autonomy and their competence were respected and linguistic and cultural groups were treated as equals from early on.

The Swiss language regime turns out to be stable because based on the principle of territoriality, the linguistic majority in each canton has uncontested privileges: the

official languages of the cantons do not face competition from other languages. During protracted political struggles pitting centralization against cantonal autonomy, language policy, if we can speak of policy at that time, developed into a prerogative of the cantons. As democracy developed, the democratic majority of each canton was given the right to decide the language of its public usage. In Switzerland, a federalism developed that came to respect cantonal autonomy and facilitated the identification of cantonal territories with one language.[10] The following sections develop the historical narrative of the formation of the Swiss federal state that laid the basis for the contemporary language regime[11].

Between 1798 and 1848, Switzerland made the transition from the old autocratic order to a federal, democratic state. This movement was paralleled by territorial, popular and political integration (Andrey 231). Popular integration was especially significant because it led to the realization of a sentiment of communality and belonging among linguistically and culturally diverse peoples. Together with the threat of foreign intervention, it contributed to a Swiss sense of nationality and was a steady incentive to find solutions to problems of integration.

This period is seen as the fermentation of Swiss political culture and regime. It was also the time when a national consciousness developed. A feeling of national cohesion across linguistic divisions was supported by the need to fend off foreign

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[10] Bilingual cantons do exist. However, in accordance with the principles of territoriality and subsidiarity (principle that delegates political tasks to the level as far 'down' to the citizen as possible), the designation of the public language is deferred to the majority of each commune.

[11] This historical narrative is based on (Andrey 1983) and (Ruffieux 1983).

pressure, first, from France, later, from the Holy Alliance, a pact of conservative regimes under the leadership of Russia, Austria and Prussia. Culture was mobilized to increase nationalistic feelings of belonging. After the troubles of war and foreign military presence during the Napoleonic era, the cultural revival of a Swiss nationality propagated the return to the golden age of a mythic, national unity. The creation of stronger federal ties was supported by supracantonal and national societies with elitist and popular participation.

At that time, the existence of a language cleavage was already a reason for conflict, but never degenerated into a national crisis (Andrey 229). By the end of the eighteenth century, the French and the German language were competing to assert their superiority. The dominance of one language over the other was subjected to the political regime. Under Napoleon, French was dominating; during the Restauration, German counterattacked, especially in the city of Bienne and in the cantons Valais and Jura; germanisation and francisation alternated in the city of Fribourg.

The regime of the Helvetic Republic of 1798 is significant point in Swiss history because it created for the first time a unified state. A loose confederation of cantons became a centrally governed state. Under the strong influence of the governing directorate of revolutionary France, a central state was cast over the heterogeneous confederation. Cantonal autonomy was abolished. A central state was introduced under the threat of war and against the will of a majority of the

Swiss people and their political leaders. However, reformers welcomed the new regime because it introduced democratic rights and liberties. For the first time, French-speaking and Italian-speaking cantons were granted equal rights to the German-speaking counterparts through the inclusion of the old associated districts and the common bailiwicks, both territories which were under the joint cantonal rule of the autocratic regimes, in the old confederation. Within the federal government and bureaucracy, documents and correspondences were translated into all three national languages.

Although renewed in 1802, the Helvetic Republic failed. It was contested by the population and through its strong centralizing tendencies ignored a history of self-government that had grown over centuries in the constituting cantons. Also, centralists were opposed to federalists over the degree of democratization and centralization. In order to pacify Switzerland, Napoleon Bonaparte imposed the Mediation Act of 1803 that re-introduced a loose confederation.

After the final defeat of Napoleon Bonaparte, the reorganization of Europe at the Congress of Vienna in 1815 brought again changes to Switzerland. The new cantons of St. Gallen, Argovie, Thurgau, Tessin and Vaud were already integrated in 1803; Géneva, Valais and Neuchâtel became members from 1815 on. The arrival of these cantons created a new equilibrium, which was only grudgingly accepted by the dominating cantons from pre-revolutionary times, Berne, Zurich

and Lucerne. Under the threat of foreign aggression, they had to accept this enlargement.

1815 is clearly a retreat from national unification. Contemporary observers regretted that Switzerland ceased to be a nation-state and returned to a pact of independent states. Never the less, centralizers and autonomists shared the common national aspiration of creating an independent Swiss state. The diet (assembly) of 1815 recognized cantonal autonomy. As the only Republic in an imperial Europe (besides England), the pact of 1815 is, above all, a defensive pact to secure internal and external peace after the traumatic war experience of the Napoleonic era. A federal element, compared to the period before 1798, was the existence of a written charter and a stronger and better instructed army. Furthermore, the diet controlled the army and was responsible for internal and external security. The Swiss government of 1815 was not necessarily weak, but it was described as being hindered by extreme decentralization. The delegates of the diet could not make their own decisions; they executed only the orders of the cantons.

The existence of a central state in 1798 and its subsequent dissolution during the Mediation and the Restauration indicate that the movement towards federation oscillated between centralization and decentralization. Both tendencies were present in institutions and policies. On the one side, the federal diet sent troops to intervene in the canton of Schwyz in 1833 and decided the creation of two half-

cantons to satisfy the democratic movement of one part of the canton. On the other side, each canton introduced democratic changes given its own power structures and internal political constellations, endowing citizens of member cantons with different political rights.

Cantons acted as sovereign governments and concluded treaties with other cantons. The diet only intervened under extraordinary circumstances, to secure internal and external peace, as in the case of Schwyz mentioned above. For other functions, it simply lacked the institutional means. The period from 1815 to 1830 can be described as the period of *concordats* (contracts) between cantons; later, after the revolutions of 1830 began the period of confrontations of the *leagues*. The successful revolutionary cantons concluded a pact to mutual assistance fearing for the continuity of their liberal regimes in 1832. This was interpreted as an act of aggression by the conservative cantons, and they formed the *Sarnerbund* (which was disbanded) and later the *Sonderbund* which threatened to secede from the pact. In the ensuing civil war, the liberal cantons won after a short campaign with few casualties.

The development towards the foundation of a nation state in 1848 is paralleled by the emergence of a democratic liberal movement in the nineteenth century. The democratic, federal state was generated from a struggle for free and democratic institutions. The federal constitution of 1848 created a real federation. Before 1848, the cantons could veto the implementations of laws. Now, the principle of

the majority applied to all decisions of the newly created institutions. The new constitution was a clear break with the old system of the Restauration: the old diet, without constitutional approval, began to decide with majority decisions. By the end of the war, the old assembly did not make a new contract among independent cantons or states, but simply adopted the majority principle (Bernhard 1998: 73). Winners and losers agreed to this newly, almost ad-hoc instituted system of political regime because it tried to take into consideration the cleavage between centralizers and autonomists. A careful balance was struck between federal powers and cantonal autonomy. The residual powers came to rest with the cantons, but federal legislation overrides cantonal legislation. Direct democracy supports cantonal powers. The existence of two legislative chambers, one assembled by population and the other by cantons, and the requirement of approval by a majority in both chambers for the acceptance for certain legislation, attributes influence to the cantons. Furthermore, curtailing federal intrusion is the stipulation that according to the principle of subsidiarity, the cantons are to execute the policy of the federation whenever they are capable to do so.

The beginning of the federal state after the end of the pact was a period of reconstruction. The progressive winners of the civil war managed to seize the internal and external opportunities to create a federal state. Internally, the conservatives were divided after the defeat. Externally, the spring of revolutions of 1848 all over Europe offered a window of opportunity to create a federative structure without foreign influence. The political views were polarized into two

camps, one of movement against one of resistance. The liberals and the radicals advocated the reinforcement of representative democracy by strengthening the federal state. They intended to reduce cantonal particularities through political and legal means. The conservatives resisted, insisting upon the survival of cantonal liberty and independence against too much centralization.

The progressives did not or could not push trough their centralizing ideas. Consequently, the new federal structures were based on a compromise. The military was not organized centrally, but retained some federal component. Public education remained cantonal; only the creation of federal universities was approved. The road network was to be under the control of the cantons. And, the least controversial of all the issues debated, French, German and Italian were recognized as national languages.

In the early years of the federation, a controversy between the French Swiss and German Swiss erupted in 1851 on the issue of a monetary union and the introduction of unitary measurements. The French Swiss managed to push through the introduction of the Swiss Francs following the French example, and the German Swiss obtained the application of German measurements. A compromise managed to defuse a potentially dangerous situation that threatened the peace between linguistic groups.

The quarrels over a revision of the constitution revealed a double cleavage along religious and linguistic lines. After two failed attempts in 1866 and 1872, the new constitution of 1874 made concessions to the French Swiss and autonomists on issues pertaining to the military, law and education. But it also satisfied the centralists by increasing federal powers in social and economic policy. It neutralized the conservative, religious camp by expanding upon civil liberties. The cleavage that emerged was not along linguistic lines, but primarily religious and pitted the urban centers against the rural periphery.

Finally, we can observe that the accommodation of linguistic and cultural diversity was firmly entrenched in Swiss federalism by recognizing strictly the competences of the cantons. The development of mutual respect between the central government and the cantons was the result of an epoch of conflict and cooperation within the Swiss federation.

3.2. The Struggle for Duality in Canada

In contrast to Switzerland, the Canadian federation does not recognize the right of the provincial majority to decide the language of public use. There is a recurrent threat to federal unity by a secessionist movement in Québec fuelled by grievances that are to large extent based on language grievances. Even recent history does not indicate that the two official language communities were treated equal. A look at the forming moments of the Canadian federation indicates the uneasy cohabitation of the two major cultural and linguistic groups in Canada.

Already in early Canadian history two incompatible visions of Canada existed (McRoberts 1997). For English Canadians, Canada was of British nationality and they felt that it would be best to assimilate the French minority since a sense of unity and solidarity required cultural homogeneity. For the francophones on the other hand, a Canadien nationality existed independently from any European affiliation. They argued that the acceptance of a French nation and an English nation as equals within one state, commonly understood as duality, was the best way to accommodate diversity. With the Royal Proclamation of 1763, the colonial government intended to assimilate the francophone majority by imposing English law upon a society that was based on French culture and customs. However, the imposition of English law upon a French society failed and the Québec Act of 1774 entrenched French civil law and distinctive French institutions. As a consequence, the use of the French language, besides the English, was indirectly recognized. The Québec Act was a first step into the accommodation of diversity and is thus at the basis of Canadian dualism.

The Constitution Act of 1791 divided Canada into English Upper Canada and French Lower Canada. French and English became de facto the official languages in Canada. In Lower Canada, a national movement emerged that demanded nation status. The language issue was already at the forefront of political debates. Historian Jaques Monet reminds us that "the first debate on the first day of the

legislature of Lower Canada in 1792 was the preservation of the French language"
(Bothwell 1995: 27).

After the rebellions of 1837/38, an assimilationist policy was again the official
policy of the English governor based on the Durham report. The Union Act of
1840 reunited the two Canada into one jurisdiction and established English as the
sole official language. French Canadians were underrepresented in the assembly in
an effort to isolate and assimilate them. But instead of English dominance, the
formalization of dualism ensued through the alliance of English reformers with
francophone parliamentarians. Dualism was instituted in the administration and
the ministries and the notion of double majority stipulated that no law that
concerned one region could pass without the approval of the members of that
region. After the first responsible coalition government consisting of Anglophone
and Francophone reformers came to power in 1847, both languages began enjoying
official language status in 1848 (Coulombe 2000: 278).

The Confederation Act of 1867 that signaled the beginning of the Canadian
federation was confronted with a fundamental divide. For John A. MacDonald, the
first prime minister, the primary task was to create loyalty to the state among a
diverse citizenry. For others, the new state was to develop and preserve the
member communities be they defined sociologically, politically, religiously or
linguistically (Simeon and Robinson 1990: 21). For French Canadians and
Maritimers, Confederation was a compact between races and provinces. For them,

the federal state was to protect the provinces defined as communities. According to historian Ramsay Cook, at confederation, a nationalist state was rejected and the union was about a political and judicial unity. At the same time, there existed also a cultural and religious duality (Cook 1966). This duality, the bicultural and bilingual character of the country, was not mentioned in the Act. The French language could thus not be protected by federal government. The only safeguard was provincial competence over customary forms of community life related to language, religion, education, civil law and public welfare (Simeon and Robinson 1990: 25).

Lower Canada would join only if it could protect its culture and language. The drafters avoided the fundamental divide between the requirements of unity versus biculturalism in order to protect a limited agreement (Simeon and Robinson 1990: 29). As a legacy remained the conflict within the federation between classical federalism that treats the central government and the provinces as sovereign and equal within their jurisdiction and quasi-federalism that subordinates the provinces to the federal government.

From 1867 to 1914, Canada remained linguistically and religiously divided. The battleground between the French and the English was not Québec, but Ontario and the West. The failure of the Riel rebellion and the lack of clemency for its leader outraged French Canadian opinion. In a shift towards French Canadian national affirmation, Honoré Mercier's *Partie Nationale* was elected in 1886. Provincial

governments took further measures that put a strain on the relationship between English and French Canadians. The Manitoba legislature abolished bilingual government services and funding for separate schools in 1890. In the same year, Ontario adopted unilingual English schools. The North Western Territories put an end to bilingual governmental services and French schools in 1891. Although the bilingual Prime Minister Wilfried Laurier managed to reach a compromise on the school question in Manitoba, the ethnic division persisted (Simeon and Robinson 1990: 38). English Canadians joined the British imperialist ardour whereas French Canadians clung to the concept of the dual nation.

During the conscription crisis of 1917 French Canadians refused to join the Canadian army to fight with Britain in WWI. They became convinced that provincial rights are a significant bastion against the English-speaking majority. A Québec centered ethnic nationalism began to emerge (Simeon and Robinson 1990: 41).

In the Québec, of the 1930s, class conflict was experienced as part of an older and deeper linguistic division. Most French Canadians were farmers and workers, and a French speaking professional class was excluded from positions of power within the business sector that was controlled by English-Canadians and Americans. After WWII, the federal government "assumed unprecedented dominance over the provinces" (McRoberts 1997: 24). The government began to encroach upon provincial competences in the finance and tax sector and even made amendments

to the Confederation Act without provincial approval. Ottawa's initiatives were supported by the majority of English Canadians. For French Canadians, the Québec government was right in defending the distinctive French-Canadian nation from the federal government (Simeon and Robinson 1990).

The struggle between Québec and the federal government continued right into the contemporary period culminating in two referendums, in 1980 and 1995. On both occasions, Québecers declined to vote for sovereignty. But the political instability based on cultural and linguistic grievances has not disappeared.

4. Language Survival and Liberal Theory

4.1. The Critique of the Concept of Language Survival

The principle of territoriality allows for the dominance of one language in one territory. The linguistic majority has the right to take maesures that restrict language usage; language competition can thus be diminished and language survival is possible. But language survival as the objective of a liberal society is contested. Leslie Green claims that language rights cannot include measures that will insure the survival and survival of a language. He states that although some group may want to preserve their language for cultural continuity, they should not be given this right. He believes that cultural survival (which would also include linguistic survival) is not "sufficiently important to warrant holding others duty-

bound to protect it" (Green 1987: 656). He makes two points. First, language will change over time and the question arises then what should be preserved? This critique seems to suggest that culture and language change faster before the intervention of protecting policies becomes effective. Thus, language survival measures are always missing their target, they are 'behind' and are thus obsolete. Second, the measures that we would have to adopt to guarantee the survival of a language would be too all encompassing and its consequences too meager: a whole range of measures in the political, social and economic realm would deliver too little (Green 1987: 657). In short, language rights aimed at survival are not efficient and too cumbersome. This is above all an argument about practicality and efficiency and aimed against the logic of language survival, preservation and continuity. It seems to suggest that human nature and the evolution of time make language preservation a fleeting task. Even a short survey of language survival policies in Switzerland, Catalonia and Québec reveals that they are applicable and that they show results without creating a overbearing bureaucracy and jeopardizing civil liberties.

The second critique of language survival claims that the attempts to insure the survival of one language will lead to competition with another language. The destruction of one of the competing languages may ultimately result. Denise Rhéaume summarizes the argument well: "If it is the speakers of a language who have a right that it survive, there is no justification for protecting speakers of one language in preference to those of another where their interests conflict" (Rhéaume

1991: 40). According to this view, we cannot restrict the use of one group's language in order to preserve another. Measures that protect one language restrict the preservation of another and thus engender injustice. Both language groups have an equally valid claim to survival and to the measures conducive to this goal.

If the cultural continuity of one group is the goal of language survival a competition with another group will be the consequence, and it is difficult to see how a right to language survival could be granted. Or, if the right to cultural survival is being granted to one group, it cannot be refused to another. The interest in linguistic continuity of one group is not sufficient enough to require "others who may have different and competing cultural ambitions to secure this outcome" (Rhéaume 1991: 44). The duty to others derived from a right of language survival is not justified. People cannot be exposed to the duty of working towards the survival of a language.

4.2. The Concept of Language Security

The critics of the concept of language survival propose the concept of language security instead. The concept of language security tries to preserve language as a marker of identity and as a cultural inheritance. However, the advantage of this approach, so its proponents argue, is its focus on the present to maintain a language. People must have the right to speak their language in the present, not in the future. The value of being able to speak one's language pertains to the present (Rhéaume 1991: 45). The right to language security allows people to speak their

language without being pressured to abandon it. In such a secure environment, the transmission and continuity of a language can take place.

Language security aims at lowering, or maybe even avoiding the oppressive burden that comes with the identification with a linguistic minority. Linguistic security and community should be retained without other costs. The members of a language group are primarily responsible for the continuity of the language. The bigger a group is, the better are chances to successfully sustain an environment that is friendly to its continuity. Language security guards against "unfair or coercive pressures to abandon one's language" (Rhéaume 1991: 47). If people desert the language, there are no means to stop the decline of a language. Furthermore, language security denies the right to intrusive policies, which might be justified under a system of language survival. Basic liberal values such as freedom of expression are thus preserved.

It seems that the main point of language security is to avoid inference, be it by other, stronger groups or by the government with rules and regulations. Thus, proponents of language security look upon the members of a linguistic community to strive for its existence in the absence of coercion. They concede some justification for government action, but only non-intrusive ones. This basic liberal view of language rights fears the coercion that might be involved in enabling the survival of a language community and the inadequacy of "fossilized cultures" to serve individual members well under the pressures of social and economic change

(Raz 1994). The change and disappearance of languages and cultures are described as natural. Why should man made law intervene in what is seen as a natural process? This view neglects the relationship between language and identity (and its crucial role for the development of the individual). Furthermore, language survival might well be a requirement for coexistence in a multination federation and does not need to contradict liberal values.

The fundamental problem of the concept of language security is that it cannot deliver what it promises, security to minority languages. It can not bring stability to a multination federation. It does not alleviate people's fears that their language might disappear. Sociolinguistic phenomena show that "minority languages are inevitably eroded by majority languages where two or more linguistic communities come into contact" (Magnet 1998). When two languages come into contact, the weaker is said to be absorbed by the stronger one. Bilingualism has not known to be effective in countering this tendency. In short, whenever languages are in contact, language security is no longer possible. We have to turn to other language right theories, based on other principles, if we want to secure the survival of a language. The critique of language survival is useful by pointing out its potential dangers, especially the threat to individual freedom. None the less, the language security approach omits the possibility that a liberal society can protect individual freedom and recognize group rights. The objective of language survival is expressed in the attribution of group rights, such as the dominance of one language within a territory. Such group rights need not be in conflict with liberal principles.

4.3. Language, Identity and Group Rights

According to Pierre Coulombe, community and language rights are justified because they contribute to maintain our identity (Coulombe 1995). The right of the community to take measures to ensure language survival is based on the significance of language for our identity. Identity and language are important goods that need to be protected. He criticizes liberal theory for its insistence upon individual autonomy. He argues that the liberal goal of achieving autonomy to revise one's ends will draw people away from their traditional culture and thus diminishes the options available to individuals (once the traditional culture has disappeared). Freedom of choice will lead people to opt out of their traditional culture. Based on liberal principles, children will learn traditional and alternative ways of life. Since alternative ways of life may be more attractive, the freedom to choose may diminish the membership in a traditional culture.

Taking into account liberal principles, the transmission of a communal way of life has to be combined with "maximizing autonomous choices" (Coulombe 1995: 31). The two may not go together. But if one's identity is rooted in one's community, Coulombe asks, how can the good of the community be transmitted without infringing upon the maximization of autonomous choices? Especially if it is a marginal culture which has less attraction than the mainstream culture. Rights to autonomy will trump the needs of the community within which identity is shaped. Thus, the liberal requirement that individuals can choose and change the way they

live undermines the community's survival and growth. Liberal theory runs counter the communal goods that contribute to our identity. Coulombe claims that liberal theory needs to recognize the role of the community in the formation of our common identity.

Coulombe postulates that a rights discourse has to make place for preserving what shapes our identity. Borrowing from Green, he states that liberty and security are preserved by liberal values, but that does not "encompass all that is worthwhile" (Coulombe 1995: 49). Individual and group rights conflict with each other by making competing claims to what contributes to our well-being. A rights discourse has to integrate the value of group rights, of autonomy and community. Communal rights derive from the value of the preservation of identity. Individuals need communal goods such as language and culture to sustain identity. Only then can we live a worthy life.

Language is an integral part of any right that intends to uphold the value of identity for human flourishing. Identity and language are linked through shared thought, meanings and understandings, which, articulated through language, shape our identity (Coulombe 1995: 68). Coulombe points out that the liberal right to autonomy undermines group rights. He is trying to combine liberal theory with group rights. Will Kymlicka shows that this can be accomplished through the differentiation between groups. Each group has different demands from society and the allocation of rights is primarily based on these demands. Kymlicka argues

that the preservation of language and culture is necessary for two reasons: (a) to provide us with a 'context of choice' and (b) for the formation of our identity.

4.3.1. Multiethnicity and Polyethnicity

Will Kymlicka's liberal theory of minority rights explains how language rights, even language rights that aim at survival, can be justified (Kymlicka 1995). He starts from the moral position that rights that are enjoyed by the majority cannot be denied to the minority. Minority groups deserve group rights in order to attain equality. The right to preserve language and culture cannot be granted to one group and denied to another. Or, his theory seems to say if we intend to do so, we have to make a distinction between groups based on their different intentions and aims. The right to cultural preservation is an 'enabling right', a right that creates equality keeping in mind the intent of each group and their demands from the larger society. To account for differences in society by separating national minorities form immigrant groups allows Kymlicka to distribute different cultural and language rights.

Unlike abstract moral and legal reasoning, Kymlicka evaluates the intention and aim of different groups. He distinguishes between multinationality and polyethnicity. In multination states, national minorities strive to preserve their culture and their language against the majority nation. In contrast, polyethnicity refers to minority groups, immigrants, whose aim is not to preserve their own nation and culture within society, but to integrate into the majority culture. He

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thus clearly distinguishes the intent of each group and the rights they should derive from this initial position. In contrast, Rhéaume claims that for reasons of freedom from interference groups cannot be required to adopt another language. However, language survival might require such demands, especially if addressed to immigrant groups. If Kymlicka is right that immigrant groups intend to integrate and can thus be expected to want to learn the language of the national majority, this demand which is conducive to language survival seems less constraining than if viewed from an absolute moral perspective. To account for difference in society by separating national minorities form immigrant groups allows Kymlicka to distribute different cultural and language rights.

This view is challenged by Daniel Weinstock on moral grounds (Weinstock 1995). He questions the moral validity of a right that appears to be based on *Realpolitik* and that seems to justify the dominance of stronger groups. He states that it is morally wrong to base a right to self-government (and the thereby attached rights to preservation of culture and language) on the capacity of a national minority to sustain a societal culture with its institutions. The distinction between immigrant groups and national minorities is thus arbitrary. Weinstock's critique is specifically aimed at the notion that societal cultures in order to be institutionally complete require social, economic, and other institutions. National groups such as the Kurds and the Armenians would not have this right since they lack the required institutions. I believe this critique is unfounded since the inclusion of institutions in the definition of 'nation' is particularly aimed at the demands that we might have

as individuals towards modern society and to distinguish them from immigrant groups. We would expect from society to contain and provide certain institutional goods. But the absence of these institutional goods does not mean that no national minority exists. Furthermore, the Kurds and Armenians clearly qualify as national minorities since they are nations within a state with a majority nation. Why elaborate a theory of minority rights and deny the very same rights based on the absence of certain institutional goods? The concept of societal culture is to help us to distinguish between groups with different intentions. On the one hand, there are groups that seek the preservation of language or culture and on the other hand are immigrant groups that tend towards integration.

4.3.2. Language and Culture as 'Context of Choice'

The distinction between polyethnic groups and national groups is further based on each group's relative standing towards the societal culture. Immigrant groups intend to integrate into societal cultures, whereas national groups, minorities and majorities, *are* societal cultures. Kymlicka claims that in order to thrive as individuals, we need to rely on societal cultures, cultures that provide us with "meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life" (Kymlicka 1995: 77). In addition, societal cultures are institutionally complete by "containing a full range of social, educational, economic, and political institutions, encompassing both public and private life" (Kymlicka 1995: 78). The survival of such a societal culture requires the presence of a people or a nation. Individual freedom which,

according to liberal theory, consists of making choices and revising our ends, can only be achieved in such a societal culture that provides us with the options from which we may choose.

Weinstock claims that "intermediary bodies"[12] (Weinstock 1999: 24) play a role that is at least as important in providing us with a context of choice as are societal cultures. He argues that the societal culture alone does not set my context of choice. A societal culture encompass many intermediary bodies that influence my judgment in meaningful ways. He adds that we make choices with regards to intermediary bodies, not the societal culture. His critique emphasizes the existence of other group affiliations, or social bodies than just being a member in a societal culture and claims that they are as important in providing us with a context of choice. Weinstock's critique seems to miss its target because the importance of a societal culture to provide us with a context of choice does not exclude other bodies from being important as well. For example, I can be member of the Québec's societal culture and at the same time I can accept other bodies (my work environment, my leisure time circle, etc.) for providing me with a context of choice. The importance that Kymlicka attributes to societal cultures does not diminish the need of other 'anchors' in society to provide us with the means to make choices; however, he argues that they may be less central and thus lead to the allocation of different rights.

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[12] My translation.

4.3.3. Language and Identity

The second reason for the preservation of culture and language is that membership in a societal culture supports individual identity formation. Membership in a societal culture provides us with the options that enable us to make choices and revise our ends. Kymlicka claims that people can be expected to want to have access to their particular culture. He believes that it is a legitimate claim to remain in one's culture. He agrees with John Rawls that it is very difficult to leave one's culture (Kymlicka 1995: 86). The difficulty stems from our attachment to language and history. The case of Québec demonstrates that even modernization and political liberalization do not diminish people's attachment to their culture and language[13]. The bonds with our language and culture are so strong because cultural membership provides us with meaningful options and because our self-identity is bound up with cultural membership. National identity serves as a "primary foci of identification"[14] because it is based on belonging and ignores accomplishment. Cultural identity provides self-identification and belonging. Consequently, our self-esteem is related with the self-esteem that our national group receives. In short, national membership supports our dignity and self-identity.

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[13] For Kymlicka, the development of Québec from a predominantly rural and catholic society to an urban and liberal one and the increasing resemblance with English Canadian society owes much to the spread of liberal values. He takes this as an example how a people that constitutes a societal culture is still attached to culture and language that differentiates them from others (Kymlicka 1995:88-89).
[14] (Kymlicka 1995:89) quotes (Margalit and Raz 1990).

Both, Kymlicka and Coulombe support culture and language survival for identity reasons. For Kymlicka, individual autonomy is dependent upon membership in a societal culture, a people or a nation. And people want to be members of the culture in which they grew up because their identity is reflected in this group. He is thus able to link autonomy and group rights, a link that Coulombe was desperate to make. Coulombe claims the right to language survival based on the importance of language for our community and identity. Community and group rights are valid because they can preserve language and identity.

Weinstock challenges the view that group membership that is meaningful to our identity is confined to a national or ethnic-cultural group, or even to an "encompassing group" as described by Raz and Margalit. Their definition of an encompassing group includes six characteristics of which we retain just the two principal ones. They are two moral functions that support the individual member. Together, they provide (a) the goals and the values, or the "frontier of the possible", and (b) are at the centre of the identity of each individual. The blooming of these six characteristics is crucial for the development of a feeling of self-worth in each individual member. Weinstock correctly points out that the first function applies to Kymlicka's societal culture and how it provides a context of choice to each individual member as discussed above. As for the second function, he contends that an encompassing group is at the centre of the identity of each individual member. He is especially critical of the importance of non-voluntary membership in an encompassing group itself. Weinstock suggests that Raz and

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Margalit believe membership in a group that we join marks us less than membership in a group into which we were born. Furthermore, why would a group that is conceived of as a *Gesellschaft* (a societal culture that is impersonal) structure the identity of an individual rather than one conceived of as a *Gemeinschaft* and personal? As I pointed out above, the fact that the *Gesellschaft* matters in the construction of identity does not exclude that the *Gemeinschaft* may also play an important role. As for the importance of membership in a group into which we were born, I agree with Weinstock that not all individuals are required to be shaped more profoundly by this initial group. But I think, as Kymlicka points out, we can *expect* people want to retain membership in the group into which they were born. Hence, the centrality of this society to our identity.

The discussion so far achieved the following: Liberal theory and group rights can be reconciled. The separation between national groups and immigrant groups is not arbitrary, but takes into consideration the relative position of each group within society. Group membership in a societal culture provides us with a context of choice and is instrumental to identity formation. The critique of this view fails to consider that membership in a national culture allows for the existence of other societal bodies with which we may affiliate ourselves. Intermediary groups provide us with a context of choice. However, only national groups have such central importance to individual well-being that group rights, such as a right to language survival, can be justified. Finally, we have to be aware that the recognition of group rights does not justify the violation of basic liberal rights.

Kymlicka reminds us that national minorities should be prevented from exerting internal oppression based on the evaluation of several factors: the severity of violations within the community, the degree of consensus within the community on the legitimacy of restricting individual rights, the presence of exit possibility for individual members and if there existed historical agreements between the nations within the state (Kymlicka 1995: 169-170). Fundamental liberai rights have to be respected. Fears that group rights come at the expense of individual rights can thus be alleviated. In the latter section on immigrant integration into language I will expand on how the limitation of liberal rights may be justified. The dominance of one language over a territory and language survival can be justified according to liberal principles and under certain conditions.

5. Official Language Policy in Canada and Switzerland: Personality and Territoriality

There are two guiding principles for language policies (Goreham 1994; EDI 1989). The first, the principle of territoriality, stipulates that over a given territory one language, usually of the majority, is dominant. The language of the state and of official business is the majority language and other languages cannot hold official status. The second, the principle of personality, says that citizens are entitled to use an official language of choice when communicating with the state. In Canada, based on the recommendations of the Bicultural and Bilingual Commission of

1967, the principle of personality was given preference to enable Canadians in all provinces and of both official languages to use their language of choice whenever they communicate with the state or require government services. In Switzerland, rulings of the federal court point to the importance attached to the principle of territoriality. The respect for this principle is above all the recognition of the federal structure and the competence of the cantons in linguistic matters.

5.1. The Principle of Territoriality in Switzerland

The federal constitution recognizes three official languages, French, German and Italian and four national languages, the three official languages and Romanche. The three official languages are used as working languages within the federal bureaucracy with a strong dominance of German. Romanche receives recognition as a national language, but its usage is confined to the canton of Grisons where it is recognized as an official language in the cantonal administration.

The dominance of the principle of territoriality reflects that language policy is traditionally a competence of the cantons. It used to be an unwritten constitutional right until it was entrenched in the constitution during the recent revision approved by a national referendum in 1999. According to the new constitution, the federal government is to support plurilingual cantons and cantons are to consider the needs of linguistic minorities within their borders[15]. Furthermore, the federal government is bound to support the two cantons with the languages that are most

[15] 'Wo steht das Sprachengesetz ?' *Basler Zeitung*, 11/5/2000, 11.

threatened, Grisons and Tessin, in their efforts to protect and promote the Romanche, respectively Italian language.

The principle of territoriality is contested for its violation of the personality principle which would allow official language speakers to use their language of choice in their communication with government agencies wherever they are within the state (EDI, 1989:189). Several rulings by the federal court affirm that cantons have indeed the right to impose an official language. The court ruled that the German-speaking canton Zurich can limit the use of the French language in private schools (Association de l'école française gegen Kanton Zurich, EDI 1989: 190). Furthermore, the court ruled that the traditional language frontiers may not be altered. The cantons have thus the right to take measures to ensure the homogeneity of their territory even if it limits the liberty of individuals to make use of their mother tongue (EDI 1989: 191). For the Swiss Ministry of Justice what matters is that the "the principle of territoriality is in each linguistic region of the country in favor of the language of the population and is firmly rooted in usage"[16] (EDI 1989: 188). In the Swiss context, the principle of territoriality is to preserve the status quo of linguistic borders and demographics and permits cantonal governments to limit the use of non-cantonal languages in public settings. For private usage, citizens may use a language of choice.

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[16] My translation.

Compared with the personality principle, the principle of territoriality as it applies to Switzerland creates clear-cut linguistic boundaries. However, despite its objective in preserving the linguistic status quo, it does not guard against demographic shifts. Although it is partially true that Swiss stability is based on mutual ignorance (reinforced the absence of significant demographic shifts that would alarm one of the linguistic groups that their survival is at stake), Charles Taylor is mistaken to describe the cantonal borders as "watertight" (Taylor 1970: 130) In fact, the territoriality principle as practiced in Switzerland does not protect weak languages sufficiently enough. If through demographic shifts the homogeneity of a territory has been changed and has as a result become more evenly split between two language groups, no protective measures can be based on the principle of territoriality since homogeneity no longer exists (EDI 1989: 191). Only where a minority language is dominant is it protected through territoriality. The principle of territoriality thus fails where it is most urgently needed, in the protection of weak languages. Furthermore, territoriality should not become a burden for minority languages (EDI 189: 194). It is rightly pointed out that support for minority languages, such as Romanche and Italian, and even French, calls for a softening of the principle of territoriality in order to allow for the establishment of Italian or French language schools outside their language territories.

I agree with Michel Rossinelli that the principle of territoriality is especially useful when it is applied as a principle of public policy with the aim to protect minority

languages and weak languages (Rossinelli 1993). For many, the revision of the constitution did not go far enough in changing a rigid concept of territoriality. Linguistic minorities have to rely on the goodwill of cantonal authorities if they want to create schools or wish even to receive services in their language. However, the timid improvements in the constitution to better protect minority languages, Italian and Romanche, are caused by the federal principle that recognizes the dominance of the cantons in linguistic matters. We will have to follow future developments to see whether the protection of linguistic minorities could be improved beyond the benefits contained in the principle of territoriality.

The problem of the most threatened Swiss minority language, Romanche seems to be beyond the issue of territoriality since Romanche speakers are only found in the Grisons and the language is an official, cantonal language. It is rather Italian and French that would benefit from a softening of territoriality. This would be a welcome development in showing greater sensitivity towards minority languages. At the same time, principled defendants of territoriality will not be easily convinced to soften the federal consensus on respect of cantonal autonomy on these issues as they see it as the guarantee for cohesion across linguistic borders (Papaux 1997). The group right that a specific language is spoken in a specific territory is seen as trust-building pact between the four language groups. The recognition of group rights through the principle of territoriality takes here the form of a political pact of equal members. But should stronger groups out of a position of strength not be able to show generosity towards minorities? A pact

among nations can go beyond insistence upon strict equality. The diverse state should aim for language survival of all official languages, not insist upon short-sighted entitlements to rights.

The principle of territoriality is primarily concerned with the survival of the language of the majority in a confined territory. However, official languages, when they are in a minority situation, need to be able to be supported. Thus, the proposal to soften the principle of territoriality seems sound. The objective is to help the language survive. However, one has to be aware that security and survival comes with being a living language, a language of daily usage[17].

5.2. The Personality Principle in Canada

Canada's current language regime is based on the Official Languages Act of 1969. Propositions for the Act were gathered in the Royal Commission on Bilingualism and Biculturalism (the B&B Commission). The cornerstone of the Commission's report and subsequent federal language policy is the personality principle stipulating that across the country the two official languages are to be treated equally and citizens of both languages should have equal access to government services. Federal language policy has ever since been opposed to the principle of territoriality which was judged to be impractical for Canada. The contention

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[17] Jeff Spinner points out correctly that only languages that are used in an advanced industrial society are able to sustain itself by being the language of business, education, etc.(Spinner 1994:157). He argues that liberals should support language groups that already possess the conditions to survival. But it might be that the creation of a moral bond that holds the multination state together relies on the support to all national groups and their languages. I argue later on that in the case of Switzerland, the continuity of the myth of 'unity in diversity' relies on the assurance of measures to language survival of all national languages.

between the two principles of territoriality and personality is reflected in the antagonistic policies of the federal government and the province of Québec. Against the philosophy of the Official Languages Act, Québec implemented policies that aim at language survival, dismissing a concept of language security that does not permit measures to restrict usage of English in Québec and thus contribute to the continued existence of the French language in North America. As the polls mentioned above clearly indicate, the relationship between persistent support for Québec independence and linguistic insecurity makes a strong argument for policies that alleviate such perceptions of linguistic insecurity for the sake of unity in a multination federation.

The personality principle aims at treating speakers of the two official languages as equals wherever they are in the country. The principal clause of the Official Languages Act reads as follows:

"2. the purpose of the Act is to

(a)   ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;

(b)   support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and

(c)   set out the powers, duties and functions of federal institutions with respect to the official languages of Canada"

(Official Languages Act, chapters 0-3.0, R.S. 1985, c.31, 4th. Supp.)

It is clear from the three paragraphs (a) to (c) that the aim is to treat French and English as equals independently from geographic location across the country. Notable is that the requirement of equal treatment is confined to the federal government. Provincial governments are not bound to provide services in both official languages. The exception is access to education which is subject to paragraph 23 of the Constitution Act of 1982 stating that official language speakers are entitled to primary and secondary schooling in their language where numbers warrants.

The primary justification for application of the personality principle and the rejection of territoriality is that Canada has language minorities which would be exposed to injustice if left without federal guarantees in a territory with a clear majority language, "it [the application of the territorial principle based on provinces] would lead to the recognition of only the majority's rights and to oppression of the official language minorities" (Commission 1967: 86). The Commissions' findings which served as a platform for current language policy found that minorities cannot be left to themselves in a majority territory with the possibility that they will be assimilated. Territoriality was rejected because it does not offer support to official minority language groups within a unilingual territory. However, after almost 30 years of Canadian language policy based on the

personality principle, empirical evidence shows that the percentage of official minority speakers is diminishing[18]. If the aim of the policy was to permit the continued existence of French language minorities across Canada, then the personality principle was not conducive to do so.

Kenneth McRoberts detects some strategic reasoning behind the adoption of a policy to treat French and English as equal and the intended protection of francophone minorities. He writes that the Commission saw symbolic importance in the sustainability of francophone minorities (McRoberts 1989: 145). The bond that was to develop between Francophones in Québec and in other provinces was seen as "an important force for national cohesion" (McRoberts 1989: 145). The Commission reasoned that if francophone Québecers would dissociate themselves from French minorities and if this was motivated by a feeling of rejection of minorities from English-speaking Canada, then support for the separatist movement would result. This describes quite accurately what has actually happened since the introduction of the Official Languages Act. Francophone Québecers seem to perceive the diminishing numbers of Francophones across the federation as a threat to the continuity of the French language in Québec. They may perceive that the federal government's effort to protect the French language across Canada is a failure. It seems then that the feeling of language security motivates support for remaining in Canada or independence. Such a feeling of language security among Québecers is provided by legislation that strengthens

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[18] Francophones as percentage of the population outside Québec decreased from 7.3% to 4.8% between 1941 and 1991. From 1991 to 1996, they decreased by 0.6%. Quoted in (O'Keefe 2000).

French against English in Québec. Language legislation implemented by the Québec government had exactly this objective: to strengthen the position of French within the territory of a majority of francophone Canadians.

The second reason that led the Commission to opt for the personality principle is the belief that unilingual territories will lead to the break-up of the federation. The official documents studied in this thesis that made such a claim fail to deliver empirical evidence. In the contrary, I take Switzerland where the principle of territoriality has been in use for many years as an example for stability and longevity of a multination federation with unilingual territories. Nonetheless, a report to the Commissioner of the Official Languages wrote as recently as in 1994 that a country that "pursued only the subdivision of its territory into unilingual regions might very well risk serious problems of unity leading to fracture" (Goreham 1994). This echoes an earlier government document that writes "[I]if that principle of equality is not accepted in spirit and in practice across the country, there can be no enduring community of our two peoples. There will rather be two separations that must lead ultimately to the political reflection of that fact" (Ministry of Supply and Services 1977: 68). Such statements contradict the own findings of the Commission that point to the importance of the perception of language security in plurilingual countries. Stéphane Dion and the recent Léger and Léger poll indicate that there is a link between language insecurity and support for independence. Therefore, the threat to unity does not come from unilingual

districts but from the perception of language insecurity among French language speakers in Québec.

The Commission wrote lucidly that if a bicultural country fails to provide a "sense of cultural security" (B&B Commission 1967: 14), the minority, in reaction to the threat to its language, will seek "'national' self-determination outside the framework of the bilingual state" (B&B Commission 1967: 14). The perception that one' language group will be able to sustain itself contributes to the stability of a multilingual state. One can regret that the Commission took its own observations not more seriously.

The B&B Commission studied Swiss language practice and observed rightly that the territorial principle works against minorities within a canton. But that it is also "valued as assuring the survival of the French and Italian minorities in the nation by guaranteeing them unilingual cantons of their own." (B&B Commission 1967: 80). The Commission was fully aware how the principle of territoriality is conducive to language survival and stability, but chose not to opt for this principle. The Commission took stock of the stabilizing consequences of the principle of territoriality with a permanent linguistic frontier in Switzerland, but dismissed its application to Canada with the observation that "in North America today the population is so mobile that it would seem unrealistic to adopt a rigid principle of this type, even if it were deemed desirable" (B&B Commission 1967: 84). Based

on such a conclusion, the Commission proposed to opt for the personality principle and to discard the principle of territoriality.

5.3. The Personality Principle and Liberal Values

One can assume that the philosophical motivation to opt for the personality principle is based on the belief that the attribution of language rights to a group will lead to the oppression of individuals. The Commission reasoned that the benefit of official bilingualism is the protection of official language minorities from the tyranny of provincial majorities. In this view, any concessions made to policies that restrict individual language rights move society on a slippery slope towards intolerance and racism (LaSelva 1996: 107-112). Restrictions of individuals or minority groups that are inherent in collective or group rights are bound to lead to intolerance. Policies that aim at language survival such as limiting access to schools in another language than the official one are thus said to oppress the individual. However, this view ignores that a restrictive language policy can be motivated by a concern to protect cultural and linguistic pluralism. Such policies an thus express values of liberal universalism provided they meet certain conditions (LaSelva 1996: 11). Proponents of language survival have thus to propose policies that reduce restrictions to a minimum. Restrictive measures need to be based on empirical evidence that they are indeed necessary to preserve cultural diversity. Furthermore, they have to show that softer measures than territorial unilingualism fail to protect the minority language (LaSelva 1996: 106).

Language policy in a liberal state that takes the principle of territoriality into consideration has two objectives (a) to respect diversity and (b) to safeguard fundamental rights such as the right to life, liberty, due process, free speech, free practice of religion, and so on. Respect for diversity might require measures that revisit or restrict privileges or immunities if there are strong reasons to do so (Taylor 1993: 176).

Let me draw some preliminary conclusions. Language survival is facilitated with the principle of territoriality. It assures the majority population of a territory the continuity of their language by giving it priority over other languages. The application of the principle of territoriality contributes to stability. In Switzerland, territoriality was a 'natural' choice for its respect for cantonal autonomy and the will of its majority. In contrast, political instability in Canada rests largely on the language insecurity of the Francophone Québec population. The application of the principle of territoriality in Canada, as it is already partially practiced by the province of Québec, would contribute to the language security perception of the Francophone Québecers and would diminish support for the independence movement and the threat unity. The last issue that has to be dealt with is the situation of linguistic minorities in the province of Québec that under the principle of territoriality recognizes the French language as the common, public language. We have seen above that the principle of territoriality can be combined with the requirements of a liberal polity. Immigrant communities and official language minorities can be respected within a linguistic framework based on territoriality.

6. The Principle of Territoriality and Respect for Linguistic Minorities

6.1. A Common Bond with Official Language Minorities

According to Kymlicka, societal cultures or nations and immigrant communities can be justified to be treated differently. However, this leaves us with the problem of official language minority in a linguistic majority territory such as the Anglophone minority in Québec (Norman 1994). From a minimal liberal point of view, Joseph Carens argues that no special obligation towards the official minority can be demanded from the majority (Carens 1995). However, one can argue that the official minority should be treated differently than immigrant groups because is a member of the group that partakes in the contract between nations. The need for the development and preservation of a moral bond between national members of a state justifies the Canadian policy of official bilingualism treating the two language communities equal across the entire territory of the state (Coulombe 2000). After all, a sense of moral justice and stability between member nations motivates official bilingualism.

In a multination state, official languages are recognized in order to provide for stability and security. The idea is that the stability of the multination state relies upon a good relationship between member nations. A soft application of the principle of territoriality supports other official languages in territories where they

are in the minority. This is also seen as an important measure to provide a moral bond between the nationalities. A recognition of each other's right to language survival certainly builds trust between the communities and provides for good relations thereby contributing to the unity of a multination state. In Switzerland, the existence of such a moral bond is described in the presence of the myth of a unified nation composed of four nations and cultures. In the words of Francois Grin, "Switzerland is built on, and bound together by, a deep-rooted mythical self-representation, whose constructed nature has been mostly forgotten, except, perhaps, to the extent that its very "constructed-ness" could be turned into a virtue" (Grin 1997). The myth persists that Switzerland achieved unity in (or despite) diversity. This mythical accomplishment is the moral bond that gives each nation a stake in the endeavor of a common state. But besides the myth, there is tangible behavior that facilitates the cohabitation of different languages and cultures. As the historical development of the Swiss federation demonstrates, the German speaking majority has always acted cautiously on sensitive language issues. The majority did not take advantage of its strength and push through legislation without consulting the minorities. Finally, strict respect for cantonal autonomy made a significant contribution. The very existence of the principle of territoriality bears witness to this practice.

Pierre Coulombe claims that official bilingualism in Canada contributes to stability. The abolition of official bilingualism would "shake the foundations of the federation" (Coulombe 2000: 291). No doubt, the outright abolition of the

current language regime without any alternative would provoke political repercussions. But advocates of the current language policy still have to prove that it delivers stability. After all, the Canadian state was threatened with break-up *after* the current language regime has been established. It seems difficult to argue that the weakness of official bilingualism bears no responsibility for the relative success of the independence movement. I believe that the absence of a soft application of the principle of territoriality sustains instability. As long as the French fact of Québec is not endorsed by the rest of the federation, the separatist movement will always gather support based on language insecurity. However, I agree with Coulombe that respect for other official minorities within a majority language territory contributes to a moral bond that is conducive to stability. But that moral bond cannot develop as long as languages are not protected through the principle of territoriality. Only once language communities are in a position of strength, they can be generous towards other language communities. At first sight, the principle of territoriality might go against the development of a moral bond between language groups by denying the right to any language besides the majority language. But we should not forget the benefits that derive from language survival. A Québec population that is assured of the continuity of the French language can also be generous towards linguistic minorities, such as the official minority language speakers, and immigrant communities and allow for measures to facilitate the continuity of their languages and cultures.

6.2. Immigrant Integration and Language

In accordance with the principle of territoriality, the Québec government's immigration policies require immigrants to learn French. This requirement does not create a conflict with liberal principles (Carens 1995, Kymlicka 1998). The French language certainly defines Québec society, but it is detached from "a public identity or a conception of membership" that goes beyond adherence to French as a common, public language (Carens 1994: 29). Québec is open to immigration, with a preference given to francophone countries, from all over the world. Such openness makes it impossible to demand integration into a specific culture, argues Carens.

This immigration policy can be described as a moral contract with immigrants. According to a Québec government immigration policy document[19] from 1990, three principles guide the integration process: (i) French is the common, public language of Québec, (ii) Québec is a democratic society where everyone is encouraged to participate, and (iii) Québec is "a pluralist society that is open to multiple influences within the limits imposed by the respect for fundamental values and the need for intergroup exchanges" (Vision, 1990). Québec has the duty to help immigrants reach these goals towards immigration as their side of the contract and in turn expects from them to accept these three principles. The first requires immigrants to learn French in order to show their sense of belonging to Québec. But at the same time, everybody is allowed to use their language of

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[19] *Let's Build Québec Together: Vision*: A Policy Statement on Immigration and Integration. Government of Québec, 1990, 15. Quoted in (Carens, 1994, 42).

choice for private communication. Furthermore, the Québec government promotes heritage retention programs that sponsors linguistic communities' efforts to teach children their language of origin. As for the two other principles, they stipulate basic foundations of a democratic and pluralistic society that aims at economic and political integration of all immigrants. The policy aims clearly at integrating newcomers into language, not culture (Carens 1995).

Québec is morally permitted to demand integration into the common French language (Carens 1995: 57). It does not violate the "minimum moral standards that a liberal democratic society ought to meet" (Carens 1995: 57). There is a need for a common, public language in industrial society and if it is the language of the majority, there is nothing that makes this illiberal. For Carens, it is up to political communities to decide. A condition of this process is certainly that no language or linguistic community might be repressed. This justifies then the application of the principle of territoriality which is a defensive policy with the objective to preserve the French language in Québec against historical and demographic tendencies that favor the stronger, English language.

7. Conclusion

The principle of territoriality as an official language policy tool aims at language survival. It gives member nations in a federation linguistic dominance over a territory. The Swiss case shows that its application contributes to political stability in a multination federation. The concept of language survival has an important advantage over the concept language security: it permits languages to survive in the future. Minority languages in a multination federation are thus assured that their language will be preserved.

Canada and Switzerland are multination states provided 'nation' is defined in cultural terms. The nation is thus defined through culture, political and social institutions. The attainment of full statehood within internationally recognized borders is not required. However, what counts is the existence of a political debate and discourse based on a specific language.

In Canada, official language policy is based on the principle of personality treating both official languages equally across the state territory. This formal equality turns out to be a disadvantage for French outside Québec and the percentage of French language speakers outside Québec is diminishing. Thus, the perception of many Francophones in Québec that the survival of French is not assured and the support for a secessionist movement creating political instability.

The concept of language survival takes into account measures that contribute to the existence of a language in the future. Such measures may restrict individual autonomy. But language survival is also a cultural and linguistic group right that contributes to individual well-being through providing a context of choice and facilitating identity-formation. The challenge for multination language policy is how to combine language survival with the protection of fundamental rights in a liberal democracy. Switzerland demonstrates that language policy based on language survival does not have to lead to language competition among member nations, but gives each language community the right to protect its language.

The territoriality principle protects existing language borders by assuring the dominance of one language over a territory. However, its strict application does not allow official minority languages to take protective measures outside their territory. Its strict application fails to support weak official languages. In accordance with the aim of language survival, the soft application of the principle of territoriality is warranted. It is a defensive concept that protects diversity and safeguards fundamental rights. The protection of the languages of all member states in a multination federation creates a common bond between official language communities: all are ensured equal preservation. The liberal rights of immigrants are protected through integration into language, not culture.

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