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Canadian Nationhood and the Identity Discourse: Incorporating Minority Ethnic Groups

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ABSTRACT

Canadian Nationhood and the Identity Discourse: Incorporating Minority Ethnic Groups

Nadine S. Huggins

Full incorporation (inclusion) into Canadian society has consistently eluded members of minority ethnic groups (i.e. visible minority and ethnocultural communities), as a consequence of the numerous barriers to equality they encounter. Such barriers prevent the full and representative participation of these groups in the social and political institutions and structures of the Canadian state. The hegemonic position of the so-called 'founding nations' within the Canadian state and society allows its members to enjoy disproportionately high levels of power, privilege and prestige, and as a result, constitutes a significant barrier for minority groups. This reality translates into a failure to fully incorporate ethnic diversity and thereby a commitment to construct an appropriate framework for the elaboration of an inclusive, widely acceptable and accepted definition of Canadian identity. To transcend 'founding nations' hegemony requires the full incorporation of members of minority ethnic groups. This thesis suggests that such incorporation is possible through the implementation of progressive employment policies, i.e. employment equity.

ACKNOWLEDGMENTS

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Introduction

Full incorporation (which extends beyond simple inclusion to encompass equitability in the distribution of privilege, power, prestige and respect) into Canadian society has consistently eluded members of minority ethnic groups (i.e. visible minority and ethnocultural communities), as a consequence of the numerous barriers to equality they encounter. Such barriers prevent the full and representative participation of these groups in the social and political institutions and structures of the Canadian state. The hegemonic position of the so-called 'founding nations' within the Canadian state and society allows its members to enjoy disproportionately high levels of power, privilege and prestige, and as a result, constitutes a significant barrier for minority groups. This reality translates into a failure to fully incorporate ethnic diversity and thereby a commitment to construct an appropriate framework for the elaboration of an inclusive, widely acceptable and accepted definition of Canadian identity. To transcend 'founding nations' hegemony requires the full incorporation of members of minority ethnic groups. This thesis suggests that such incorporation is possible through the implementation of progressive employment policies, i.e. employment equity.

Employment equity initiatives infer a desire on the part of the Canadian state to integrate minority ethnic groups into the structures and institutions of Canadian society by eliminating barriers to equality in employment.. Eliminating barriers to employment is intended to facilitate the statistical representation and visibility of these communities in all spheres and at all levels of the Canadian labor force and thereby the Canadian state. Should such representation become a reality, it is expected that a sense of inclusion and identity with the Canadian state will be instilled among members of minority ethnic groups, and will encourage members of the Charter groups to acknowledge minority

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ethnic communities as 'full' Canadians, valuable to the future of the country. The term Charter group(s) will be used from here on to refer to descendants of the founding nations.

The Canadian Charter of Rights and Freedoms indeed precludes discrimination for all Canadian citizens including members of minority ethnic groups. However, as will be demonstrated below, descendants of the 'founding nations' enjoy disproportionately high levels of privilege, power and prestige within the Canadian state. As such, they have had more impact than have minority ethnic groups on how the Canadian Charter was negotiated, has developed and how it has been interpreted. This fact has resulted in the needs and interests of members from the founding nations being more rigorously considered and dealt with in the Charter. With the exception of Aboriginal peoples who assume an atypical political position within the Canadian state, the English and the French are the only ethnic groups specifically mentioned in the Charter — hence the term Charter group(s).

Two specific policy initiatives are identified as positive employment equity milestones in Canada: The entrenched Canadian Charter of Rights and Freedoms (1982) and the Employment Equity Act (1986). The Canadian Charter of Rights and Freedoms is important because it reinforces the constitutional right of all Canadians to enjoy equality in employment. However, constitutional guarantees are only valid if there exist follow-up legislation or programs which are more readily enforceable. The Employment Equity Act is understood as the follow-up policy to the Equality Rights section of the Charter (Section 15). The Act is the only employment equity initiative enforced by the Canadian state, which is legally binding on those institutions falling under its jurisdiction. Whereas the Employment Equity Act is a legislated employment equity measure, there also exist administrative employment equity initiatives in place within the Canadian state. Two such initiatives will be discussed briefly: the Federal Contractors Program and the Quebec Contract Compliance Program.

The social and political discourse in Canada has reached a stalemate because of the hegemony enjoyed by members of Charter groups. Such hegemony is perpetuated by the limited success of state sponsored employment equity initiatives; specifically Section 15 of the Canadian Charter and the Employment Equity Act. As such, Canada's claim as a universal pluralist state is unsubstantiated.

Section 15 of the Canadian Charter and the Employment Equity Act have achieved only limited success in realizing their inferred and stated (practical) objectives. Stated objectives refer to goals outlined by each policy in reference to eliminating barriers to employment faced by minority ethnic groups. Inferred objectives include the full and meaningful incorporation of ethnic diversity into the social and political structures of Canadian society. Incorporation includes the dismantling of Charter group hegemony, the inclusion of minority ethnic group viewpoints in the Canadian identity discourse and substantiation of Canada's claim to universal pluralism through the actual statistical representation of minority ethnic groups in all spheres of the Canadian state.

Employment equity initiatives have achieved only limited success for several reasons: Contemporary liberal theory, gleaned for the most part from the work of John Locke and Jean Jacques Rousseau have adapted poorly to the reality of ethnic diversity. In Canada (an aspiring egalitarian state), despite official policies guaranteeing *de jure* (in theory) incorporation, Canadian structures have yet to reflect *defacto* (practical) incorporation of ethnic diversity.

The goal of this thesis is to demonstrate that the Canadian state is unsubstantiated in its claim as a universal pluralist society, because of the existence of a Charter group hegemony and the fact that employment equity initiatives have only realized limited success in incorporating minority ethnic groups into the social and political structures of the Canadian state.

Chapter I is a discussion of equality in liberal theory, and is divided into two sections. In section one, classical liberal notions of equality as expressed by John Locke and Jean Jacques Rousseau are explored, followed by contemporary liberal sentiments on equality. The work of Friedrich A. von Hayek and John Rawls are used to illustrate divergent contemporary perspectives on the role of the state in relation to the concept of equality.

Liberalism as it functions in the Canadian state is the subject of chapter II. Divided into two sections, section one establishes that liberalism in the Canadian state aspires to Rawls' egalitarianism but fails to achieve it, due to historical as well as contemporary reasons. Discussions regarding equality are particularly oriented around issues of relevance to the incorporation of members of minority ethnic groups into the Canadian state, and how such incorporation would impact the formation of an inclusive national identity. Section two is a discussion of theories of nationalism and nationhood as presented by Ernest Gellner, Liah Greenfeld and Benedict Anderson.

Chapter III discusses the issue of the incorporation of minority ethnic groups. The purpose of this chapter is to demonstrate that there in fact exists a hegemony of Charter group power, privilege and prestige within the Canadian state; which serves as a barrier to participation and incorporation for members of minority ethnic groups. Chapter III is divided into three sections: Section one is a discussion of the historical parameters of Canada's search for identity and nationhood, which emphasizes the evolution of Charter group hegemony and minority group marginalization. Section two makes the case for a new, more inclusive framework for pursuing Canadian nationhood and identity using the work of M.G. Smith, who examines pluralism as it pertains to society and its structures. Section three defines parameters for the inclusion of members of minority ethnic groups into the discourse concerned with Canadian nationhood and sets the stage for the policy discussion which is undertaken in Chapter IV.

Chapter IV is a policy discussion concerned with both the Equality Rights section of the Canadian Charter of Rights and Freedoms (Section 15); and the Employment Equity Act. Also discussed are two administrative employment equity initiatives. These include the Quebec Contract Compliance Program and the Federal Contractors Program. The purpose of this final chapter is to explore and assess the impact these equity initiatives have had on the representativeness of ethnic diversity in the structures of the Canadian state. To this end, chapter IV is divided into four sections: Section one is a discussion of the Canadian Charter of Rights and Freedoms. This section establishes that Charter guarantees are only enforceable through the implementation of progressive, proactive follow-up legislation. Section two is a discussion of employment equity policy initiatives in general. Discussed are the specific parameters of the Act and requirements of employers subject to the Act as well as to the other initiatives under consideration. The purpose and application of employment equity policies, as well as arguments against employment equity are discussed. Section three is a discussion of the impact of employment equity initiatives. The final section of chapter IV is a discussion of the shortcomings of the Employment Equity Act. It is established that limited application, imprecision in requirements etc., compromise the effectiveness of the Act and ultimately other initiatives as well.

Chapter I: Liberals and Liberalism: The Social Theory

Liberalism is the political philosophy which functions as the primary point of reference for political and public policy discourse in Canada; discourse regarding equality issues is no exception. The Canadian social and political systems are comprised of numerous political interests, all competing for positions of power, influence and privilege. The political platforms and social arguments put forth by these interests, are constructed upon the ideological foundations of classical philosophies regarding the roles, responsibilities and motivations of human nature and the civil state. Philosophies by such theorists as John Locke, Jean Jacques Rousseau, Immanuel Kant, Thomas Hobbes etc., fundamentally affect how contemporary issues are interpreted, how policy positions are assumed and why certain social arguments are put forth.

Each of the philosophers mentioned above discussed equality issues as they pertain to the state and humanity. As expressed by Guttman however, the egalitarian orientation of contemporary equality discourse did not preoccupy classical theorists; several of whom promoted the idea of a natural hierarchy. Further, despite that equality issues were discussed by classical theorists, there existed no single conception of equality in classical liberalism.

It is only modern liberal theorist who overwhelmingly deny previous claims of a natural hierarchy, while contending that a just state must be conceived on the basis of an assumption of human equality. Despite this unifying theme of liberalism, no single postulate of human equality is to be found in classical liberal theory.[1]

Concrete examples of classical liberal theorists who flagrantly legitimized inequalities among human beings include Thomas Hobbes and John Locke. Hobbes legitimized

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[1]Guttman, Amy 1980. Liberal Equality. New York: Cambridge University Press. Pg. 18

significant inequalities between the monarchy and the subjects of the civil state; where the monarchy is understood to protect the liberty of the masses through authoritarian governance, so as to prevent 'a brutish short existence'. John Locke also justified inequalities between inhabitants of the civil society particularly in relation to wealth and property distribution.[2]

The absence of a single postulate in relation to human equality in classical liberal theory, does not preclude the development of generalized assumptions regarding human nature; which function as a means to classifying classical liberal philosophies. There exist two generalized assumptions concerning human nature in classical liberal theory: the first assumption considers the emotive capacity of humans as the prime motivation behind their behavior; the second, regards rational capacity on the part of individuals as the primary determinant of human behavior.

When the first generalized assumption regarding human nature is paired with the notion of equality, it states that humans possess an equal emotive capacity and ability to withstand and/or enjoy pleasure and pain. Philosophers whose theories rely on this first assumption of human nature, believe that human beings are governed by their passions and as a result, seek to maximize what is in their self-interest. Renowned classical theorists whose equality theories are based on the belief in the primacy of human passions include Jeremy Bentham, John Stuart Mill and Thomas Hobbes.

The second general assumption under which classical liberal theories of equality can be categorized assumes that humans are equal in their ability for potential rationality.[3] Theorists believing in this latter assumption believe that humans are not guided exclusively by the need to satisfy their passions but, are also graced with the ability to think (reason)

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[2]Once money has been introduced and accepted in the society.
[3]Potential rationality implies that humans can learn rationality.

about and thereby choose their course of action. Renowned classical liberal theorists whose human equality theories are based on the belief in fundamental human potential for rationality include, John Locke, Jean Jacques Rousseau and Immanuel Kant. Theories stemming from the rationalist school of thought are of primary importance for the purpose of this work.

Theorists from the rationalist school agree that humans chose to leave the state of nature, where they enjoyed absolute freedom, and enter the civil state as a means to self preservation. Upon leaving the state of nature, humans agreed to cede absolute liberty and by so doing, to give power to the newly established state apparatus. As stated by Locke

> nobody in the state of nature had a power to execute that law [natural law] and thereby preserve the innocent and restrain offenders. And if anyone in the state of nature may punish another for an evil he has done, everyone may do so, for in that state of perfect equality were naturally there is no superiority or jurisdiction of one over another...[4].

The amount of liberty to be ceded to the state, and the amount of power legitimately wielded by the state is a central point of contention among liberal theorists of the rationalist school; particularly between John Locke and Jean Jacques Rousseau.

Section 1: Equality and Liberalism - Classical Debates

The Civil State: John Locke

John Locke (1632-1704) is known to be the father of modern liberalism in the western tradition. The Second Treatise of Government, Locke's seminal work, establishes Locke as the first liberal theorist to, not only rely on a liberal method for elaborating his theory, but to also legitimize what is currently defined as the modern liberal state. Secondly, in the Second Treatise of Government Locke, through his discussion of liberty in the civil state, establishes himself as the first philosopher to apply the ancient concept of natural law to

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[4] Locke, John Second Treatise of Government (ed. C.B. Macpherson). Of the State of Nature #7.

the modern notion of individual rights.[5]. Finally, Lockean theory includes a framework for the elaboration of a social contract. According to Waldron[6] the Lockean social contract was developed to establish a degree of reciprocal obligation between the citizen and the civil state.

The key equality assumption within Lockean liberalism is that all individuals are born free and as such, are entitled to perfect freedom. However, the individual is not entitled to unrestrained license within the state of nature, as there exists a natural law "which obliges everyone: and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions ...".[7]

Lockean theory further states that

> the only way whereby any one divests himself of his natural liberty, and puts on the *bonds of civil society* , is by agreeing with other men to join and unite into a community for their comfortable, safe and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it. [...] When any number of men have so *consented to make one community or government* , they are thereby presently incorporated, and make *one body politic* , wherein the *majority* have a right to act and conclude the rest.[8]

Within the context of Locke's said inalienable individual rights to life, liberty and possessions (mainly of property), and his support of a rationality postulate focusing on the satisfaction of individual self-interest, Locke establishes that people are equal not only in their right to rationally pursue their passions (understood as the motivation to act in one's

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[5]It is important to remark that classical liberal theorists did not all use the same terms to refer to the transition from the state of nature to the 'modern state'. Locke referred to the transition as moving from the state of nature to 'political society'; Rousseau spoke of the 'civil society'; Kant referred to the social state' regulated by righteous laws; etc..

[6]Waldron, Jeremy. 1987. "Natural Rights in the Seventeenth and Eighteenth Centuries". Nonsense Upon Stilts. Jeremy Waldron (ed.). London: Methune.

[7] Locke, John Second Treatise of Government (ed. C.B. Macpherson). Of the State of Nature #6.

[8]Locke, John Second Treatise of Government (ed. C.B. Macpherson). Of Political or Civil Society #95.

self-interest), but also in their right to enjoy (at least the potential) to obtain certain definable goods. As such, it is important to note, that despite his support of majority rule, Locke confines such rule as well as state power, within the boundaries of his said inalienable rights.[9] In sum, "sovereignty in Locke is constrained at the very time it is popularized by the assumption of human rationality: Participatory rights are equalized among rational beings, but democratic decision-making is constrained within the bounds of the principles of political right."[10]

A significant component of Locke's notion of the right to possession, is his belief in the right to self-ownership. The right to self-ownership implies that one individual may not enjoy rights over another individual without the permission of the latter. Self-ownership works in conjunction with the Lockean rationality postulate, which implies that the individual will consistently undertake actions to satisfy her own desires and realize her conception of the good life; the rational individual, in all conditions remains the best judge of her own self-interest.

Discussing Lockean self-ownership and rationality, Guttman argues that because people are rational beings, they can be assumed to be responsible for their own actions; and can further be considered as the moral and factual owners of their actions.

> They [rational individuals] have the right to do what they will so long as
> they do not infringe upon another person's equal rights to life, liberty or
> possessions; and as mature persons, they are presumed responsible for the
> harm as well as for the benefits accruing from their actions. [...] Property
> rights thereby become a metaphor for human rights.[11]

The third and final element of Lockean liberalism of interest here, is his elaboration of a social contract to guide interrelationships in the civil state. Hinged on reciprocal obligation

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[9]Gutman, Amy. 1980. Liberal Equality. New York: Cambridge University Press. Pg. 29.
[10]Ibid.
[11]Ibid. Pg. 31

between the individual and the powers of the civil state, Locke's social contract obliges the state to establish "legislative power as the first and fundamental natural law [of the civil state] which is to govern even the legislature itself."[12] The purpose of legislation is to guarantee that the primary motivation for entering into civil society, i.e. the full enjoyment of property in peace and safety, is realized. As the wielder of legislative power, it is the responsibility of the state to orient state policies in such a way as to realize this goal.

In return for the state seeking to maintain a climate conducive to the enjoyment of liberty and property, the individual is obliged to cede the power of absolute liberty to the state; and to abide by her decision to do so. The "legislative is not only the supreme power of the commonwealth, but sacred and unalterable in the hands where the community have once placed it."[13]

In sum, the Lockean social contract which is fundamental to the Lockean civil state (the legislators), has a binding effect on individuals who have agreed to curb their individual freedom and on the state, to the extent that it must maintain order and a comfortable level of security within the established society. As a political construct and an artificial institution however, the governing body must not forget its primary role; i.e. "to produce the conditions under which individuals have the broadest possible choice in deciding upon their definition of the good life...to create social conditions which encourage the broadest possible individual choice".[14] Should the governing institution fail to meet their end of the bargain, (in theory) the population is within its rights to rebel.

Lockean liberalism promotes a society which is governed via legislative decree based on rights; understood for the most part, to refer to liberty and property rights. Locke believes

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[12]Locke, John Second Treatise of Government (ed. C.B. Macpherson). Of the Extent of the Legislative Power #134.
[13]Ibid.
[14]Axworthy, Thomas. 1982. "Liberalism and Equality". In Morals, Politics and the Inflation of Human Rights. Windsor: Yearbook Access to Justice.

that legislation (law) elaborated as per the mandate given to the civil state, is able to ensure that the self-interest of individuals will be equally regarded and as such, the individual enjoyment of property will be equally assured. Locke's belief that laws are able to guarantee equal consideration for each individual's interests, and his rationality postulate which dictates that rational individuals will always maximize their own self-interest, do not adequately indicate what obligations the state or wealthy individuals have toward those in society with naught to enjoy. Locke's social contract identifies the reciprocal relationship between individuals and the state, but fails to account for obligation / patterns of interaction among individuals living in civil society.

The Social Compact: Jean Jacques Rousseau

Jean Jacques Rousseau too established a social contract (compact) in his theory regarding human evolution from the state of nature to the civil state. Resembling Lockean liberal theory at its base, Rousseau's social compact develops the conception of rational morality rather than rational self-interest, as well as the pursuit of justice over the pursuit of possessions.

Whereas Locke identified self-interest and the maximal enjoyment of property as the primary catalysts to the establishment of the civil state, Rousseau charges that the departure from the state of nature was a means to preserving the equal liberty of all individuals and to encourage 'man' to develop himself and transform from an instinctual being to an intellectual being.

The family is identified by Rousseau as the only natural society where children are bound to their 'father' only so long as they require care and protection. Once such protection is no longer needed, "... the natural bond is dissolved. Once the children are freed from the obedience they owed their father [in a sense repayment for his protection] and their father

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is freed from the care he owed his children, all return equally to independence."[15]

According to Rousseau, if any relationship remains once both parties within the family have returned to equal independence, such a relationship is maintained on a volunteer basis. As such, the fundamental basis for, and nature of human existence in Rousseau's theory is "common liberty,"[16] where the civil laws (legislation) are primarily concerned with the maintenance of such liberty; "since all are born free, none give up their liberty except for utility".[17]

As the only natural society in Rousseauian liberalism, the family structure is used as a prototype for political (civil) society. The fundamental difference between a family and a state according to Rousseau, deals with the reasons why care and protection are provided. Within the family, "the love of the father for his children repays him for the care he takes for them, while in the state, where the leader does not have love for his peoples, the pleasure of commanding takes place of this feeling."[18] The basis of Rousseau's theory is therefore entrenched in a solid belief in the equal independence of individuals in both the natural state and in political societies. The fundamental compact in Rousseauian theory is that of natural equality, also understood as equal independence based on rational intellectualism in the civil state.

Civil society from Rousseau's perspective, evolved as a result of obstacles which were harmful to 'men' in the state of nature. For the most part, obstacles are defined as the illegitimate pursuit of authority and power by certain individuals in the state of nature. The result is a threat to equality of independence and liberty. The decision to enter civil society required that,

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[15]Rousseau, Jean-Jacques The Basic Political Writings (trans. Donald A. Cress) pg. 142
[16]Ibid.
[17]Ibid.
[18]Ibid.

> Men [would] have reached the point where obstacles that are harmful to
> their maintenance in the state of nature gain the upper hand by resistance to
> the forces that each individual can bring to bear to maintain himself in that
> state. Such being the case, that original state cannot subsist any longer, and
> the human race would perish if it did not alter its mode of existence.[19]

The birth of the civil state is identified as a consequence of individuals working to build a

cooperative and cohesive unit so as to counter illegitimate attempts at domination and

thereby challenges to equality of liberty.

Like Locke, Rousseau believes that upon entrance into the civil state, individuals agree to

divest themselves of absolute liberty and power over their destiny. As stated by

Rousseau, the social compact which forms the basis of civil society, transfers power from

the individual to the body politic; which enjoys absolute power over all its members and

requires that

> each of us places his person and all his power in common under the
> supreme direction of the general will; and as are we to receive each member
> as an indivisible part of the whole.[20]

Rousseau however emphasizes the fact that the absolute power of the body politic is

contingent on the perpetuation of the fundamental (social) compact; i.e. the maintenance of

equality of independence and liberty.

Though in the civil state the individual relinquishes her right to absolute liberty, she in turn

attains what Rousseau perceives to be significant benefits. In civil society indi duals are

encouraged to exercise and develop their intellectual capacities, broaden their ideas and

ultimately to "be transformed from a stupid, limited animal into an intelligent being and

man."[21] Upon entering civil society, there occurs a substitution of "justice for instinct in

his behavior and his actions are given a moral quality they previously lacked."[22] The

result is the replacement of impulse with a deeper sense of duty and a stronger reliance on

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[19]Ibid. Pg. 147
[20]Ibid. Pg. 148
[21]Ibid. Pg. 151
[22]Ibid. Pg. 150

rational contemplation prior to action. Unlike Locke who believed that self-interest followed the individual from the state of nature to the civil state, Rousseau believes that the civil state brings about a change in human motivations; issues of justice and the common good supersede self-interest and individual rights to a significant degree.

The gains which compensate for that which is lost in the transition from the state of nature as described by Rousseau are: civil liberty and the proprietary ownership of all that the individual possesses. Rousseau is meticulous in making distinctions between that which is lost upon entrance into civil society and that which is gained:

> natural liberty (which is limited solely by the force of the individual involved) [is lost] and civil liberty (which is limited by the general will) [is gained], and between possession (which is merely the effect of the force or the right of the first occupant) [is lost] and proprietary ownership (which is based solely on positive title) [is gained].[23]

Unlike in Locke's civil state, the purpose of the civil state in Rousseau's framework is to work for the common will — equally understood as the common good. It is therefore imperative for the general will to be articulated adequately. To this end, Rousseau claims that there should exist no partial society in the civil state and each citizen within the state should be able to make decisions based on their own conscience. Homogeneity is ideal, in that it facilitates the work of government; however, absolute homogeneity is recognized as unrealistic. As such, should partial societies exist within the state, Rousseau supports the multification of their numbers and the prevention of inequality among them.[24]

In Rousseau's theory (as in Locke's), the civil state is the result of a voluntary commitment on the part of individuals to divest themselves of power. The nature of the compact in civil society requires that every act by the state (i.e. every act sanctioned by the general will) obligate and favor all citizens equally. Such a result requires that the state

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[23]Ibid.
[24]Ibid. Pg. 156

regard all citizens as an aggregate, and refrain from drawing distinctions among the components of the aggregate. Based on this latter statement, equal treatment by the state in Rousseau's thought appears to support treating all citizens the same in order for treatment to be considered equal. However, reflecting on his sentiments regarding the treatment of 'partial societies' in the state, indicates that Rousseau actually favored fair treatment (equity) over the sameness of treatment, as the standard by which to judge equality in the civil state.

In sum, Rousseau's social compact theory and conception of the civil state does not destroy natural equality, understood as the fundamental (social) compact. Rather, the social compact substitutes "a moral and legitimate equality to whatever physical inequality nature may have been able to impose upon men, and that, however, unequal in force or intelligence they may be, men all become equal [in the civil state] by convention and right."[25] To achieve such equality, Rousseau supports the fair treatment of individuals in the civil state. Fairness and justice constitute the criteria of equal treatment in Rousseau's theory; such treatment may or may not mean that individuals are treated the same by state policies and decisions.

Over the past several pages, the theories of two of the pillars of classical liberal theory, John Locke and Jean Jacques Rousseau, have been explored. Both believe that absolute liberty and equality were central to existence in the state of nature. Both also agree that passing from the natural state to the civil state required the curbing of liberty and individual power, and the voluntary allocation of individual power as a means to legitimizing the newly formed state. Despite these similarities, several fundamental differences exist between the theories of Locke and Rousseau; it is to these differences we now turn.

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[25]Ibid. Pg. 153

Classical Debates: Points of Divergence

The differences between the theories espoused by Locke and Rousseau can be divided into two categories: (1) differences in relation to the conceptualization of the role and motivation of the individual in civil society; and (2) differences in the role and responsibilities of the state in civil society. These areas of divergence are important not only in and of themselves, but also because they constitute the foundations upon which contemporary debates concerned with liberal theory are constructed.

In relation to the roles and motivations of individuals in civil society, as discussed at length above, Locke believes that rational self-interest is the primary factor which guides human decisions in both the state of nature and the civil state. Locke is convinced that individuals will always act in, and are most preoccupied by what is in their self-interest. Entitled to the maximum pursuit of their self-interest at all times, the rational individual will always seek to maximize what is best for them. In legitimizing the individual's pursuit for the satisfaction of their self-interest, Locke is simultaneously legitimizing inequalities (mainly of property / possessions) within the civil state.

Conversely, Rousseau believes that once individuals become citizens of the civil state, they become concerned not only with what is best for them, i.e. what is in their self-interest, but also with issues of rational morality, i.e. justice, fairness and the maintenance of equality standards, not only in relation to possessions but also in a more general sense.

Consideration of the role and responsibilities of the state, reveal differences between Lockean and Rousseauian theories first, to the extent that the state is able to exercise its power; and secondly, in relation to what ends that power is legitimately wielded. As a believer in the minimal, legislative state, Locke perceives that the primary responsibility of the state is to act as a guarantor of individual rights (understood to refer largely to the right

to property). Consequently, the state has no legitimate authority to equalize the distribution of possessions in the civil state, as such action would compromise its role; which is to ensure that the rights of the individual are not transgressed.

Rousseau regards the role of the state to be that of an equalizing force in civil society. For Rousseau the civil state's primary responsibility is to act as a guarantor of the common good, even when the common good infringes on individual rights.[26] From Rousseau's perspective, the state has legitimate jurisdiction over the distribution of goods based on notions of justice.

Differences of opinion regarding the roles and responsibilities of the state can be summarized as being oriented for the most part, around whether the state's role is that of an objective legislator sanctioned as the guarantor of individual rights; or a moral institution aware of the common good and sanctioned as a distributor of justice. Human rationality–based on self-interest or justice, predetermines what the role of the state will be.

The era and environment in which Locke and Rousseau wrote, significantly impacted the tone and hidden assumptions within their work. Historical documentation serves as evidence to the fact that the European continent on which these philosophers lived, was tainted with both formal and institutional inequalities which by contemporary standards would be considered not only immoral but also illegal. Numerous examples of institutionalized inequalities which may have influenced the theories of Locke and Rousseau are apparent without much reflection. Of interest here however, are those issues or environmental factors which may have specifically influenced how Locke and Rousseau contended with the issue of ethnic and racial[27] diversity in their works.

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[26] Infringements of individual rights always consider the elements of the fundamental social compact.

[27] Racial designations in a biological sense, are strongly abhorred by the author, who believes that there exists but one race – the human race. However, designation by race is commonplace in contemporary social, political and policy discussions. As such, because this work is not intended to refute the use of

Classical Liberalism: Diversity Issues

As a result of the social and political context within which Locke and Rousseau undertook their treatises, their theories fail to clearly and precisely define and/or deal with issues of racial and ethnic diversity. This conclusion is drawn based on two criteria: First is the limited definition of the individual during the era in question; and second is the consequent assumption of ethnic homogeneity inherent in the work of both theorists.

In the Second Treatise of Government by Locke and On the Social Contract by Rousseau, 'man' is the rational entity choosing to forsake the state of nature and opting to enter civil society. Not to be confused with the contemporary literary convention (which is quickly losing favor) of using masculine designations to refer to humans in general, the term 'man' in the work of both Locke and Rousseau carried a considerably more restrictive definition.

In classical theory, 'man' was defined as an individual of the male gender, with a Caucasian racial designation, and a pre-determined level of property and wealth (i.e. from a wealthy class). As such, when Locke and Rousseau refer to 'man' choosing to enter the civil state and agreeing to abide by either the rule of law or the social contract, they are making the designation 'man' synonymous with the that of citizen. The implication of establishing such an equivalence is, that if only 'man' is bound by the established code of conduct in the civil state, then those who are not included under the designation, generally the least advantaged (e.g.. the poor, women, humans held in chattel bondage, etc.), are not actually included or involved in the agreement to enter the civil state. The consequence to these marginalized groups are two fold: first, they do not benefit from the gains of entering the civil state; and secondly, in theory at least, because they do not share in state awarded the rewards, they are not obligated to the said state in any way.

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such designations, and readily accepted alternatives do not exist, the concept of race will be used and defined in its conventional socio-political sense.

The second criteria (a consequence of the first) contributing to an inadequate consideration of ethnic and racial diversity in classical liberal theory is the assumption of population homogeneity. Despite that the existence of a mono-racial (homogeneous) society[28] is questionable at best and highly improbable at worst, limited definitions of the individual and thereby the 'citizen' in civil society, impacted the way in which the pool of potential citizens were perceived and defined (i.e. they had to fit the limited criteria explained above). Restricted citizenship pools and thereby the allocation of citizenship rights, rewards and duties, resulted in narrowed assumptions regarding patterns of future population development. Because 'citizens' of Europe during the 16th and 17th centuries were for the most part, from a homogeneous population (wealthy, Caucasian, males), little consideration was given to the possibility that the demographic makeup of the European population would change to become more ethnically diverse – specifically in relation to an increase in visible minority composition. The transfer of narrow European assumptions to the Americas can be explained by recalling north America's colonial origins.

Moving the discussion forward to include the issue of national identity, sentiment and affiliation, if the social contract and citizenship status constitute the basis upon which civil society is to function, is it not reasonable to conclude that in order to perpetuate a civil society with a strong sense of nationhood all who exist within the boundaries of the civil state must enjoy full citizenship (privileges and duties) as a matter of both right and justice? Is it not also reasonable to conclude that should full citizenship not be enjoyed by all, any national identity, sentiment or affiliation on the part of those excluded from citizenship is unlikely, resulting in a failure to derive a comprehensive nationalist identity?

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[28]Society is defined here by the conventional western definition. It is acknowledged that other cultures have diverse social categorizations (e.g.. tribes, castes, bands, etc.).

As explained above, liberalism is the paradigm within which mainstream contemporary western social and political debates are elaborated. Mainstream liberal thought is identified via a belief in methodological individualism, the support of social justice (to a greater or lesser degree) and the belief in the legitimacy of the Lockean state.[29]

Contemporary liberal philosophers and their theories, are ascribed more numerous designations than were liberal theorists during the classical era. Contemporary theorists regard classical liberal thought as a hotbed from which they are able to select theoretical elements which will serve to derive new conceptions of liberalism. Classical liberal theories were categorized based on the philosophers' assumption regarding human motivation (i.e. motivation by passion or by rationality), and further according to the primary pre-occupations of individuals upon entering civil society. As explained above, both Locke and Rousseau are promoters of the assumption that individuals are motivated by rationality. However, they differ in their interpretations of what constitute the primary pre-occupations of individuals once they enter the civil state: Locke contends that the central pre-occupation of the rational individual in the civil state is (remains) the satisfaction of individual self-interest through exercising individual rights. Conversely, Rousseau contends the rational individual, once a citizen of the civil state will be primarily concerned with issues of morality, justice and the common good. The roles assigned to the state by each theorist (either as the guarantor of individual rights or the guarantor of

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[29]Gutmann and others identify Lockean liberalism as the archetypical liberal theory because it justifies a liberal state as it is comprehended in the conventional sense. The conventional liberal state is characterized by a "(1) constitutional government within a legalistic framework, (2) representative democracy, and (3) systems of equal liberty and opportunity". Taking into account Locke's criteria, it is fair to identify Canada as a modern liberal state with its constitution dating back to 1867, its parliamentary system and the entrenchment of the Charter of Rights as a means to guaranteeing equal liberty and opportunity.

morality and justice) are pre-determined based on the orientations of the individual in civil society.

Contemporary liberals are referred to by several designations depending on which classical theorist their work is most closely modeled after, and the degree to which they emphasize specific elements of classical theory. Libertarian liberalism and egalitarian liberalism are two contemporary bodies of liberal theory which provide important perspectives on equality in the modern liberal state. Over the next several pages, debates regarding the contemporary notions of equality will be regarded. To this end, the work of Friedrich A. Hayek, a noted libertarian; as well as the work of John Rawls, the most renowned contractarian-egalitarian of our era, will be considered. The purpose of examining the work of these theorists is not to reveal the potential inconsistencies of their arguments, but rather, to explore how theoretical debates concerned with the issue of equality have evolved since the classical era; determine where the equality discourse stands in a theoretical sense; consider where the equality debate stands in the Canadian state and how it must further evolve in order to encourage more consideration of ethnic diversity, and thereby encourage the full incorporation of all citizens of the Canadian state.

The Libertarian Perspective

Libertarians base their state doctrine for the most part, on the classical philosophy of John Locke, much like conservatives do. However, for several reasons which will be subsequently elaborated upon, libertarians cannot be identified as sharing other philosophical attributes with traditional conservatives. Libertarian social and political theory maintains the primacy of the individual and individual freedom, which is guaranteed as per the rule of law. The rule of law in the civil state is, from the libertarian perspective, a simple transfer of natural law from the state of nature to the civil state. Such a perspective disallows legislative power within the libertarian state. Further, the libertarian

position hinges on its definition of the legitimate state; i.e. a minimal structure which functions as no more than an enforcer of individual rights. Extreme libertarian perspectives (which will not be dealt with here) go so far as to claim that no state can be legitimate unless actual rather than hypothetical consent is obtained from the citizenry.[30] The assumption within libertarian thought is that whereas previous generations may have consented to live under the power of the state, current populations have entered no such agreement and as such are not bound by state rules of order and conduct.

Generally considered to lie to the far right of the liberal political spectrum, libertarians differ from traditional conservatives in that they do not accept the rule of law, as defined through legislation, as the foundation upon which society is ordered. This is demonstrated in their lack of support for state intervention in private morality issues. Such issues include prostitution, illicit drug consumption, sexual perversion, etc.; so long as individual participation in these activities does not interfere with or harm others, libertarians believe that an individual's personal resources are theirs to do with what they please.

Though highly supportive of individual rights and the freedom to exercise those rights, libertarians are skeptical of the state's inclination toward stockpiling military hardware and maintaining easily mobilized military forces, under the guise of protecting individual rights through the protection of boundaries. Libertarians are equally skeptical regarding the significant monetary expenditures justified by the state in the name of defense.

Finally, libertarians differ from conventional 20th century liberals in that they do not believe in social justice; they perceive the welfare state to be naught but a system of robbery disguised as law. Libertarian disdain for the welfare state, as well as their perceptions regarding the primacy of individual rights and the minimal / ultraminimal role

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[30]This in reference to the social contract presumably conceptually entered into upon transferring from the state of nature to the civil state.

of the state, provide insight into their positions on issues of contemporary importance. What remains at issue is the libertarian perception of equality.

The Minimal State: Friedrich A. von Hayek

Friedrich A. Von Hayek in this work entitled The Constitution of Liberty provides a quintessential libertarian argument on the issue of equality. A strong supporter of unmitigated individual rights, and the legislative enforcement of the rule of (natural)law as a framework for guaranteeing such rights, Hayek argues that the only legitimate equality in the civil state is equality before the law. From Hayek's perspective, state legitimacy may only be extended beyond the rule of law, to include changes to those rules voluntarily entered into by individuals living in the civil state.

Similar to several theorists from the Lockean tradition (i.e. promoters of a rights based discourse), Hayek perceives the right to absolute liberty as the preferred condition for human existence. Implicit in such a belief system is the acceptance of inequalities among citizens. Hayek states that the "extension of the principle of equality to ... the rules of moral and social conduct is the chief expression of what is commonly called the democratic spirit — and probably that aspect of it that does most to make inoffensive the inequalities that liberty necessarily produces."[31] In fact, Hayek charges that equality of the general rules of law and conduct is the only kind of equality which is conductive to liberty and which can be secured without bringing about the destruction of liberty.[32] Abiding by the rule of law, which guarantees individual liberty is the sole justification for the existence of equality by any definition; and this, because of the benefits reaped from individual liberty. From Hayek's perspective "if the result of individual liberty [i.e. results which contribute

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[31]Hayek, Friedrich A. 1960. The Constitution of Liberty. Chicago: University of Chicago Press.
[32]Ibid.

to power, privilege and prestige] did not demonstrate that some manners of living are more successful than others, much of the case for it would vanish."[33]

Hayek takes what he identifies as egalitarian arguments in support of more far-reaching equality to task on several fronts. Three areas of argument are relevant here: First, is a discussion of the relationship between equality before the law and the notions of factual equality and material equality are considered. Second is a discussion dealing with the boundaries of state legitimacy in applying coercive force as a means to deriving desirable changes in society, should such force infringe upon individual liberties. Elemental to this discussion is the rejection by libertarians of what is perceived to be a pre-determined pattern of distribution in society. Third is a discussion of Hayek's charge that egalitarian aspirations extending beyond the rule of law are fundamentally enmeshed with envious sentiments, (i.e. those who fail to use their personal power to exercise their rights fully are envious of the power, privilege and prestige enjoyed by those who do).

The claim of factual human equality (i.e. the truism that 'all men are born equal') familiar in such documents as the American Bill of Rights, irks Hayek and other libertarians who perceive such statements to be false because they fail to adequately consider individual differences. Believing the only legitimate equality is that of equality in the application of general rules of law, Hayek emphasizes the pressure placed on government to ignore other forms of equality and to exercise its only legitimate role, i.e. to regard all individuals in the same manner under the law and within the constraints of liberty preservation as a means to guaranteeing individual rights. In sum, equal treatment from the libertarian perspective is defined as treatment which is 'the same', regardless of social position or individual differences. The issue which arises from a critic's standpoint, is whether human differences are adequately reconciled with the rule of law as defined by Hayek, so as to

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[33]Ibid.

ensure that individuals in the libertarian state are not systemically singled out because of individual differences; the consequence of which is the failure to benefit from the undifferentiated application of law. Libertarians contend that human differences are indeed adequately considered within the libertarian framework.

Listing the numerous way in which each individual is distinct from the next, Hayek charges that "the widely held uniformity theory of human nature, which on the surface appears to accord with democracy...would in time undermine the very basic ideals of freedom and individual worth..."[34] As such, differences do not warrant differential treatment, as such treatment would jeopardize the libertarian state, and ultimately the existing hierarchies which exist therein.

Libertarians concede that individual differences subjected to equal (same) treatment by the government will undoubtedly lead to material inequalities among individuals. However, such inequalities are not undesirable as they exist as a result of individual volition. The only way to ensure material equality is, from Hayek's perspective, to treat individuals differently — an option not available in the libertarian framework because of the perceived threat it would pose to liberty. As such in a libertarian state, it is concluded that there exist distinct relationships between equality before the law, factual equality and material equality.

In sum, because factual equality is a myth in the libertarian state, one may achieve either equality before the law or material equality, but the two may not co-exist, the reason being, that equal treatment by government results in material inequality. To dispense with material inequalities, government would be forced to treat individuals differently by relying on coercive measures. Coercive force on the part of the government is permissible in certain instances, but not in the case of distributing or redistributing social wealth, i.e.

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[34]Ibid.

deriving material equality. Undertaking coercive measures in this area would not only dispute the liberty of others in society, but also challenge the legitimacy of the state which by undertaking such action, would be stepping beyond its legitimate jurisdiction.

Despite his adamant rejection of government intervention to distribute or redistribute goods in society, Hayek claims that a more equal distribution of material wealth in society is not in and of itself unappealing. Instead it is the motives of egalitarians which are to be cautioned against. Hayek charges that under the guise of social justice, proponents of material equality are in fact seeking to establish a planned system of material distribution in society which is based on subjective criteria rather than the objectivity of the rule of law.

> Our objection is against all attempts to impress upon society a deliberately chosen pattern of distribution, whether it be an order of equality or of inequality. [...] many of those who demand an extension of equality do not really demand equality but a distribution that conforms more closely to human conceptions of individual merit and that their desires are as irreconcilable with freedom as the more strictly egalitarian demands.[35]

From Hayek's perspective then, merit should not be judged based on subjective factors, but rather based on individuals' perceptions of accomplishment. In order to sustain a free society it is essential to recognize that the desirability of an object (e.g. a more equal distribution of material wealth), does not necessarily justify the use of coercion to obtain it; specifically where such coercion may jeopardize individual rights, liberty and individual accomplishment. Further, it is essential to consider the ulterior motives of those who would support an 'any means necessary' approach to deriving a desirable end.

Similar arguments are presented by Hayek in relation to discussions concerned with equality of opportunity issues. Hayek identifies the duty of government as not to guarantee the same prospect that each individual will attain a given station, but rather to make available to all, on equal terms, relevant facilities which can only be provided by government. Once such faculties are provided, it is up to the individual to do with them

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[35]Ibid. Pg. 82.

what they will — individual particularities will yield different results. Once the government makes faculties available, their role is fulfilled and any additional action would be beyond their legitimate jurisdiction.

Hayek goes further to claim that just as it is inappropriate for government to purposefully orient society toward a more equal distribution of material goods, so too is it inappropriate for government to use coercion to ensure equality of opportunity.

> This conception that all should be allowed to try has been largely replaced by the altogether different conception that all must be assured an equal start and the same prospects. This means little less than that the government, instead of providing the same circumstances for all, should aim at controlling all conditions relevant to a particular individual's prospects and so adjust them to his capacities as to assure him of the same prospects as everybody else. Such deliberate adaptation of opportunities to individual aims and capacities would, of course, be the opposite of freedom.[36]

Hayek associates equality of opportunity with the subjective notion of moral merit, i.e. the belief that

> material rewards ought to be made to correspond to recognizable merit and then opposes the conclusion that most people will draw from this by an assertion which is untrue...in a free system it is neither desirable nor practicable that material rewards should be made generally to correspond to what men recognize as merit and that it is an essential characteristic of a free society that an individual's position should not necessarily depend on the views that his fellows hold about the merit he has acquired.[37]

Where Hayek discredits the subjective value attributed to moral merit, he legitimates reward based on a more objective derivative of merit. Merit is defined as those attributes of conduct which make it deserving of praise, i.e. the individually perceived moral character of the action and not the value attributed to the action by others in society. Essentially merit is understood as the result of exploiting natural ability in cooperation with additional effort as a means to taking advantage of individual rights as guaranteed by

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[36]Ibid.
[37]Ibid. Pg. 88

conditions of equal treatment (sameness), perpetuated by a legitimate government structure.

A final allegation made by Hayek is, that those who disagree with the libertarian philosophy and maintain that government wielded coercion should in fact be utilized to derive a more equal distribution of material goods and opportunities in the civil state, are in fact driven by envy; where envy is defined as a socially undesirable passion which cannot be eliminated in a free society. In typical libertarian fashion, Hayek laments what he terms to be the modern tendency to give credence to, and gratify envy under the guise of social justice — itself a threat to freedom. Charging that should government seek to ensure that no individual enjoys any good which is of better quality, or is better suited to them, than to another, the result would be giving unfulfilled desires a legitimate claim for compensation from the community. Such an act would lead to an end of individual responsibility and consequently an end to the free society.

von Hayek: Diversity Issues

In his argument Hayek makes special reference to equality issues as they effect members of national or racial minorities. Recall that Hayek delegitimates the truism that 'all men are born equal', stating that individual human differences and the inequalities which result therefrom, are not adequate reasons for government to dispense differential treatment and consequently jeopardize the liberty of society at large. Hayek makes no exception for members of national and racial minorities, who he identifies as possessing significant individual differences which, in his view, further discounts the claim of factual equality. Despite this acknowledgment, Hayek maintains that individuals should be treated the same regardless of any differences they may possess. He criticizes egalitarians for using factual equality as the foundation of equality arguments in the interest of these populations.

> To rest the case for equal treatment of national or racial minorities on the assertion that they do not differ from other men is implicitly to admit that

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factual inequality would justify unequal treatment; and the proof that some differences do in fact, exist would not be long in forthcoming.[38]

Only by acknowledging but ignoring the differences of national and racial minorities can the free state be perpetuated.

Hayek's equality argument can be summarized as follows: First, the only legitimate form of equality is equality before the law, where law is understood as natural law not legislation and this, because such equality will preserve and promote liberty in the civil state. Factual equality is a lie and material equality is a threat to liberty. Secondly, it is the government's duty to treat all individuals the same regardless of differences — national, racial or otherwise. Finally, the government has no legitimate jurisdiction to use coercive force in order to derive a more equal distribution of materials and opportunities in the civil state. For the state to succumb to requests for such action is paramount to giving in to the demands of those in society motivated by envy (one of the most undesirable and unavoidable passions in free society), and to excuse individual responsibility. Hayek's argument facilitates the conclusion that the libertarian definition of equality is synonymous with sameness of treatment, despite that inequalities resulting in the formation of permanently disadvantaged groups is likely. Also ignored by the libertarian school, is the fact that should all elements of society not be incorporated into the system in a manner that is perceived to be fair, there still exists a threat to liberty anyway. The libertarian school, from a practical perspective, supports the existence of a hegemonic state.

Libertarians do not enjoy the final word on equality in civil society. A competing body of liberal theory is espoused by the egalitarian school of thought.

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[38]Ibid.

The Egalitarian Perspective

Whereas libertarians reject the concept of social justice, egalitarians are fundamentally concerned with this concept, and its relationship to equality in civil society. Whereas libertarians acknowledge the legitimacy of only one type of equality — equality as it relates to the application of (natural) law, egalitarians regard equality issues as embodying numerous elements and assuming various forms. For the most part, egalitarians believe that inequality is unjust in civil society and as such should be eliminated where ever possible.

Generally, egalitarians are supporters of government intervention as a means to deriving a more fair distribution of goods in the civil state. A fundamental difference between egalitarians and libertarians is the more serious consideration paid by egalitarians, to those differences which exist among individuals which may contribute to disproportionately high levels of disadvantage (or advantage) in relation to power, privilege and prestige among those individuals possessing particular characteristics.

> For the egalitarian ... everyone should have an equal voice in constructing the games. He might admit that all social systems were bound to be unfair in an absolute sense, since any system will favor one set of talents or skills over another; but if everyone has the same power as every one else in deciding what system to have, he might be satisfied.[39]

Whereas the libertarian state is most closely modeled after theories espoused by John Locke, egalitarians are more apt to support the theories of Jean Jacques Rousseau (i.e. the pre-occupation with justice, the common good and the social contract rather than individual rights, self-interest and the rule of law, in the civil state). As is the case within all ideological frameworks egalitarianism spans a continuum; for the purposes of this work,

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[39]Wilson, John. 1966. Equality. New York: Harcourt, Brace and World Inc.

extreme egalitarianism[40] will not be discussed; only those forms of egalitarianism which do not challenge the central tenets of liberal democracy will be considered. As a means to exploring the egalitarian framework more thoroughly, the work of John Rawls the leading egalitarian theorist of the 20th century will be explored.[41]

The Just State: John Rawls

In 1971 John Rawls released his seminal work entitled A Theory of Justice, the object of which was to present a model for the just society which would have practical applications in the modern state. The particular components of Rawls' theory of justice which will be relied upon to reveal his equality thesis, are his two principles of justice and his discussion of distributive justice. Rawls defines justice as representing but one of the many virtues of social institutions in the civil state.

> Justice is not to be confused with an all inclusive vision of a good society; it is only part of any such conception ... it is essentially the elimination of arbitrary distinctions and the establishment, within the [state] structure of a practice, of a proper balance between competing claims.[42]

Rawls' two principles of justice serve as a means to guaranteeing social justice in the civil state and equally functions as the basis for the social contract to which individuals in the civil state adhere. Though the two principles of justice deal with the rights of individuals, because they are intended to apply to all individuals equally, they are perceived to be in the interest of the common good. The first justice principle states, that

> each person participating in a practice, or affected by it, has an equal right to the most extensive liberty comparable with a like liberty for all.[43]

The second principle states, that

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[40]Extreme egalitarianism refers to egalitarian doctrines which, in order to be implemented as policy, would require a radical change in the western state system, i.e. liberal democracy.
[41]John Rawls is equally understood to be the leading contractarian theorist of the 20th century.
[42]Rawls, John "Justice as Fairness" Pg. 133.
[43]Rawls, John 1971. A Theory of Justice. Cambridge: Belkap Press of Harvard University Press.

inequalities are arbitrary unless it is reasonable to expect that they will work out for everyone's advantage and provided the positions and offices to which they attach, or from which they may be gained, are open to all.[44]

Taken together, these principles designate Rawls' justice theory as a complex combination of issues pertaining to liberty, equality and rewards for services contributing to the common good.

Rawls' second principle of justice is of primary importance to discussions concerned with equality because it recognizes that absolute equality in the civil state is unlikely and as such, he explains what types or categories of inequality are permissible in the just state. Inequality from Rawls' perspective (which is quintessentially egalitarian), is defined not by the differences which exist between positions, but rather by the direct and indirect benefits and burdens attributed to, and associated with such positions. Egalitarians do not object to there being a differentiation between the positions of individuals, for example between a manager and an employee, nor with the differences in power, prestige and privilege which exist between such positions. Objection is levied only when differences in the aforementioned areas fail to correspond to established rules of the game and are not equally obtainable, i.e. they fail to correspond to the two principles of justice and are consequently perceived to be unjust. Elaborated further, egalitarians object to benefits and burdens being allocated arbitrarily and disproportionately as a result of an individual possessing some specific individual characteristic.

> [T]he citizens of a country [do not] object to there being the different offices of government...each with their special rights and duties. It is not differences of this kind that are normally thought of as inequalities, but differences in the resulting distribution established by a practice, or made possible by it, of the things men strive to attain or avoid. Thus they may complain about the pattern of honors and rewards set up by a practice (e.g. the privileges and salaries of government officials) or they may object to the distribution of power and wealth which results from the various ways in which men avail themselves of the opportunities allowed by it...[45]

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[44]Ibid.
[45]Ibid. Pg. 135

Another component of Rawls' second principle is the stipulation that inequality in the modern civil state is just and therefor permissible, only if the practice will result in advantage for everyone — with the most benefit for those in the least advantaged positions in society. Despite that Rawls does not relinquish the primacy of the individual in his work, the fact that any inequality in the Rawlsian conception must benefit everyone in society (i.e. must be for the common good), constitutes a fundamental departure from the self-interested individualism promoted by libertarians.

Further, Rawls explains that the morality or concern for fairness inherent to the second principle of justice serves a particularly important role when there exist conflicting, competing claims or concerns about the design of a practice in the civil state. Debates of this kind are typically pursued by individuals convinced that justice has failed to prevail (i.e. their rights are not respected) as a result of a particular practice. The pursuit of individual rights is valid providing that it occurs within the framework of Rawls' two principles of justice. Under circumstances where competing claims must be reconciled, it is necessary to derive a fair settlement. The moral foundations of the second principle of justice facilitates the process whereby equilibrium is achieved; and this because the self-interest of each individual is limited by the orientation toward the common good as embodied in the two principles of justice. As explained by Rawls, when individuals with competing claims anchored in self-interest are searching out a fair resolution "they will settle on these two principles [of justice] as restrictions governing the assignment of rights and duties, and thereby accept them as limiting their rights against one another."[46]

As explained above, the concept of fairness is central to Rawls' theory of justice; where fairness "relates to right dealing between persons who are co-operating with or competing against one another."[47] A fair practice then, is one in which none of the parties involved

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[46]Ibid. Pg. 140-41
[47]Ibid.

feel that they are being taken advantage of, or forced to succumb to claims which they do not regard as legitimate (assuming that all parties involved possess a conception of what is a legitimate claim). In essence,

> persons engaged in a just or fair practice can face one another openly and support their respective positions, should they appear questionable, by reference to principles which it is reasonable to expect each to accept.[48]

The ability for each party, as free persons, to concede to the existence of the principles upon which the arguments of their opponents are based, also reinforces that fairness is a central component of justice. Mutual acknowledgment is necessary to ensure a voluntary community where relations are not governed by force.

Finally, justice as fairness requires that once individuals in the civil state accept that practices within the state are fair, they must agree to abide by them. Once such agreement is attained, individuals develop a *"prima facie* duty of fair play and a corresponding *prima facie* right to fair play and [are expected to] conduct themselves in accordance with the practice when they are called upon to comply."[49] Fulfilling the duty of fair play and enjoying the right to fair play requires that there exist a defacto balance of forces (power, privilege and prestige) between the parties involved.

In sum then, the principles of justice put forth by Rawls

> may be thought of as arising once the constraints of having a morality are imposed upon rational and mutually self-interested parties who are related and situated in a special way. A practice is just if it is in accordance with the principles which all who participate in it might reasonably be expected to propose or to acknowledge before one another when they are similarly circumstances and required to make a firm commitment in advance without knowledge of what will be their particular condition, and thus when it meets standards which the parties accept as fair should occasion arise for them to debate its merits. Regarding the participants themselves, once persons knowingly engage in a practice which they acknowledge to be fair and accept the benefits of doing so, they are bound by the duty of fair play to

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[48]Ibid.
[49]Ibid.

follow the rules when it comes their turn to do so, and this implies a limitation on their pursuit of self-interest in particular cases.[50]

Rawls calls for an end to regarding the conception of justice as an executive pre-occupation, and rather to regard it in cooperation with fairness, as a pre-occupation of the general population. Such a shift would acknowledge that individuals indeed deserve to enjoy equal liberty and would identify practices within the civil state as unjust should they fail to conform to the voluntary limits of fair play set by individuals party to the said state.

The preceding discussion of justice as fairness provided valuable insight into Rawls' perception of equality. The upcoming section — a discussion of distributive justice, will further thrush out Rawls' equality framework. Issues of life prospects, the influence of state institutions on such prospects, the role of equality of opportunity in altering life prospects and the application of procedural justice are all issues central to discussions of distributive justice from the Rawlsian perspective.

In its simplest form, distributive justice can be defined as studying and altering the status quo with the intention of changing how goods are meted out in society. In accordance with preceding discussions, goods within the context of this work refer to material equality, and equality of opportunity.

From Rawls' perspective, individuals left the state of nature voluntarily and agreed to the live in the civil state according the social contract which is designed to treat individuals justly, based on the two principles of justice. Regardless of just intentions, it must nevertheless be acknowledged that individuals born in the civil state are unavoidably endowed with life prospects in accordance with their social positions at birth. Life prospects are defined as being determined in part by political liberties, personal rights and the economic and social opportunities available to individuals. Birth in a given social or

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[50]Ibid.

economic class will therefor result in individuals enjoying only those social and economic opportunities available to that position should no external force act upon their situation.

> [T]he basic structure of [civil] society favors certain men over others, and these are the basic inequalities, the ones which affect their whole life prospects. It is inequalities of this kind presumably inevitable in any society, with which the two principles of justice are primarily designed to deal.[51]

In the egalitarian state, the government is permitted jurisdiction over altering the life prospects of individuals via a system of distributive justice.

The primary concern of distributive justice then, is the allotment of wealth in society; and more specifically how that allotment affects the life prospects of individuals from different social and economic positions. That inequalities of life prospects cannot be done away with in the liberal democratic state, requires that a means to minimizing and justifying such inequalities must be derived. Reconciling this dilemma requires reliance, once again on the second principle of justice, which states that inequalities in society are justified only if they are to the advantage of everyone, with the most benefit to those individuals who are worst off in society. As such, egalitarians grant the state apparatus and those to whom similar jurisdiction is extended, the power to alter life-prospect patterns via distributive and redistributive measures.

State institutions and their proxies may also play a role in altering the life prospects of individuals through reforming the social and economic systems. Reforms can take the form of special measures targeting specific populations. For example, in the case of individuals who at birth, are disadvantaged because of some physical handicap and thereby are faced with low life prospects in relation to income, the state may implement special measures programs which will help such individuals to ameliorate their life prospects.

> The social system affects the life prospects of typical individuals according to their initial places in society, say the various income classes into which

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[51]Rawls, John. "Distributive Justice" Pg. 62

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they are born, or depending upon certain natural attributes, as when institutions make discriminations between men and women or allow certain advantages to be gained by those with greater natural abilities.[52]

The power enjoyed by the state to alter life prospects, result in a fundamental problem in relation to distributive justice; that problem being state institutions and institutional practices which encourage or support differences in life prospects. Within the liberal democratic framework, it is assumed that government will seek to ameliorate rather than denigrate the life prospects of individuals; and as such will, in good faith, affect institutional changes should unjust practices be discovered.

Equal opportunity is the third issue of importance in Rawls' notion of distributive justice. It is understood that both the law and government of the egalitarian state are obligated to derive a just distribution of goods in society. As discussed above, this may be achieved through the implementation of specific policies, maintaining competitive markets, employing all available resources, distributing property and wealth widely over time and finally underwriting equality of opportunity to widely available education programs.[53]

In relation to equality of opportunity, it is essential to note government initiatives are not restricted to the realm of education; but extend, to include monetary opportunities: minimum government expenditures on child (family) allowances, unemployment insurance and other such special payments; commercial ventures and freedom in choosing employment / occupations.

> [E]quality of opportunity is a certain set of institutions [government laws, policies, procedures etc.] which assures equally good education and chances of culture for all and which keeps open the competition for positions on the basis of qualities reasonably related to performance...[54]

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[52]Ibid. Pg. 66
[53]Ibid. Pg. 69
[54]Ibid. Pg. 71

Finally, the glue which binds Rawls' distributive justice framework and which helps to derive equality in the civil state, is the element of pure procedural justice. Pure procedural justice is achieved when

> no attempt is made to specify the just distribution of particular goods and services to particular persons, as if there were only one way in which, independently of the choices of economic agents, these things may be shared. Rather, the idea is to design a scheme such that the resulting distribution, whatever it is, which is brought about by the efforts of those engaged in co-operation and elected by their legitimate exceptions, is just.[55]

Pure procedural justice is supported by Rawls because in his view, it is possible to derive procedures which will ensure that decisions taken by the state in relation to equality and life prospects are just in a vast majority of cases.[56] Those familiar with the work of Rawls will recall the cake example – used as a means to illustrating this point.

Rawls identifies a situation in which there is a cake to be divided among several individuals; the individual responsible for dividing the cake is expected to keep the last piece for herself. This arrangement provides some guarantee that the individual will divide the cake equally so as to assure she will receive as large a share as possible (assuming that the individual cutting the cake would want as large a share as every one else). In such a situation, there exists an independent criterion of what constitutes a fair division, i.e. a division whereby the last person to receive their piece of cake will, in their own interest and the common interest, divide the cake evenly so as to receive a just portion. The challenge faced by the state, is to identify similar independent criteria for justice and derive procedures which will yield outcomes of fair (just) divisions of goods in society.

In relation to equality then, Rawls' position can be summarized as being based in notions of social justice; where just procedures are derived to govern the system, and individuals' rights are dependent on both the equality of distribution in society (i.e. equality at all levels

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[55]Ibid. Pg. 77
[56]Rawls undertakes an extended discussion of perfect and imperfect procedural justice, which will not be discussed here.

of well-being) and the common good (i.e. a system of total welfare or the sum of utilities taken over all individuals). Equality of opportunity is to be actively encouraged by the state as a means to redistributing goods and ameliorating life prospects. Rawls clearly designates the social system which is most successful in these areas to be the better social system in comparison with a system which is less successful. It is important to note however, that when applied to practical situations it is realistic to expect that compromises be made between the application of distributive procedures.

> It is widely agreed for example, that the distribution of income should depend upon the claims of entitlement, such as training and experience, responsibility and contribution, and so on, weighed against the claims of need and security.[57]

The fundamental question is how these practical expectations can be reconciled in the egalitarian society; the response lies in deciphering to what ends particular policy initiatives are formulated.

> In a modern democratic state [policy] aims are to be advanced in ways consistent with equal liberty and equality of opportunity...different political views balance these ends differently.[58]

The challenge in the modern egalitarian state where equality is understood to represent a fair or just distribution of goods, is to reconcile existing divergent political views so to derive effective policies which will meet desired ends.

John Rawls: Diversity Issues

Unlike Hayek, Rawls does not specifically deal with the differences inherent to different ethnic groups. This is a significant flaw in his work as ethnic differences constitute a significant element of equality debates. Nonetheless, for the purposes of this work, Rawls is given the benefit of the doubt, and it is assumed that all of the equality measures

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[57]Rawls, John. "Distributive Justice" Pg. 81
[58]Ibid.

discussed within his theory contain mechanisms to accommodate the difficulties faced by individuals from minority ethnic groups.

With regard to the issues of national identity, the egalitarian state as described by Rawls is more apt to encourage the birth of a cohesive, inclusive national identity than is the libertarian state; reason being, that all individuals perceive a sense of fair treatment, fair play and opportunity for input.

Critics of Liberalism

Liberal theory is not without its critics; specifically in relation to its central tenets. As explained by Sarah Salter who is skeptical regarding the primacy of the individual within liberalism[59]

> liberal concepts of liberty and individuality are a celebration of freedom from definition by the invasive intimacy of feudal social norms...the central concept of liberal theory must be challenged [i.e.] the concept of the autonomous and undifferentiated individual. Every person's day-to-day experience is organized around differentiations of gender, class, race and other factors.[60]

What Salter is expressing is the reality that within liberal societies there generally exists a dominant (cultural) group which manipulates the governing institutions of that society in order to serve their own best (social, political and economic) interests. The result is the establishment and perpetuation of disadvantaged groups whose choices are systematically restricted, permitting them only limited or conditional equality and incorporation. In the Canadian state for example, the majority groups who enjoy the largest inputs in governing institutions and thereby have their needs met as a priority, are the Charter groups. Demonstration of this reality and is related impact will be discussed in chapter III of this

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[59]Other key critics of the primacy of the individual in liberalism include: Charles Taylor and Michael Sandel.

[60] Salter, Sarah "Inherent Bias in Liberal Thought" In Morals, Politics and the Inflation of Human Rights. Windsor: Yearbook Access to Justice.

work. That certain groups have more input with government and thereby have more influence over public policy decisions not only challenges the notion of undifferentiation within liberalism, but also the whole notion of consentual government under the social contract.

The legacy of inequality faced by members of the ethnic multi-variant living in Canada has profoundly affected their integration and incorporation into Canadian society and their sense of national identity as Canadians. In failing to recognize and utilize all that minority ethnic groups have to offer to the economic, social and political spheres of Canadian society and ultimately to debates concerned with Canadian nationhood, the Canadian state is shirking its responsibility to maintain an effective, efficient, fair and just society.

As will be argued below, the ideological framework guiding the Canadian state has at its roots, the elements of numerous theories of liberalism. Despite aspirations to egalitarianism, the Canadian state has failed to reconcile its practice with liberal theory. Chapter two illustrates the complex relationship between the Canadian state and liberal theory, and the legacies if inequality endured by non-Charter group Canadians as well as the foundations upon which nations, national sentiment and national identities are built.

Chapter II: Liberalism and the Canadian Identity

The Canadian state is a complex formulation of ideological tenets gleaned from the theories and belief systems discussed in the works of Locke, Rousseau, Hayek and Rawls. The Canadian state is promoted and reputed to be a just state which is respectful of the rule of law and, in which individual rights are preserved by a system which incorporates all of its citizens regardless of differences, which supports equality of opportunity and varying degrees of distributive justice. Regardless of the numerous theoretical influences acting upon the Canadian state, it continues to be categorized as a liberal state. However, because the Canadian state is created using only selected aspects of each of the theories elaborated above, a new form of liberalism is created. This form will be referred to as Canadian liberalism. The elements of Canadian liberalism which are relevant here are those of equality and equality of opportunity; specifically as they relate to the incorporation of minority ethnic groups into all strata of Canada's social and political systems and structures.

This second chapter is divided into two sections. Section 1 is a discussion of aspirations to egalitarianism harbored by the Canadian state. Illustrated using historical and contemporary examples, is the failure of the Canadian state in its pursuit of egalitarianism — particularly in relation to minority ethnic groups.

Section two is a discussion of traditional conceptions of nations, nationalism and the issues of national identity therein. Specifically, Ernest Gellner's[61] discussion of modern nationalism, Liah Greenfeld's[62] discussion of how the definition of nation evolved, as

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[61]Gellner, Ernest. 1983. _Nations and Nationalism_. Ithaca and London: Cornell University Press.
[62]Greenfeld, Liah. 1992. _Nationalism: Five Roads to Modernity_. Massachusetts: Harvard University Press.

well as Benedict Anderson's[63] argument regarding the origins of nationalism and the development of national identity, will be elaborated. Included will be a short discussion with regard to social and technological developments which tend to homogenize and/or unify the Canadian nation, and thereby influence the realization of a Canadian national identity.

Section 1: Equality and Liberalism in Canada

Representative democratic systems such as the one used by the Canadian state permits the existence of a tyranny of the majority in relation to various government decisions, as well as in relation to the application of various political and policy decisions which are not perceived to be in the interest of majority populations. Until the Canadian Charter of Rights and Freedoms was passed in 1982, equality rights were dependent for the most part, on government decisions which were in turn, based on the sentiments of majority populations as expressed through the election process and opinion polls.

The purpose of entrenching equality rights (Section 15 and Section 27) into the Canadian constitution was to present marginal groups in society, particularly members of minority ethnic groups with a sense of inclusion and incorporation into the Canadian system; by moving the equality debate beyond the uncertainty of the houses of parliament and into the constitutional realm of absolute right. Indeed on one level the right to equality in the Canadian state has become more concrete; however, it is essential that constitutional rights be enforceable in order to effectively bring about desired change. The realization that the constitutional right to equality before the law and equality of opportunity embodied in sections 15(1) and (2) of the Canadian Charter are only enforceable through the

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[63]Anderson, Benedict. 1983. Imagined Communities: Reflections on the Origins and Spread of Nationalism. London, New York: Verso.

development of concrete follow-up policy measures such as the Employment Equity Act, is essential to bringing about change in the Canadian state.

One of the areas identified by the Canadian state as requiring attention based on its equality record, as it pertained to the incorporation of minority ethnic groups, was the Canadian employment system. As reported by the Standing Committee on the Role of Minorities in Canada (1982) and again by the Royal Commission on Equality in Employment (1984), members of minority ethnic groups faced disproportionate disadvantage in employment. As such, in 1986, the Employment Equity Act was passed as the follow-up policy required to enforce the constitutional right to equality of opportunity in employment (Section 15(2)). The impact of both the Canadian Charter and the Employment Equity Act will be discussed at length in chapter IV of this work.

The Canadian State: Definitions of Equality

Prior to 1984,[64] definitions of the equality concept in Canada ran much along the lines of definitions put forth by Locke and Hayek, i.e. equality was understood to mean sameness. The assumption held by the governing structures at the time was, that in applying policies impartially, i.e. by treating all individuals the same, unbiased decision making could be claimed. In the best case scenario, the naiveté of such an assumption is evident as hindsight reveals the impact of such practices. Ultimately, in the context of the Canadian state, synonymizing equality with sameness has proven detrimental to various populations in Canada--not the least of which are members of minority ethnic groups. Since 1984 after the Abella Commission reported its findings, the official definition of equality in Canada has evolved, resulting in a rejection of the belief that sameness of treatment guaranteed impartiality in government decision making. The recognition that (ethnic) differences

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[64] The Report of the Royal Commission on Equality in Employment reported in 1984. Its findings supported those of the Standing Committee on the Role of Minorities in Canada, which published its report, entitled Equality Now! in 1982.

among citizens play a significant role in how policy decisions affect these populations, has prompted the Canadian state to embrace the more egalitarian notion of fairness as the axis of the equality concept in Canada.[65]

Central to any theoretical discussion of equality and its effect on the rights of individuals functioning in liberal societies is an elaboration of the contemporary relationship between concepts of justice, equality and fairness. Simply expressed, if fairness is central to the definition of equality, and central to the concept of justice is the fair consideration and participation of citizens within society, then equality is central to justice. What remains to be elaborated is the concept of equality as it is defined in practice as opposed to theory.

As explained above, the protection of individual rights constitutes a pivotal component of liberal theory. However, the definition of 'individual right', more recently referred to as 'human right', is in a practical sense incomplete. Individual rights as per Locke dictates that each individual, in the state of nature and the civil state is entitled to enjoy 'life, liberty and property'. In contemporary liberal theory, 'the pursuit of happiness' has replaced 'property' as the third element of the concept of individual right. This narrow definition identifies individual right as an individualist conception which fails to consider either collective needs, collective rights or the collective good. In order for individual rights to play any valuable role in deriving equality in a contemporary practical sense, a fourth element must be added to the rights trilogy: the concept of social responsibility.

As it stands, the concept of individual right leaves the onus and responsibility for exercising rights with the individual; who may not have the power or jurisdiction to see to the enforcement of these rights. What results is a situation akin to social Darwinism,

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[65]For further discussions regarding definitions of equality see: Mandel, Michael. 1989. The Charter of Rights and the Legislation of Politics Canada. Toronto: Wall and Thompson Inc. Pg. 239-308 and Rocher, François and Daniel Salée. "Charte et Société: Vers un nouvel ordre politique Canadien?". Revue Québecoise de science politique. No. 20. Pg. 35-64.

where those able to see to the enforcement of their rights do so; and where individuals constantly struggle to achieve what they perceive to be within their rights. This entire process is governed by individual conceptions of what constitutes their fair (or equal) share of desired goods. A lack of consensus as to what constitutes 'a fair share' and seeking to define 'a fair share' as individuals has resulted in those with more power enjoying a greater share than those with less power.

Preoccupation with individual conceptions of 'a fair share' results in the creation of a vicious cycle of wants; i.e. a want is identified, fulfilled and replaced with a new want in rapid succession. Wants in this case include basic needs such as those described by the first three levels of Maslow's hierarchy[66], as well as wants sought purely as a means to personal prestige, power or wealth. The result of such indiscriminate and perpetual wants is the manifestation of a negative reality where, in the perpetual quest for power and prestige, 'the strong do what they can and the weak suffer what they must'. When discussing equality within the Canadian context, the strong are represented by the dominant and dominating populations; i.e. members of the Charter groups of the male gender; and the weak by ethnic minority groups. Breaking the cycle of wants through more aggressive distributive policies will help the Canadian state to reconcile the practical Canadian reality with the standards set out in (Rawlsian) liberal theory.

In sum, social responsibility is an outbirth of a social conscience. It is the concern, interest and respect each individual must demonstrate to all other individuals living within a just society. Social responsibility is also the realization on the part of those currently able to weild power that only in safeguarding the equality of others, can they in fact guarantee of their own 'fair share' as population patterns and demographic trends continue to shift and change..

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[66]Maslow, B.G. 1972. Abraham H. Maslow: A Memorial Volume. Monterey, California: Brooks/Cole.

As established above, central to the definition of equality is fairness. Within the current Canadian political and policy contexts, fairness is defined according to how the largest and most influential constituency base chooses to define it; this reality results in equality failing to have a consistent definition despite it being constitutionally guaranteed. Functional definitions of equality, based exclusively on dominant political ideology are inadequate to produce the type of comprehensive definitions needed to realize true equality within the Canadian state, i.e. an equality framework where theory and practice are reconciled.

The underlying assumption of equality discussions is that individuals actually want to be equal. The truth, so far as there is truth, is that individuals in capitalist liberal democracies, do not want equality. Those who hold the reigns of power in the political, social and economic spheres ar ry reluctant to relinquish or share their status; choosing rather to construct artificial barriers so as to eliminate threats to their position. As explained by Salter,

> When the substance of equality consists of a majoritarian political procedure among frequently irrational participants, and when those participants have historically experienced the social patterns of an ideologically dominant group such as elite white males, then the choices made by that procedure are also likely to result in the oppression and even death of certain sectors of the populace.[67]

Where does this reality leave those who are less powerful, such as minority ethnic groups, struggling for their 'fair share'? It is at this point that concepts related to equality become imperative. When the predicament of those struggling to achieve 'a fair share' is taken into consideration, two concepts related to equality must be explored: equity and equitability.

Absolute equality, or the ability to make choices without constraints (systemic or otherwise), is a utopian ideal, which is for the most part, unattainable under current institutional structures in any liberal democratic state. What is more readily attainable

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[67] Salter, Sarah "Inherent Bias in Liberal Thought" In Morals, Politics and the Inflation of Human Rights. Windsor: Yearbook Access to Justice.

however is equity and/or equitability. The suggestion is not for equality as a goal to be abandoned, but rather, that equity and equitability be utilized as means or strategies to achieving the ultimate goal of equality.

Equity has at its foundation the guarantee of equality rights as entrenched in Section 15(2) of the Canadian Charter of Rights and Freedoms, in which each individual is guaranteed equality (of opportunity) in employment. Note, as mentioned above, that Charter guarantees are fruitless without enforcement mechanisms in the form of supplementary legislation or public policies. In the case of the Charter guarantee of equality in employment, subsequent legislative, administrative and voluntary policy initiatives have been implemented in an endeavor to enforce the right. The intent of such initiatives is to make disadvantaged (ethnic) groups more equitably represented in the Canadian labor force.

Equitability seeks to redistribute assets–abstract or concrete, with the aim of accommodating and considering those traditionally faced with inequalities. Assets may be identified as opportunities, special measures programs, financial compensation or other forms of redistributive remuneration. Implementing both equity and equitability will facilitate the reconciliation of practical elements of equality in Canadian society, with liberal based theories of equality. Such transformational measures, will facilitate the process for full incorporation of groups disadvantaged in the Canadian state, despite equality theories espoused by egalitarian liberalism.

Legacies of Inequality: Ethnic Minorities in Canada

The collective Canadian conscience elects for the most part, to distance itself from any recollection or responsibility for the legacy of inequality endured by minority ethnic groups living within the boundaries of the Canadian state. The next several pages are intended to reveal in brief, the historical inequalities inflicted by the Canadian state and endured by

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these communities. Historical contextualization is essential to legitimate subsequent calls for accountability on the part of the Canadian state and ultimately, redistributive justice for members of minority ethnic groups.

The term 'minority ethnic group' is used to refer to members of visible minority and ethnocultural communities. The policy terms 'visible minority' and 'ethnocultural community' became prevalent in the early 1980s, have persevered into the 1990s and by all indications will continue to be used into the turn of the century. It is safe to assume that these terms are attempts on the part of the Canadian state to identify non-Charter group Canadians without reverting to traditionally used (derogatory) labels such as 'chinamen', 'niggers' or 'WOPS'. There exist two plausible definitions of visible minority—that used at the federal level and that used in Quebec.

The federal definition of a visible minority as recorded in the regulations of the Employment Equity Act identify members of visible minorities as:

> Persons other than Aboriginal peoples who are, because of their race or color, in a visible minority in Canada; are considered to be persons who are non-Caucasian in race or, non-white in color and who identify themselves to an employer, or agree to be identified by an employer as non-Caucasian in race or non- white in color.

Groups considered to be members of visible minorities as per the federal definition include:

> Arabs, Armenians, Cambodians, Chileans, Chinese, East Indians, Egyptians, Filipinos, Haitians, Jamaicans, Japanese, Koreans, Laotians, Lebanese, Maltese, people of Latin, Central and South American origins, other West Indians, Pakistanis, Punjabi, Hispanics and Vietnamese.[68]

In Quebec, visible minorities are identified as:
[trans.]

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[68] Statistics Canada 1986 Census Report.

> Members of cultural communities other than those of the white race, whose mother tongue is other than French and English.[69]

Despite that it is not clearly stated, the Quebec definition also excludes Aboriginal peoples as members of visible minorities.

The term 'ethnocultural community' is a policy term which is most often used in Quebec. It is used to identify members of society who are not of French, English or Aboriginal descent. The term 'ethnocultural community' does not differentiate between visible minority and Caucasian ethnic groups.

Good intentions aside, these generalized policy terms can only be applied if certain important limitations are respected. Detailed study in fact reveal that these terms fail to accurately reflect the reality of Canadian multiculturalism and ethno-culturalism. As explained by Anthony H. Richmond (in relation to the term visible minority):

> ...the legal and bureaucratic adoption of the term 'visible minority' fails to address the complex ethno-cultural reality of the Canadian population. It implies the equation of genetically determined physical attributes (such as skin color) with environmentally influenced cultural and socioeconomic characteristic. The use of the term 'visible minority' gives a spurious legitimacy to 'racial' categorization which has no biological or social reality. Furthermore, its use obscures the very different circumstances and needs of such widely different groups as the Canadian-born descendants of Afro-American slaves who escaped via the 'underground railroad' in the 19th century, wealthy Asian immigrants, Vietnamese refugees, Afro-Caribbean immigrants and many others including Arabs and Latin Americans. It also includes Canadian-born children of these groups. No single policy or program designed to deal with discrimination, employment equity or other dimensions of economic and social justice, can respond to theses very different situations by combining them all into one category of 'visible minority'. This is not to deny the reality of discrimination and disadvantage for many people perceived as 'racially distinct'.[70]

Reading Richmond's statement, it appears that as a result of his chosen vocabulary, he himself falls into some of the same traps he is attempting to criticize. This weakness aside,

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[69] Programme d'accès à l'égalité: de la fonction publique du Québec pour les membres des communauté/s culturelles 1990-1994, pg. 8.

[70] Richmond, H. Anthony "Race relations and Immigration a Comparative Perspective" International Journal of Comparative Sociology Vol. XXXI, 3-4 (1990) pg. 166-7.

it is clear that he makes valuable observations regarding the limited application of such generalized policy terms as visible minority and ethnocultural community. For the duration of this work the term 'minority ethnic group' will be understood to refer to members of both visible minorities and ethnocultural communities (despite the limits of these terms), unless otherwise stipulated; this in contrast to the term (majority) 'Charter groups'.

In discussing the legacy of inequality endured by minority ethnic groups living in Canada, the unequal treatment of Aboriginal peoples is included. However, because of historical claims as the first peoples of north America, Aboriginal peoples are not, considered within a political or policy context as other minority ethnic groups.

In contextualizing inequalities faced by ethnic minority groups in Canada, the term race is often used.[71] It is important to note that unlike in the United States the race debate in Canada cannot be polarized into blacks versus whites; mainly as a result of Canada's historically documented ethnic diversity. To polarize the race debate in Canada would amount to leaving out integral components of the equation i.e. Canadians of Asian, East Indian, etc., descent. Such omissions are unjust as they would delegitimize the inequality endured by minority ethnic groups other than blacks living in Canada.

In her submission to the Royal Commission on Equality in Employment (The Abella Commission), Lorna Lampkin informs her readers that:

> Starting with the earliest slaughter of Indians, racism and discrimination [generally the foundations of inequality in society] have always been serious problems in Canada. Slavery, which degraded humanity across the country and involved both Indians and blacks, was another early manifestation of discrimination...It was not until the 1950s and 1960s that

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[71]Racial designations are strongly abhorred by the author, who believes that there exists but one race – the human race. However, designation by race is commonplace in contemporary government and policy discussions. As such, because this work is not intended to refute the use of such designations, and readily accepted alternatives do not exist, the concept of race will be used and defined in its conventional sense.

Canadians began to be aware of the extent of discrimination practiced in this country.[72]

Generally speaking, until the end of the second World War, the Canadian government did little to eliminate discrimination against minority ethnic groups, especially members of visible minorities. In fact the Canadian government did much to promote it.[73]

The first piece of Canadian legislation which can be identified as supporting the partial elimination of discrimination based on race, was passed by the Assembly of the Province of Upper Canada in 1793. The legislation was entitled "An Act to Prevent the Further Introduction of Slaves and Limit the Term of Enforced Servitude within this Province". The Act restricted the importation of slaves into the province and stipulated that the children of slaves already in the province, were to be freed once they reached the age of 25. The Act remained in effect for some 40 years; until 1833 when the Act of Emancipation of Imperial Parliament (the Emancipation Act) was passed. The Emancipation Act abolished slavery in all British colonies. Ultimately, because of extensive economic decline in New France, slavery diminished significantly prior to the passing of the Act.

Slavery in Canada was considerably less extensive than it was in the southern United States. However, discrimination and disharmony based on race and ethnic origin were prevalent in both the legislative and private spheres of the Canadian state. Despite that minority ethnic groups other than blacks and Indians living in Canada have never been legally reduced to the status of chattel, they too have faced significant problems in their attempts to become fully incorporated into Canadian society. These problems stem as much from government sanctioned polices and legislation as to social ignorance and racism.

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[72] Lampkin, Lorna "Visible Minorities in Canada" Report of the Royal Commission on Equality in Employment, pg. 651.
[73] Tarnopolsky, W.S. "The Control of Racial Discrimination" The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms, pg. 289-307.

Whereas the Black presence in Canada can be traced back to the 1600s and it is accepted fact that North American Indians inhabited this continent before Europeans; the duration of the Chinese, Japanese and South Asian presence in Canada are frequently questioned. In fact, their presence in Canada can be traced back to the end of the 1800s, when they immigrated to Canada for the most part, as laborers who ultimately played significant roles in building up the West.[74]   The contributions to the Canadian infrastructure made by members of minority ethnic groups living in Canada cannot be refuted (eg. Italian labor on the railways). However, discriminatory legislation is a trademark of their experience in Canada. Discriminatory legislation included "federal laws restricting immigration, provincial laws denying the franchise, restricting employment and business opportunities, restricting and segregating land ownership".[75]

Immigration policies were used as a covert tool to perpetuate racial inequality in Canada. Lampkin states that "from the eighteenth century right up to the 1960's [sic], immigration [was] a commonly employed tactic of discrimination, disallowing immigration of certain racial groups, then indirectly setting up criteria that militated against non-white immigration."[76]

A final example of the legacy of how Canadian legislation legitimated the inequality endured by Canadians from the minority ethnic groups, is the deportation and internment of naturalized Japanese and Japanese Canadians, during World War II. In 1942 when the Canadian government, in the name of wartime security "uprooted thousands of Japanese and imprisoned them in work camps...[and] Japanese who had been here for several generations had their properties confiscated and sold at ridiculously low prices".[77]   The

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[74] Lampkin pg. 652.
[75] Tarnopolsky, W.S. "The Control of Racial Discrimination" The Practice of Freedom: Canadian Essays on Human Rights and Fundamental Freedoms, pg. 289-307.
[76] Ibid.
[77] Lampkin pg. 652.

internment of Canadians of Italian descent during the same period cannot go unmentioned. Further, examples of government sanctioned discrimination are readily available.[78]

The British North America Act (now the Constitution Act) was noncommittal on the issue of human rights or anti-discrimination provisions when it was passed in 1867. In fact, according to Ian Hunter between confederation and the 1940s:

> The judiciary had not lacked opportunities to advance equality, but had preferred to advance commerce, judgments had enumerated a code of mercantile privilege rather than a code of human rights. The judiciary and the common law had been tried and found wanting. Henceforth the initiative was passed to legislators who, spurred by the revelations of wartime racist atrocities, enacted specific legislation designed to protect human rights.[79]

The first constitutional commitment to equality rights in Canada is embodied in the Constitution Act of 1982, with its entrenched Charter of Rights and Freedoms.

Section 2: Nations, Nationalism and National Identity

Any analysis of the nation-building discourse in Canada must include an exploration of how concepts of nation, nationalism and national identity have evolved to adapt to changing environments, political and social realities. Nation, understood as a western concept, is discussed as an artificial or 'imagined' social construct by Benedict Anderson and in relation to modernity by Ernest Gellner and Liah Greenfeld.

Gellner and Greenfeld argue from opposing perspectives with respect to the relationship between modernity and nationalism. Gellner argues that modernity is the cause of nationalism and Greenfeld argues that nationalism is the cause of modernity.

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[78]For a detailed discussion of racism in Canada, consult: McKague, Ormond (ed.). 1991. Racism in Canada. Saskatoon Saskatchewan: Fifth House Publishers.
[79] Kelly, John G. Human Resource Management and the Human Rights Process, pg. 110

Ernest Gellner: Homogenous Modernity

The nationalist philosophy put forth by Ernest Gellner essentially states that nations are not national entities but forms of social construction. More specifically, the nation is seen as a system of signs and associations as well as a way of behaving and communicating. Gellner believes that as a result of modernity and the technological advancements which accompany it, there will occur a homogenization of populations. Gellner sees a positive connection between modernization, nationalism and the homogenization of society. He understands the modern state to need a mobile, literate and culturally standardized interchangeable population. The goal in Gellner's modern society is to create a new nation — one of a homogenous population. As per Gellner, nationalism is not considered to be the cause of homogeneity, rather it is the objective need for homogeneity in the modern nation which is reflected in nationalism.. Nationalism is thus seen as a positive consequence of modernity.

Considering Gellner's view of nationalism in the Canadian context, one is struck by his elitist at best and eurocentric at worst, conceptualization of national identity understood within the context of his theory as a homogenized population. At issue within the context of the argument here, is Gellner's comprehended need on the part of the modern state for a culturally standardized interchangeable population. From which culture and/or social class would the accepted standard(s) for homogeneity be derived? In arguing for the inclusion of ethnic diversity in the Canadian identity discourse and within Canada's social and political structures, there is also the sub-argument being made for the valuing, accepting, integrating and adapting to the differences inherent to ethnic diversity. Gellner, in his conception of nation and national identity is demonstrably uncomfortable with accepting the perpetuation of difference as a legitimate route for the modern state.

Liah Greenfeld: The Origin of the Nation

Liah Greenfeld traces the origins of the term nation from its Latin roots to the present. Originating from the Latin word *natio*, meaning something born; the first Roman definition of nation was pejorative, in that it was used to refer to groups of foreigners from the same geographical region who, as a result of their foreign status, were considered inferior to Roman citizens. During the same period both the Greeks and Hebrews defined nation in a similar fashion.

With the establishment of common Christian universities during Medieval times, the concept of nation evolved to refer not only to a group of foreigners from the same place, but who also shared similar opinions and purpose. The negative definition of nation and thereby national identity was shed during this era. It is important to note that once students returned home, they no longer carried national designation or national identity.

A third progression in the definition of nation came with the establishment of Church Councils (traveling scholars interested in ecclesiastical discussions), which resulted in the term nation acquiring yet another meaning; that of a group of foreigners with similar opinions and purpose who represented "cultural and political authority or, a political, cultural and social elite."[80]

In sixteenth century England, the definition of nation as referring to a social elite once again changed, in that it was applied to the general population of England. 'Nation' became synonymous with 'people', and insinuated an equality of citizenship not previously recognized by preceding definitions. "This semantic transformation signaled the emergence of the first nation in the world, in the sense in which the word is understood

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[80]Greenfeld, Liah 1992. Nationalism: Five Roads to Modernity. Massachusetts. Harvard University Press.

today, and launched the era of nationalism."[81]   The first enduring nationalist identity was established.   The definition of nation evolved to mean a sovereign people of equal citizenship.

The resulting national identity is associated with a sense of inclusion as a member of a 'people', defined as a 'nation'. Membership within a nation or a people and the criteria for such membership is variable, and need not be based on "common territory, or common language, statehood or shared traditions, history or race."[82] However, certain of these elements do generally constitute components of a national identity. When considering the numerous nations existing globally, the particularism of nation and nationalism cannot be avoided. "[A]pplied to other populations and countries which like the first nation, (England) naturally had some political, territorial, and/or ethnic qualities to distinguish them, and [were] associated with geo-political baggage. [...] 'nation' changed its meaning once again, coming to signify a *unique* sovereign people."[83]

One can identify a division in the evolution of how the concept of nation was defined. The definition evolved from being negative and general (a group of foreigners), to being particular and positive (a unique sovereign people). Based on Greenfeld's discussion of nation, pluralist and ethnically diverse societies such as Canada face a unique dilemma, in that, more than one nation may coexist within the same territorial boundary (i.e. a nation may be simultaneously general and particular). This results in the presentation of significant challenges with regard to the emergence of acceptable conceptualizations of nationhood and the issues of national identity and national consciousness therein. Using Benedict Anderson's discussion of the origins and types of nationalism, it will be

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[81]Ibid. pg. 6
[82]Ibid.
[83]Ibid. pg. 9

demonstrated that within the context of Canadian nationalist discourse, the incorporation of ethnic diversity is essential to the emergence of a national Canadian identity.

Benedict Anderson: Imagined Communities

In his discourse on the origins of nationalism, Benedict Anderson defines the nation as "an imagined community; imagined as both inherently limited and sovereign".[84] Anderson defines nations as limited because, in his view they fail to be coterminous with mankind; sovereign because they are not divinely ordained, and imagined because all members will never interact directly with one another. Anderson does not however preclude the establishment of a national identity based on these realities. Specifically, Anderson argues that conceptions of nationalism and nationhood are the result of historical happenstance brought about by particular historical occurrences. These occurrences include the decline of religion, resulting in a more secular social orientation; the elimination of divine right as justification for leadership; the rise of capitalism and technological innovations, specifically in the print media; and the promotion of common vernaculars rather than elite dynastic languages such as Latin. In the Canadian context relevant historical happenstance must also include Confederation (the signing of the British North American Act) and the Quiet Revolution in Quebec. One element of Canadian historical happenstance which is conspicuous in its absence, is a period during which ethnic diversity is accepted and integrated into Canadian structures, leading to an observable consolidation, valuing and respect for such diversity.

Anderson argues that there exist two types of nationalism; he terms them 'official nationalism' — the nationalism of the elites; and 'popular nationalism' — the nationalism of the masses. Explanations regarding how the types of nationalism evolved rely heavily

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[84]Anderson, Benedict 1983. Imagined Communities: Reflections on the Origins and Spread of Nationalism, London, New York: Verso.

on the particular historical occurrences identified above. According to Anderson, the masses retain the power to legitimize nationalness since "the fundamental legitimacy of [...] dynasties had nothing to do with nationalness".[85] Popular nationalism and the resulting shift in the national imagined community is understood to be the outcome of interplay between "a system of production and productive relations (capitalism), a technology of communication (print) and the fatality of human linguistic diversity";[86] i.e. the replacement of dynastic languages such as Latin or Sanskrit with the more common dialects spoken by the masses.

Simply, popular nationalism can be defined as the empowerment of the masses to identify themselves as unique (i.e. the ability to differentiate themselves from others). Such empowerment was precipitated once technological advancements facilitated travel and access to information about what lay outside their immediate 'imagined community'. Access to information was facilitated largely as a result of language substitution and replacement Empowerment on the part of the masses threatened dynastic rule. As such, elites sought to protect their position of privilege by promoting 'official nationalism' — an attempt to reconcile popular nationalism with dynastic empire.

The character of 'official nationalism' is defined by Anderson as "an anticipatory strategy adopted by dominant groups which are threatened with marginalization or exclusion from an emerging national-imagined community".[87] 'Official nationalism' and the policies emerging therefrom, sought to include elites in the imagined national communities established by popular movements; the presence of which challenged the legitimacy of divine right as justification for leadership. Simply stated, 'official nationalism' developed

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[85]Ibid. pg. 83
[86]Ibid. pg. 43
[87]Ibid. pg. 101

after and in reaction to popular national movements proliferating in Europe since the 1820s.

The origins and types of nationalism identified and defined by Anderson affect the Canadian situation and particularly the argument in this work in three specific ways: First, technological advancement was not the exclusive means by which the boundaries of the Canadian 'imagined community' were altered. Increased immigration from non-European countries since 1967 has challenged the once homogenous Canadian population to reorient their communities (specifically in Canada's urban centers) to integrate the global influences, cultural and linguistic differences which accompany new immigrants.

Canadians have extended the boundaries of their imagined community with a view to *tolerate* difference. Further, limited population size and the lack of empowerment on the part of the these new communities did not previously require the implementation of integration measures. Tolerance and a hands off approach could work when non-European immigration was but a trickle; however with the largest immigration flows currently coming from Africa and the Asian-Pacific Rim, and immigrants being more educated and empowered, *tolerating* difference in Canada's imagined community is no longer adequate. Adapting to and integrating difference through a re-evaluation of the hegemonic tendencies of the French-English element is central to the development of an 'imagined community' in which minority ethnic groups perceive themselves to be a part, and where they are perceived by others to belong.

Second, as a result of the exclusionary nature of debates concerned with Canadian nationhood, there fails to exist an empowered inclusive popular base on which to build an 'official nationalism'. Implicit in this failure is the fact that there exist no mechanisms

designed to reconcile the interest of the multi-variants[88] which make up the masses of Canadian society, and the interests of the established French and English elites. In other words, because of the exclusion of ethnic diversity from the structures and institutional organization of Canadian society in general, and from participating in the Canadian identity discourse in particular, there exists a situation where derived symbols and other identity forming tools fail to unite the popular and elite elements of Canadian society. Within the Canadian context, Anderson's nationalisms exist as parallels rather that outgrowths, one from the other.

The third way in which Anderson's thesis impacts Canada's search for nationhood is in regard to his premise concerning the origins of nationalism. We are struck by the similarities between what Anderson defines as the historical occurrences (happenstance) leading to the evolution of nationalism, and those elements which, as demonstrated in existing literature, have had significant influences on conceptions of Canadian nationhood. Elements affecting Canadian nationhood can be divided into two types: Those which threaten a distinct Canadian identity because they tend toward continental homogenization (communications, mass media, technology, popular culture imported from the United States, etc.), and those which when elaborated effectively serve to unite the Canadian peoples, and derive a united Canadian identity (symbols, power structures, language, ethnicity, regions, etc.). Key to elaborating tools which succeed in uniting the Canadian population as a means to deriving a Canadian identity, is the full consideration and incorporation of all elements of Canadian plurality (i.e. multi-variants, specifically ethnic diversity).

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[88]The term 'multi-variants' is intended to be understood through the definition of its compound parts: 'multi' meaning many or more than one; and 'variant' meaning differing in form or details from the main one, where 'the main one' is understood to refer to the English - French dualism and the hegemonic social and political norms born therefrom. Defined in this way, multi-variants include any and all variations which deviate from established norms in the modern Canadian nationalist context (e.g. culture, religion, language, ethnicity, etc.). Within the context of this work, the multi-variant of primary concern is that of minority ethnic groups.

Demographic statistics to be presented subsequently as well as the identification of existing lacunae in the framework used to define the Canadian nation, appeals for progressive action. As demonstrated by Greenfeld's project tracing the evolution of the term nation, changing the framework within which Canada's nationhood discourse has been undertaken is not only possible, it is essential. Responding positively and progressively to changes in the Canadian environment is a first step toward recognizing, reflecting and incorporating the perspectives of minority ethnic groups.

Chapter III: The Issue of Incorporation: Facts and Reality

Canada seems slow in preparing for the challenges expected to confront the country's established social, political, economic and state structures as it is thrown into the 21st century. Globalization (of markets and otherwise), unrestrained and unregulated technological advancement, as well as ameliorated transportation and communications systems all threaten current structures of the nation-state and with it, related issues of national identity and citizenship. Preparing for the year 2000 requires a renewed examination of conceptions of Canadian nationhood and Canadian identity. Discourse pertaining to Canadian nationhood has since the inception of the Canadian state, been governed by dualist contradictions which have encouraged the evolution of a hegemonic blueprint and further, has served to suffocate any progressive examination of tertiary considerations when discussing Canadian nationhood and issues of Canadian national identity. Long-standing dualisms include French versus English, Charter groups versus minority ethnic groups, continentalism versus imperialism, urban versus rural, Quebec versus Canada, bilingualism, biculturalism, regionalism versus federalism, etc.. The most prevalent dualism in the Canadian context is that of British (English) versus French. As will be demonstrated below, since Confederation the British and the French (since the Quiet Revolution), understood to be Canada's 'two founding nations' have enjoyed economic, political and social hegemony in Canada; the consequence of which has been the marginalization of minority ethnic groups.

The dualist nature of, and the hegemonic blueprint directing the development of the discourse pertaining to Canadian nationhood, renders the discourse incapable of considering the inputs presented by multi-variants in Canadian society. Such inability incapacitates any substantive, inclusive discussion of Canadian national identity and

thereby prevents the derivation of an acceptable definition of what constitutes a Canadian identity.[89] A Canadian identity separate from that of the United States is, as illustrated by Bashevskin[90], Grant[91] and others, the most desired product of the ensuing discourse concerned with defining the Canadian nation.

The purpose of this chapter is threefold: (1) To demonstrate the hegemonic nature of the Canadian state as well as its failure to fully incorporate minority ethnic groups; (2) to demonstrate that the inclusion of minority ethnic groups in Canada's search for nationhood is not only in line with Canada's international reputation as a universal pluralist society dedicated to equality, fairness and justice but also, such inclusion is central to deriving an acceptable, just and inclusive definition of who is a Canadian (i.e. a Canadian identity separate from that of the United States); and (3) to illustrate that the statistical representation of members of minority ethnic groups in Canadian institutions and structures is a realistic means to increasing the probability that the interests of these constituents will be fairly reflected in the ensuing discourse concerned with Canadian nationhood and ultimately full incorporation will be achieved. In sum, this chapter is intended to argue for the full incorporation of ethnic diversity into all spheres of the Canadian state, using the Canadian search for nationhood as a starting point.

To undertake an argument for incorporating the perspectives of minority ethnic groups into Canada's discourse on national identity and nationhood, it is essential first to clearly set parameters for the argument. To this end, this chapter is divided into three sections.

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[89]The word identity is not intended to suggest that the author perceives a single Canadian identity is pre-eminent.

[90]Bashevkin, Sylvia B. 1991. _True Patriot Love: The Politics of Canadian Nationalism_. Toronto: Oxford University Press.

[91]Grant, George. 1965. _Lament for a Nation: The Deficit of Canadian Nationalism_. Ottawa: Carleton University Press.

Section one is a discussion of the historical parameters of the nationhood discourse in Canada and will include a discussion of why the English - French dichotomy gained primary (hegemonic) status as well as how traditional perspectives regarding Canadian nationhood are inappropriate in contemporary Canada.

The second section consists of a discussion concerning the potential for a new, more inclusive discourse pertaining to Canadian nationhood and identity. To this end, an examination of the nature and variety of plural units i.e. pluralism as it pertains to society and its structures, as discussed by M.G. Smith from Yale University will be elaborated. The central premise of Smith's argument is that pluralist societies can be defined as existing at one of three levels of pluralism: structural pluralism, cultural pluralism or social pluralism. Each level of pluralism demonstrates the limit or level to which multi-variants are incorporated into the society under examination. In exploring Smith's thesis Canada's level of pluralist achievement and incorporation of minority ethnic groups will be identified and its effect on the achievement of Canadian nationhood will be elaborated.

The final section of this chapter will set the stage for a policy discussion undertaken in Chapter IV of this work.

The central assumption here is that the Canadian government, despite its shortcomings, remains the vehicle with the most potential for developing a more equitable society and thereby an inclusive Canadian identity. To realize its potential, the federal government in elaborating nation-building strategies, must consider Canadian nationhood within a holistic framework and actively seek to ensure that minority ethnic groups are equally recognized and included in representative numbers; and this in both the development of nation-building policies and participation in the debates concerned with defining the Canadian nation conducted by academics and intellectuals. These goals for more effective nation and

identity-building strategies can be achieved by actively implementing existing distributive policies, the spirit of which are progressive and inclusionary.

The central contention is, despite policy initiatives such as entrenched equality rights and the Employment Equity Act, the spirit of which are both progressive and inclusionary, discourse concerned with defining the Canadian nation has existed within the confines of exclusionary dualisms, (all of which are governed in one way or another by the English-French dualist hegemony). Seductive in their simplicity long-standing dualist contradictions preclude any tangible consideration of issues raised by minority ethnic groups in Canadian society because the are not equitably represented in Canadian institutions. The result is a stagnation of debates concerned with the Canadian nationhood; the reality that identity discourse is neutered; and finally, that the current monopoly on power, enjoyed by those ethnic groups recognized within established dualisms (i.e. the descendants of British and French forefathers) is perpetuated.

Section 1: Historical Parameters of the Canadian Search for Nationhood

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Recognition within the context of debates concerned with Canadian nationhood is considered here to be determined by the degree to which one achieves what Weber terms the "three broad types of rewards"[92]: Privilege, defined as economic security based on employment and labor force characteristics; power, defined as the degree to which one is able to control the actions of others as measured through political participation and representation and finally prestige, defined as the degree of deference or derogation to which one is subject.

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[92]Goldstein, Jay E. 1985 "The Prestige Dimension of Ethnic Stratification" In _Ethnicity and Ethnic Relations in Canada 2nd ed._ ed. Rita M. Bienvenue - Jay E. Goldstein. Butterworths Publishing Company, Toronto 1985. Pg. 181.

Analysis of Statistics Canada 1986 census figures[93] for Canadians aged 25 - 64 years, divided according to gender, visible minority status and ethnic origin and looking specifically at (1) labor force participation, (2) the percentage of the labor force which is employed full time, (3) the percentage of the labor force which hold white collar jobs[94] and (4) the percentage of the labor force who hold a university degree or higher, reveal the following.

With comparable rates of labor force participation, levels of educational achievement and percentage of the labor force employed full time, there exists on average a significant discrepancy between the percentage of British and French descendants holding white collar positions than other ethnic groups; particularly members of visible minorities[95] (see Table I). White collar positions, according to Statistics Canada definitions include managerial and administrative occupations as well as occupations in natural sciences, engineering, mathematics, social sciences, teaching, medicine and health and artistics, literary, recreation and related occupations.[96]

Boyd[97] clearly identifies the heterogeneity of experiences among both Charter groups and members of minority ethnic groups. Based on the data presented in Table I, four primary conclusions can be drawn. First, whether one is male or female contributes significantly to how one is differentiated within the labor force. As explained by Boyd "within the groups defined by ethnic/visible minority status, women are less likely to be in the labor

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[93]1991 Census figures are not yet available as this document is completed.

[94]White collar jobs are selected because of the high salaries associated with them.

[95]The exception here is the Jewish community which enjoys the highest rate of participation in white collar positions.

[96]It is recognized that white collar jobs can be defined in a number of ways and that all do not necessarily guarantee high salaries. However on average, individuals holding white collar positions in Canada do earn substantially above the minimum wage.

[97]Boyd, Monica. 1992. "Gender, Visible Minority, and Immigrant Earnings Inequality: Reassessing an Employment Equity Premise". In Deconstructing a Nation: Immigration Multiculturalism and Racism in '90s Canada. ed. Vic Satzwich. Halifax: Fernwood.

force and to work full-time. They are more likely to have lower levels of education than their male counterparts, and they work at different occupations."[98]

Second, both men and women who are members of visible minority groups have higher rates of labor force participation than to other ethnic groups. Third, in relation to education and occupations, there exist disadvantaged non-visible minority groups particularly among foreign-born women. Croatian, Serbian, Greek, Italian and Portuguese women have low levels of employment in white collar positions. In relation to foreign born visible minority groups diverse experiences are also revealed.

> For example among women, those with South East Asian ethnicity have the second lowest rate of labor force participation, slightly below average years of education and nearly one-quarter are employed in machining and product manufacturing. In contrast, women of Filipino ethnicity have the highest labor force participation of all visible minority women and the largest percentages employed full-time. Nearly two in five are in select white collar occupations, and nearly as many have a university degree or higher. The high percentage of women of Filipino ethnicity in select white collar work reflects their concentration in health care occupations. [...]

> Women in black ethnic origins also have similar percentages employed in medical health care professions, and this too underlies the general finding that one-third of black women hold select white collar occupations.[99]

Finally, in relation to earnings, it is important to note that while women and men from visible minority groups do not monopolize low income occupations, but they are found there more often than are other minority ethnic groups.

If privilege is defined as economic security based on labor force characteristics, and British and French descendants occupy a significant proportional percentage of white collar jobs (understood to be among the most highly remunerated positions), these two populations can[100] (on average) be identified as the most privileged ethnic groups in Canadian society. Despite that Charter group members do not hold the monopoly on economic security and

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[98]Ibid.
[99]Ibid.
[100]Along with members of the Jewish community and a small number of minority ethnic groups

therefore privilege within he Canadian state as will be demonstrated below, because they enjoy disproportionately high levels of power and prestige, the claim that they enjoy hegemony within the Canadian state is valid.

TABLE I

Socio-economic Characteristics for Females and Males, Age 25-64,
by Visible Minority Status[a] and Ethnic Origins,[a] Canada 1986

	Percent			Percent Labour Force Which Is				Mean		Percent
	Living In CMA[b]	Immigrated after >1976	In Labour Force[c]	Full Time[d]	Select White Collar[e]	Service Occupation[f]	Machine Product Fabrication[f]	Age	Years of Education	With Univ. Degree or Higher
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Females										
Not Visible Minority										
British	63.8	12.1	65.4	68.8	32.1	11.7	3.2	46.5	12.8	9.6
French	66.1	13.5	65.1	77.4	41.2	15.7	5.9	45.4	12.7	9.2
Dutch	45.7	5.9	57.3	56.2	27.8	17.5	3.5	47.0	11.2	5.3
German	60.7	8.1	58.6	65.7	26.3	17.3	5.5	48.1	11.5	6.4
Scandinavian	58.1	13.0	61.3	56.6	30.1	15.0	2.9	45.0	12.5	8.7
Eastern Europe	78.2	23.0	62.1	74.5	23.5	23.1	9.7	46.2	11.8	12.9
Ukrainian	73.2	4.0	51.3	73.5	28.5	21.5	7.0	52.9	10.1	11.4
Jewish	96.0	25.2	69.1	69.6	46.7	4.0	4.0	44.6	13.6	30.9
Croatian	79.8	11.9	70.0	75.9	15.9	26.1	16.7	43.1	9.9	5.8
Greek	92.3	8.0	62.3	77.6	9.3	31.9	30.4	44.0	8.4	3.7
Italian	87.4	2.1	57.1	77.7	11.2	20.0	28.2	45.6	7.8	3.4
Portuguese	86.2	14.2	65.1	85.1	7.5	28.4	24.9	41.9	7.1	1.7
Other Europe	72.5	17.3	63.2	72.2	31.0	20.1	9.2	47.1	12.1	12.8
Other[g]	61.3	16.9	68.8	67.2	40.0	11.8	3.5	42.3	13.5	20.9
Visible Minority										
British	91.8	29.4	79.9	78.0	18.8	16.3	16.3	39.7	11.8	5.7
West Asian	89.8	52.5	58.7	77.9	29.5	11.9	10.5	40.2	12.2	20.0
South Asian	86.1	39.3	69.8	84.0	25.6	13.2	12.0	39.2	12.2	20.8
Chinese	92.5	50.0	70.4	83.9	21.8	19.6	17.4	40.5	11.4	15.7
Filipino	89.7	45.7	87.0	85.1	39.3	18.5	9.3	40.7	14.1	37.4
South East Asian	88.9	66.3	63.2	80.3	22.4	18.5	23.1	38.9	11.6	16.1
Black	95.1	30.0	83.0	82.8	32.4	18.0	13.9	39.6	12.1	7.4
Other[g]	84.1	41.8	71.6	78.5	29.7	17.0	14.3	39.1	12.5	13.6

TABLE I (Continued)

Males
Not Visible Minority

British	66.2	12.8	92.3	95.9	42.7	7.2	15.6	45.6	14.0	19.3
French	68.4	14.6	90.4	93.1	41.7	8.5	15.6	45.4	13.5	23.7
Dutch	47.0	5.3	93.4	95.8	31.5	5.6	13.7	47.0	12.4	12.8
German	62.1	6.4	91.4	94.1	28.9	5.3	20.4	48.3	12.4	12.0
Scandinavian	60.4	9.4	93.4	92.9	30.5	4.4	18.8	48.1	13.1	15.6
Eastern Europe	73.8	19.9	86.9	93.5	28.1	6.7	23.5	47.6	12.7	18.4
Ukrainian	73.3	3.1	80.7	95.8	19.0	14.1	20.4	52.3	11.1	14.8
Jewish	96.7	13.2	93.2	92.7	56.4	2.8	8.3	45.2	14.7	42.7
Croatian	79.5	6.4	90.1	94.1	10.7	6.3	29.9	45.9	11.4	7.8
Greek	90.6	8.2	90.9	94.5	17.5	35.4	16.8	44.5	9.6	6.1
Italian	86.5	2.3	91.3	96.6	15.2	9.7	20.8	46.0	9.0	5.4
Portuguese	84.5	16.3	92.6	96.6	7.7	12.4	21.6	41.2	7.9	2.7
Other Europe	73.6	16.2	90.4	93.9	19.8	8.9	20.3	46.5	13.2	16.6
Other	65.5	14.1	92.2	93.5	43.2	7.0	13.4	42.9	14.2	28.1

Visible Minority

British	93.2	20.4	93.2	92.0	27.7	9.2	31.2	42.4	12.5	7.5
West Asian	89.4	45.3	90.8	94.1	43.2	10.9	16.7	40.3	14.2	36.5
South Asian	86.4	37.3	93.4	94.4	36.4	7.3	18.4	39.8	14.2	33.7
Chinese	90.3	44.0	90.0	94.4	34.3	24.8	12.8	40.5	13.0	27.0
Filipino	92.4	45.6	93.0	95.2	29.1	10.4	26.7	39.6	14.9	41.7
Southeast Asian	86.9	67.0	87.6	92.5	29.0	12.1	25.6	37.6	13.4	28.0
Black	92.0	55.6	97.1	92.2	22.9	11.4	26.4	39.5	13.3	17.5
Other	83.2	56.9	91.7	90.9	31.1	13.1	24.5	39.4	13.6	21.8

a Single ethnic origin responses only for designated groups

b Includes Montreal, Toronto, Vancouver plus CMA's listed in footnote (c), Table 1.

c Labour force participation rate.

d Full time in 1985.

e Includes managerial and administrative occupations as well as occupations in natural sciences, engineering, mathematics, social scienc teaching, medicine and health and artistics, literary, recreational and related occupations.

f Refers to machining and product fabricating, repairing and assembling occupations.

The second element which determines recognition within the nationhood discourse, that based on power, involves a discussion of who in Canadian society possess the ability to control the actions of others. Who holds the reigns of power is clearly related to exercising the rights of citizenship as expressed through political participation. A significant component of political participation is access to the Canadian party system, in particular through the three major political parties. Such access has not always been available to ethnic minorities in Canada. As explained by Stasiulis and Abu-Laban:

> While restrictions on immigration and denial of the franchise affected some minority ethnic groups more harshly and for longer periods of time than others, one feature of the Canadian party system that has affected all minority groups has been the pre-eminence given to the French-English question by all major political parties. The hegemonic vision of Canadian society reflected within party discourse has at best reflected biculturalism and at worst Anglo-conformity.[101]

The latter statement is equally supported by Brodie and Jenson[102] and Peter.[103]

This is not to say however, that there exists no representation of ethnic diversity in either political parties or the Canadian parliamentary structure. However "the evidence suggests that even when ethnic minorities were represented...their numbers were small. Lacking a 'critical mass'...minority politicians had limited power to shape party or government policy in directions favorable to the interests of their communities".[104]

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[101]Stasiulis, Davia K. and Yasmeen Abu-Laban. 1991. "The House the Parties Built: (Re)constructing Ethnic Representation in Canadian Politics". In Ethno-Cultural Groups and Visible Minorities in Canadian Politics: The Question of Access. Vol 7. of the Research Studies for the Royal Commission on Electoral Reform and Party Financing. ed. Kathy Megyery. Minister of Supply and Services Canada.
[102]Brodie, Janine and Jane Jenson. 1980. Crisis, Challenge and Change: Party and Class in Canada Revisited. Toronto: Methune.

[103]Dahlie, Jorgen and Tissa Fernando. 1981. "The Myth of Multiculturalism" in Ethnicity, Power and Politics in Canada. Toronto: Methune.

[104]Stasiulis, Davia K. and Yasmeen Abu-Laban. 1991. "The House the Parties Built: (Re)constructing Ethnic Representation in Canadian Politics". In Ethno-Cultural Groups and Visible Minorities in Canadian Politics: The Question of Access. Vol 7. of the Research Studies for the Royal Commission on Electoral Reform and Party Financing. ed. Kathy Megyery. Minister of Supply and Services Canada. .

Ethnic representation within federal political structures has, based on contemporary data, not been anywhere near statistically representative of ethnic diversity in Canadian society. "In 1988 the total number of MPs of non-British, non-French origin had dropped [from 50 members out of 282 constituencies in 1984] to 49 out of 295 constituencies, forming 16.6 percent of the House of Commons. The vast majority of ethnic minority MPs were of European origin...with only six visible minority MPs (or 2 percent of the total number) elected in 1988. This compares poorly with the 6.1 percent of visible minorities in the Canadian population as per the 1986 census".[105] Further, based on figures released by the Canadian Ethnocultural Council, 83 % of MPs in the House of Commons are from British or French descent; this compared to 50% of the national population based on 1986 census figures.

Much has been made of the ethnic mix achieved in the forming of the 35th Parliament after the 1993 election which brought the Chretien Liberals to power. As stated in the (Montreal) Gazette on January 29, 1994

> The 35th Parliament is a sort of Global village, with MPs born in countries
> that include Greece, Lebanon, New Zealand, Philippines, India, Hungary,
> Poland and Armenia.[106]

At issue however is the representativeness of these minority ethnic groups within the parliamentary structure, particularly when members of these groups are also members of visible minorities. For instance, based on the 1991 census, the Chinese population in Canada is at 2.2% however , Raymond Chan a Hong Kong-born Liberal is the only Chinese member of parliament. Such is the case for several other visible minority ethnic groups represented in the House of Commons.

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[105]Ibid.
[106]The Gazette (Montreal). January 29, 1994 pg. B1.

There are strong arguments to be made regarding how the representativeness of minority ethnic groups can be better ensured in the House of Commons, and why the 35th Parliament is not as diverse as it purports to be. However, such arguments are beyond the scope of this work. Suffice it to say that though there exists token representation of minority ethnic groups (particularly members of visible minorities), within the House of Commons which may constitute an improvement over the past, there remain significant margins for further amelioration.

Acknowledging apparent changes in the ethnic composition in the 35th Parliament of Canada, the fact that Charter groups have been historically over represented in the federal parliament, and the fact that certain minority ethnic groups remain under-represented, lends further credence to the contention that there exists a French-English hegemony of power in Canada.

Finally, in relation to prestige, the third element of recognition within the nationalist discourse, Jay E. Goldstein in his work entitled "The Prestige Dimension of Ethnic Stratification", states that "since ethnicity has affected to one degree or another, the allocation of privilege and power in society, it is reasonable to expect that ethnicity has some bearing on prestige".[107] Goldstein, using supporting evidence from various studies, and especially a 1981 inquiry conducted by Isajiw, in which approximately 2,300 men and women between the ages of 18 and 65 were asked to rate the social standing or prestige of fourteen ethnic groups in Canada,[108] comes to the conclusion that ethnicity does affect the degree to which one is subject to deference or derogation in Canadian society. He qualifies this finding however, stating that occupation is the highest determinant of prestige. The results of the study quoted by Goldstein are presented in Table II. Notice

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[107]Goldstein, Jay E. 1985 "The Prestige Dimension of Ethnic Stratification" In Ethnicity and Ethnic Relations in Canada 2nd ed. ed. Rita M. Bienvenue - Jay E. Goldstein. Butterworths Publishing Company, Toronto. Pg. 185.
[108]Ibid.

once again that the British (English) and French elements both enjoy Good - Very Good standings with regard to prestige. Regardless, based on the qualifications presented by Goldstein and the results of Boyd study on employment patterns quoted above, it is clear that British and French descendants enjoy the highest prestige in Canadian society.

Taken together, the results of inquiry into the impact of ethnic origin on these three broad types of rewards demonstrate, that those from British and French origins rank very high in all categories when compared to other (minority) ethnic groups. As such, it can be concluded that these groups, because of their high levels of privilege, power and prestige, are the ethnic groups most recognized within the Canadian state and enjoy a position of dualist hegemony in relation to Canada's identity discourse. It can thus also be concluded that since the Quiet Revolution in the 1960s when the French element began to assert themselves within the Canadian context, there has existed a correlation between 'founding nation' status and the enjoyment of social, political and economic, privilege, power and prestige.

TABLE II

Prestige of 14 Ethnic Groups Judged by a Sample of Torontonians (n = 2,338).[a]				
Ethnic Group	Rank	X̄[*]	S D	D K. and N R [b]
English	1	3 94	86	5 8%
Scottish	2	3 66	87	11 8
Irish	3	3 59	87	14 2
Jewish	4	3 45	96	10 0
Germans	5 5	3 26	82	17 8
Ukrainians	5 5	3 21	87	20 4
Italians	7	3 13	87	6 0
French	8	2 98	.93	12 9
Greeks	9 5	2 89	85	15 7
Chinese	9 5	2 87	91	11 8
Portuguese	11	2 58	89	11 8
West Indians	12	2 01	92	13 2
Canadian Indians	13	1 87	96	18 7
Pakistanis	14	1 71	90	13 9

[*]Social standing rated on the following scale: Excellent = 5, Very Good = 4, Good = 3, Fair = 2, Poor = 1.

[b]Percentage of respondents who said they did not know a group's prestige or who did not respond.

Source: Goldstein, Jay E. 1985 "The Prestige Dimension of Ethnic Stratification" In Ethnicity and Ethnic Relations in Canada 2nd ed. ed. Rita M. Bienvenue - Jay E. Goldstein. Butterworths Publishing Company, Toronto.

Increased diversity within Canada's pluralist reality, has rendered the English-French dualist hegemony (and the norms born therefrom), which has governed and dominated traditional Canadian organization and conceptions of nationhood, obsolete. Only by adapting to, integrating and valuing the input of minority ethnic groups as significant components of Canadian society and as participants in debates concerned with building the Canadian nation will a successful, inclusive and widely acceptable Canadian identity be elaborated.

Dualist Hegemony: Binary Opposition

Canada's history is fraught with political and social analysis limited by a framework of binary opposition; generally focusing exclusively on the perspectives of "the two founding nations". As such, the search for nationhood in Canada appears to be an exemplary demonstration of the theory of social behavior developed by French anthropologist Claude

Lévi Strauss, and understood as 'binary opposition'. Despite that Strauss has been widely criticized over the past 20 years, ethnographers continue to believe that "[A]ll ethnography as a process of identifying specific human groups, is ... built explicitly or implicitly around the notion of opposition".[109]

Strauss argues that humans attach symbolic meaning to their actions and as such, their behavior can be seen as being guided by various networks of ideas and ideals which tend to focus on sharply contrasting pairs of concepts: male-female; good-bad; happy-sad; etc.. The basic organization of society thus follows from the nature of binary oppositions which are most important within a given culture or society.[110] The argument put forth by Strauss, suggests that ideas and ideals also affect the way in which social and cultural norms are established and acted out.

The dualist oppositions which have structured debates concerned with Canadian nationhood and ultimately the organization (social contract) of Canadian society since its inception (i.e. what Strauss would term the most important binary oppositions in Canadian society), are French versus English, regions versus center and Canada versus the United States. The English - French dichotomy is however understood to be at the core of all other oppositions. Analyzing literature on Canada's social and political history, there is ample evidence that Canadian society has been built on the contrasting, either directly or indirectly, of French versus English; resulting in the firm establishment of a Canadian political and social culture dominated by the pre-occupations of these two groups and excluding to a significant degree, those pre-occupations put forth by other ethnic groups.

[109]McAll, Christopher. 1990. "Ethnicity and Social Anthropology". In Class, Ethnicity and Social Inequality. Montreal: McGill Queen's University Press.

[110]Sanderson, Stephen K. 1991. Macro-Sociology: An Introduction to Human Societies. 2nd ed. Harper Collins Pub. inc.

The Myth of the Canadian North is crucial to understanding how English versus French rose as the principal binary opposition in Canadian society. The Myth of the Canadian North was largely based on the brutality of the harsh Canadian climate, and alluded to the heartiness of those who were able to survive in the 'great white north'. The assumption was that only the good and strong could survive the Canadian cold. The Myth was used by early Canadians in two specific, and in hindsight unjust ways: First the Myth was successfully put forth as pseudo-scientific evidence to systematically prevent immigration to Canada from southern countries. The argument put forth suggested that the warm climate and 'loose' lifestyle enjoyed in their homelands made southern immigrants inappropriate candidates for the cold northern climate.

Secondly, the Myth was used to perpetuate the belief that Northern Europeans were a superior race for being able to withstand the harsh climate. Both uses of the Myth sought to prevent the contamination of the Canadian state by 'lesser races'.[111] George Parkin, a Canadian imperialist in his version of the Myth of the Canadian North, explained that the cold Canadian climate served as "a persistent process of natural selection,"[112] ensuring the fittest Canadian population. Of course this Darwinist perspective was never tested, because southern immigrants were not permitted to enter Canada in significant numbers until after World War II. Further, following Parkin's line of thinking, Aboriginal populations who endured Canada's harsh winters for generations prior to colonization, would certainly be considered a race superior to the English and French.

As the first colonizers of what is today the Canadian territory, and in concert with the Myth of the Canadian North, the French and English were, in a social sense, granted primary status (i.e. prestige) because they were considered the most hearty and long-standing

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[111]For an extensive discussion of the Myth of the Canadian North see Canadian Nationalism (1966) by Carl Berger.
[112]Berger, Carl 1966. Nationalism in Canada, ed. Peter Russell, Toronto: McGraw-Hill pg. 9.

inhabitants in the cold Canadian climate. In a political sense, the reality that the French and English ethnic populations are the longest standing colonizers in North America, and enjoyed the most significant population numbers at the time of Confederation (and continue to do so), has permitted them to enjoy the privilege and power of being designated the 'founding nations'. As a result of numbers as well as the privilege, power and prestige associated with 'founding nation' status, the English and French citizenship, identity and national interests are considered of most, and at times exclusive import on a political level. Lord Durham captured the essence of Canada's historical and persistent fundamental dualist opposition and resulting hegemonic foundations in his description of Canada as "two nations warring in the bosom of a single state".

A contemporary example of the primacy of the French versus English dualist opposition is the Meech Lake Accord, the collapse of which was considered the most crucial threat to Canadian unity in the country's history;[113] Meech Lake pitted Canada's two founding nations in a head-to-head battle. As expressed by Jeffrey Simpson, a well known Canadian political journalist, the Meech Lake debate "demonstrated that the old idea of Canada as an ongoing arrangement between two large groups no longer reflected adequately the entire Canadian reality...[it]...left behind both multicultural Canadians, who now represent nearly a third of the population, and Canada's aboriginal peoples who felt excluded from the debate".[114]

The fact that the ethnic make-up of Canadian society has diversified considerably since the Canadian state was established in 1867, poses significant challenges to Canada's structural organization. Further, important questions regarding the legitimacy of undertaking an identity discourse in which French and English concerns are given privileged consideration are raised when the reality of a more diverse Canadian population

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[113]Simpson, Jeffrey 1990-91. "The Two Canadas." Foreign Policy 81:71-86.
[114]Ibid. pg. 73.

is taken into consideration. Specifically unresolved are central democratic issues of equality and citizenship.

The search for Canadian nationhood was previously considered an integrated whole; where nation-building strategies were controlled by a representative central government, mandated to derive policy which would preserve Canada's distinct identity on the North American continent. However, discourse concerned with defining the Canadian nation and thereby a Canadian identity is increasingly reflective of fragmentary cleavages. Contemporary authors (Bashevkin for instance, in her work True Patriot Love) continue to regard the "... federal state ... as the most capable vehicle around which to organize resistance to continental influence...".[115] However, discourse pertaining to Canadian nation-building appears to have lost its holistic construct. Existing social and political cleavages, though valid components of the Canadian nation-building debate, have been legitimized as ends in themselves, rather than elements of a more important whole. As we undertake to expand the existing boundaries of the nationhood discourse in Canada, we must not seek to define the Canadian nation in terms of economic identity, cultural identity etc., without deriving mechanisms for linking these elements to build a functional whole. Fundamental to deriving unifying mechanisms is to in fact reaffirm the federal government's centrality to nation-building while simultaneously reforming the federal apparatus to better reflect Canada's ethnic diversity.

In order to escape the confines of a binary hegemonic discourse in relation to Canadian nationhood, it is necessary to recognize the changes which have occurred in the social and demographic realms of the Canadian nation-state. As demonstrated above there does indeed exist a French-English hegemony in Canada. Also demonstrated above is the fact that the descendants of the 'founding nations' enjoy disproportionate levels of privilege,

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[115]Bashevkin, Sylvia B. 1991. True Patriot Love: The Politics of Canadian Nationalism. Toronto: Oxford University Press. pg. 5.

power and prestige in Canadian society; and that their concerns have historically been attributed primary consideration in relation to nation-building and other political debates. The question which arises however is, do descendants of "the founding nations" warrant continued hegemony in Canada?

| Section 2: Contemporary Canadian Nationalism: Incorporation into the Discourse |

The Demographic Reality

The Canadian demographic make up has changed significantly since the state was born in 1867. These changes necessitate that the Canadian conception of nation evolve to accommodate and include ethnic minority perspectives, as it simultaneously works to unite existing fragments. As reported in the 1991 Census of Canada, 31% of the Canadian population (up from 24% in the 1986 census), reported ethnic origins other than British, French or some combination thereof (see Table III for breakdown by Province and Territories and Table IV for breakdown by Census Metropolitan Area).

Based on 1991 figures, of the number of Canadians claiming ethnic origin other than British and/or French, 22.8% are members of ethnocultural communities and 7.5% are members of visible minorities.[116]

The 1991 census also demonstrates interesting trends regarding the percentage of Canadians reporting non-European ethnic ancestry. Canadians claiming Asian ancestry rose from 3.5% in 1986 to 5.1% in 1991; the number of Canadians claiming Caribbean,

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[116]Calculated using 1991 census figures.

TABLE III

Origins other than British or French, Canada, Provinces and Territories, 1991

%
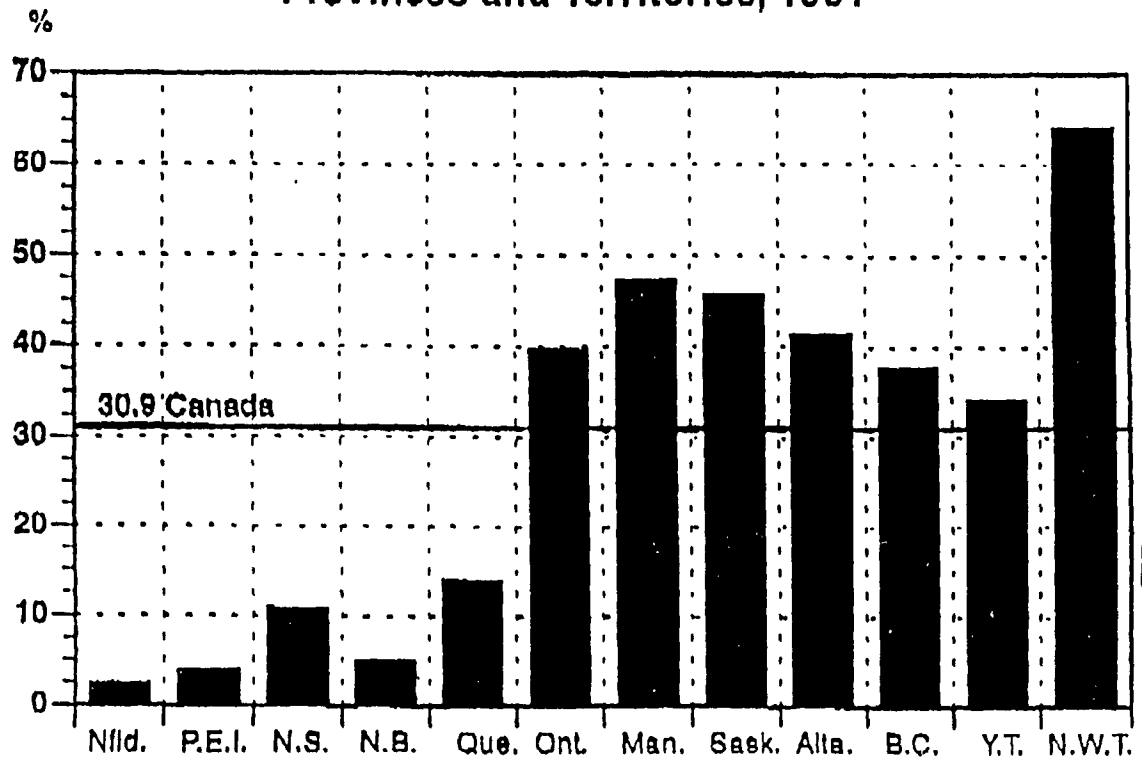
Source: Statistics Canada, The Daily: Ethnic Origin. 1991

TABLE IV

Ethnocultural Population by Census Metropolitan Area

|							
Toronto							
Winnipeg							
Saskatoon							
Edmonton							
Regina							
Vancouver							
Kitchener							
Thunder Bay							
Hamilton							
Calgary							
St. Catharines-Niagara							
Oshawa							
Windsor							
London							
Montréal							
Victoria							
Ottawa-Hull							
Sudbury							
Halifax			Canada 30.9				
Saint John							
Sherbrooke							
Québec							
St. John's							
Trois-Rivières							
Chicoutimi-Jonquière							

0   10   20   30   40   50   60   70   %
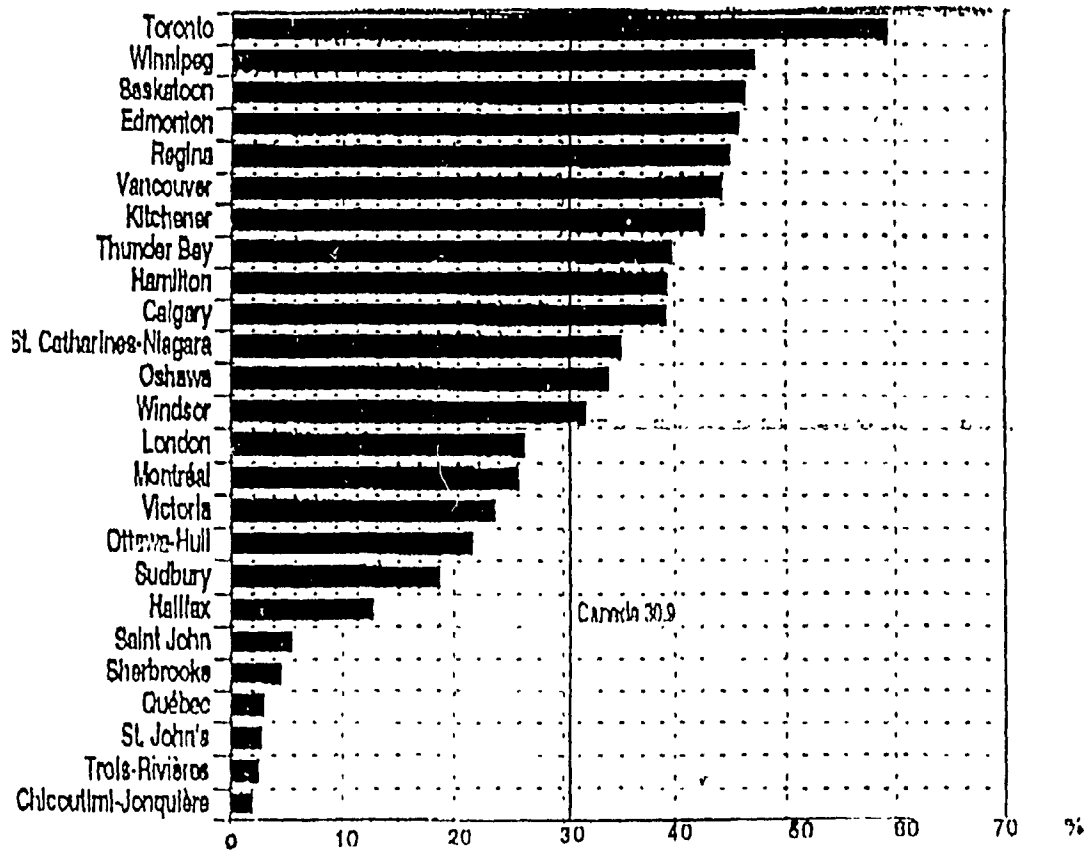
Source: Statistics Canada, The Daily: Ethnic Origin. 1991

Latin, Central or South American ancestry rose from 80,715 persons in 1986 to 179,925 persons in 1991. Finally, the number of Canadians claiming Black origins in 1991 rose to 224,620 from 174,970 in 1986.[117] Demographic projections as prepared by the Golfarb Corporation in 1990, predict further ethnic diversification of the Canadian population. These changes are urgently serving notice that conceptions of Canadian nationalism must evolve in order to include the multi-variant of ethnic diversity, whose presence is being increasingly felt within the Canadian context; and disassemble the French-English hegemony which has secured itself at the head of the Canadian state. The Canadian

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[117]Statistics Canada, The Daily: Ethnic Origin. 1991.

conception of nationhood need not be static. It can evolve much as the conceptions of nation, nationalism and national identity have done in the past.

| Section 3: The Canadian Nation in the 1990s: Parameters for Inclusion |

Recalling the argument that the Canadian national crisis is composed of numerous symptoms i.e. characteristics, it can similarly be argued that ethnic diversity in relation to pluralism is not an end in itself; but rather a single component of the much larger entity. To fully understand the implications of incorporating ethnic diversity into Canada's nation-building discourse, a discussion and/or definition of ethnicity in relation to pluralism is warranted.

As with all terminology, definitions of ethnicity have emerged, diverged and converged as perspectives in the social sciences have transformed. Objective definitions of ethnicity (a perspective which has fallen out of favor for the most part), contends that ethnicity is the result of cultural values and "primordial loyalties with which individuals claiming such an ethnicity has been programmed."[118] The suggestion on the part of the objective perspective is that ethnicity is externally imposed and static.

Subjective definitions of ethnicity, which have existed since Max Weber wrote on the issue, are once again in favor. The Weberian definition of ethnicity contends that ethnic groups possess no objective existence but rather that ethnicity is "a subjective belief in their common descent because of similarities of physical type or of custom or of both, because of memories of colonization and emigration."[119] Contemporary interpretations of Weber's definition of ethnicity, such as that presented by Roosens include the fact that ethnicity is

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[118]Despers Leo A.1982. "Ethnicity: What Data and Theory Portend for Plural Societies." In The Prospects for Plural Societies: 1982 Proceedings of the American Ethnological Society, ed. David Maybury-Lewis and Stuart Plattner. American Ethnological Society.
[119]Ibid.

ascriptive; i.e. it can, depending on the context in which it is considered, be both objective and/or subjective. Ethnicity need not consistently be relied upon as a means of self-identification but rather, it may act as a variable factor or a contingent element of human interaction. It is important to note that because ethnic self identification is variable, it may be overridden by social class identities, or vice versa. Roosens, in his work Creating Ethnicity: The Process of Ethnogenesis, states that "it is more difficult now to identify oneself as a member of professional category or of a 'social class' simply by virtue of dress or cosmetic emblems. In an intense multiethnic milieu, however, one can make use of any number of signs for differentiation as long as they are credible–that is, so long as they *could* be in line with a particular cultural tradition".[120]

In Roosens' view, ethnicity and therefore ethnic identity has many faces and, the term ethnic identity can stand for a spectrum of phenomena; from "symbolic ethnicity, that is ethnicity that manifests itself superficially and temporarily, to the comprehensive commitment of the ethnic leader figure who professionally organized the interethnic struggle".[121]

The variable nature of ethnic identification is important to discussions concerned with Canadian nation-building in two specific ways: One, it emphasizes the fact that token inclusion of delegates from ethnically diverse populations constitutes an inadequate measure to ensure that the grassroots perspectives and sentiments of minority ethnic groups are consistently presented; and this in relation to Canadian structures as well as the Canadian nationhood discourse. Because of the potential for token representatives to be co-opted (i.e. their ethnic self-identification may be overridden by social class identities), it is essential that demographically representative numbers of agents from minority ethnic

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[120]Roosens, Eugeen. 1989. Creating Ethnicity: The Process of Ethnogenesis (Frontiers of Anthropology Volume 5). London: Sage Publications.
[121]Ibid.

groups be incorporated into the Canadian system. As argued by Muhammed Anwar in relation to the connection between statistical representation of ethnic minorities and the representation of their interests in the British parliamentary system (the parent system to the Canadian parliamentary system):

> One way to achieve political action...by the political parties [and other structures and institutions] is to increase the number of members of ethnic minorities who are active in the decision making process. This will help to achieve equal opportunity not only within the political parties, but also outside them. As the white members...become more aware of the issues and needs of ethnic minorities they will thus formulate and implement relevant policies.[122]

A second way in which the variable nature of ethnic identity is of import to debates concerned with Canadian nationhood is the fact, that given some other valuable source of identification, ethnic identity can be transcended. Transcendence in this case does not mean co-optation, but rather transformation based on inclusion, value and respect for ethnic diversity within Canadian structures, and thereby a stronger sentiment of justice and equality. Such transformation is promising as a means to deriving a Canadian identity. The transcendence of ethnicity and inclusionary state transformation is contingent upon minority ethnic groups trusting the organization of Canadian society. Such a level of trust is in turn contingent upon the full social, political and structural incorporation of the ethnic diversity into the structures of Canadian society.

Pluralism in Canada

Canada has, since its origins, been defined as a universalistic pluralist society. As stated by Frank Underhill in the foreword of Nationalism in Canada (1966), the intentions of the founding fathers in relation to the formation of the Canadian (nation) state was for it "to be that of a composite, heterogeneous, plural society, transcending differences of ethnic

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[122]Anwar, M. 1986. Race and Politics: Ethnic Minorities and the British Political System. London: Tavistock Publications.

origin and religion among its citizens."[123] In a sense, this definition is ironic when subsequent fears of continentalism are taken into consideration. Reason being, the definition of nation held by Canada's founding fathers at Confederation is very much patterned after the then prevalent American conception of the nation. The wide ranging theoretical inclusion purported by Canada's founding fathers was directly contrary to the prevalent definition and conception of nation in Europe circa 1867. European definitions of nation were more exclusive and based on biological descent around this time period.[124] The contemporary question is, what category and/or caliber of pluralism actually exists in Canada?

Identification as a pluralist society (i.e. social and political unit based on pluralism), in fact requires a further precision. Such precision takes the form of a question: Is the society *de jure* pluralist or is it *de facto* pluralist? Using explanations put forth by M.G. Smith regarding the potential variety of pluralisms, it will be demonstrated that Canada is in fact only a *de jure* pluralist society in relation to its inclusion of ethnic diversity as a component of pluralism. To contextualize Smith's argument his definition of pluralism is essential :

> Pluralism is a condition in which members of a common society are internally distinguished by fundamental differences in their institutional practice....Such differences....identify institutionally distinct aggregates or groups, and establish deep social divisions between them. The prevalence of such systematic disassociation between the members of institutionally distinct collectivities within a single society constitutes pluralism. Thus pluralism simultaneously connotes a social structure characterized by fundamental discontinuities and cleavages [of which ethnicity is a component], and a cultural complex based on systematic institutional diversity...
>
> Pluralism may be defined with equal cogency and precision in institutional or political terms. Politically these features have distinctive forms and conditions, and in their most extreme state, the plural society, they constitute a polity of peculiar though variable type. Specific political

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[123]Underhill, Frank 1966. "Forward". In <u>Nationalism in Canada</u>, ed. Peter Russell, Toronto: McGraw-Hill.
[124]Ibid.

features of social pluralism center in the corporate constitution of the total society. Under these conditions, the basic corporate divisions within a society usually coincide with the lines of institutional cleavage.

Central to Smith's model of the pluralist society is a discussion of incorporation and its relationship to levels of pluralism achieved in society. In Smith's view, there exists a correspondence between the incorporation of society's multi-variants and the level of pluralism attained by that society.

Western societies, including Canada, define themselves as democracies which are universal in the incorporation of their citizens. However, societies may simultaneously incorporate and divide their population into mutually exclusive sections or segments; and this in one of two ways: They may either be considered equivalent or, fundamentally unequal. As equivalents, each member of a society must belong to a coordinated segment in order to participate in that society as an equal.

In societies where there exist fundamental differences regarding the inclusion of a society's membership, rights, burdens, and status are unequally distributed between members of superior and inferior sections of society.[125] Generally it is the superior sections in society which hold the reigns of power (i.e. have control over decision-making structures, law, intellectual debates, policy machines, etc.).

It is important to note that based on the preceding discussion, "plural societies are either constituted as groupings of coordinated segments or as sectional hierarchies"[126]; or in the case of Canada, some combination thereof.

Considered summarily, the alternatives of incorporation presented in Smith's argument distinguishes three levels of pluralism: The first is Structural Pluralism, which "consists in

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[125]Despers Leo A.1982. "Ethnicity: "What Data and Theory Portend for Plural Societies." In The Prospects for Plural Societies: 1982 Proceedings of the American Ethnological Society, ed. David Maybury-Lewis and Stuart Plattner. American Ethnological Society.
[126]Ibid.

the differential incorporation of collectives segregated as social sections and characterized by institutional divergences."[127] In arguing for the full inclusion of ethnic diversity, the treatment of the Aboriginal peoples by the Canadian state is a prime and blatant example of structural pluralism at work in Canada. The utilization of the reservation system to segregate Aboriginal peoples as well as establishing the Indian Act as a mechanism for dealing with the Aboriginal 'problem', clearly established Aboriginals as 'fundamentally unequal' members of Canadian society in the eyes of the Canadian state.

Cultural Pluralism, Smith's second level of pluralism, "consists in variable institutional diversity without collective institutional segregation". In a culturally pluralist society, specific institutions are not established in such a way as to officially sanction differentiation in how treatment is administered to citizens. However, because of the variable nature of institutions, they may or may not respond to the challenges of diversity.

The final level of Smith's model of pluralism, Social Pluralism, "involves the organization of institutionally dissimilar collectives as corporate sections or segments whose boundaries demarcate distinct communities and systems of social action."[128] This final level of pluralism provides for multi-variants in society to derive systems of cooperation through institutional establishment and recognition. Social pluralism as a result of its inclusive framework, is identified as the most sought-after level of pluralism. It is the level of pluralism liberal democratic societies such as Canada, claim to have attained.

Smith's model, considered within a Canadian political context specifically in relation to the degree of incorporation enjoyed by those who are members of minority ethnic groups is revealing. Based on the definition of pluralism elaborated above, Canada is indeed a pluralist society. At issue however, is the level of pluralism attained and the degree of

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[127]Ibid.
[128]Ibid.

political incorporation enjoyed by diverse ethnic groups as they seek to be recognized, reflected, respected and represented in Canada.

As a result of the stringent entrenchment of the English - French dualism which controls debates concerned with Canadian nationhood, and despite the existence of potentially progressive social policies, which demonstrate *de jure* incorporation of ethnic diversity on a political and social level (e.g. Section 15 of the Canadian Charter and the Employment Equity Act), there fails to be *defacto* or structural reflection of a universal, statistically representative incorporation of ethnic diversity. This is demonstrated by the lack of representation and reflection of the sentiments of a diversity of minority ethnic groups in government structures, literature on Canadian nationalism and Canada's identity discourse. For instance, 1991 Public Service figures indicate that only 3.6% of employees in the federal public service are members of visible minorities.[129]

The fact that ethnic diversity is only *de jure* incorporated into Canadian pluralist society has two effects. The first, is that Canada's assertion as being universally pluralist and its claimed attainment of Social pluralism is compromised. The second effect, is that without *defacto* (i.e. structural representation) incorporation of ethnic diversity, attempts to develop a Canadian identity through national debates is delegitimated.

The question arises as to how Canadian pluralism developed to achieve *de jure* incorporation of ethnic diversity but has failed to incorporate and reflect such diversity in its structures. The response has much to do first, with the social and political paradigms within which Canadian society functions; and second, with the rise in social and political recognition of a small and exclusive selection of Caucasian minority ethnic groups.

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[129] Advisory Committee on Employment Equity *Breaking through the Visibility Ceiling: Interim Report of the Visible Minority Consultation Group on Employment Equity* March 27, 1992. pg. 7.

The liberal paradigm under which Canadian society is governed and the rise of liberalism (the ideology), necessitates that the Canadian state present the international community with a society which is just and egalitarian in its treatment of its citizens, regardless of their ethnic origin. It is this preoccupation with international reputation which, in a first instance, accounts for the Canadian government's willingness to establish policies which ensure *de jure* incorporation of ethnic diversity. Unfortunately, establishing policy does not mean that goals of incorporation are completely attained.

The economic success, adaptability and numerical strength of certain long-standing ethnic communities (such as the Italian and Jewish communities) constitutes a second reason why *de jure* incorporation of ethnic diversity exists in Canada. Political lobbying, financial stability and high degrees of what Breton[130] termed 'institutional completeness' on the part of these groups, have given them the ability to demand policy changes which result in the development of policies which ensure *de jure* incorporation of ethnic diversity. Unfortunately lobbying ability, strength in numbers and even financial and institutional stability are inadequate to force the hand of the Canadian government when it comes to demanding the rigorous enforcement of incorporation oriented policies; and this, because of the continuing hegemonic orientation of the Canadian state. A lack of policy enforcement has prevented the *defacto* incorporation of the multi-variant of ethnic diversity into the structures of Canadian society.

As demonstrated above, Canada clearly has a responsibility to live up to its international reputation as a universal pluralist society; a designation falsely assigned because of the current failure on the part of the Canadian state to incorporate ethnic diversity into its structures in representative numbers. The need for the statistically representative, and not token incorporation of ethnic diversity into existing structures is crucial and this, as a

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[130]Breton, R. 1964. "Institutional Completeness of Ethnic Communities and the Personal Relations of Immigrants". American Journal of Sociology. 70: 193-205.

means to increasing the likelihood that the interests of these groups will be represented is also clearly identified. The following chapter will discuss policy solutions designed by the Canadian state to effect the full incorporation of minority ethnic groups.

Chapter IV: Equity Policy an Analysis

The statistical representation of minority ethnic groups in all spheres of Canadian social and political structures is essential if the full incorporation these groups into the Canadian state is to be achieved. The full incorporation of ethnic diversity will not only help members of minority ethnic groups derive a keener sense of Canadian identity, it will also work toward dismantling the illegitimate hegemony enjoyed by Charter groups in the Canadian state. Once the full incorporation of minority ethnic groups is achieved by the Canadian state, a more equitable Canadian state will emerge; resulting in, among other things, a more inclusive, comprehensive and successful framework for defining a national identity. The full incorporation of minority ethnic groups into the structures of the Canadian state, constitutes a significant step toward reconciling the egalitarian liberal theory to which the political system aspires and the practical elements of the Canadian state. Increased representativeness of minority ethnic groups at all levels of the Canadian employment system will significantly elevate the potential for the full incorporation of ethnic diversity and the redistribution of privilege, power and prestige in Canadian society. Such changes will validate Canada's claim to being a universally pluralist society, which is just and fair and which has attained the aspired to level of social pluralism. Simultaneously, improved representativeness will work to include members of minority ethnic groups in the Canadian identity discourse.

As observed above, the Canadian state is not without public policy initiatives designed to expressly incorporate ethnic diversity into its political, social and structural organizations. The most effective initiatives are those which seek to include members of minority ethnic groups into the Canadian employment system, and are enforceable and open to reform. There currently exists two significant pieces of legislation as well as various administrative measures, which are able to improve the representativeness of ethnic diversity in the

Canadian employment system and thereby, Canadian institutions if they are implemented correctly and rigorously.

This final chapter is concerned with those public policy initiatives which if used correctly, will help to achieve the full incorporation of minority ethnic groups into the all spheres of the Canadian employment system and thereby the Canadian state structures. The policy initiatives which are most relevant to this discussion are the Canadian Charter of Rights and Freedoms (1982) and the Employment Equity Act (1986). Also included however, are brief discussions of contract compliance programs implemented by the federal and Quebec governments.

The Constitution Act of 1982 has consistently stoked the fires of academic discourse and political controversy. In the 12 short years since the Act was signed, debates have burgeoned concerning the value, validity, legitimacy efficiency and effectiveness of the Canadian Charter of Rights and Freedoms (see Appendix I). Various sections of the Charter have been particularly targeted for debate; testing as they do, many of the fundamental tenets of liberalism. Equality rights specifically as they relate to the issue of equality in employment, have proven extremely controversial and as such are at the heart of heated theoretical and practical debates.

To assess the impact of the Charter as a whole requires multidisciplinary expertise and a life time of dedication. To assess the impact of a single section or sub-section however, permits more intensive analysis as well as detailed and extensive discourse. As such, this chapter is intended to analyze the impact Section 15(2) of the Canadian Charter has had in working to achieve the increased representativeness of members of ethnic minorities into the Canadian employment system. As discussed above, despite that there exists a constitutional right to equality in employment, that right is only of practical worth if it is enforceable. The enforceability of constitutional guarantees (such as that of equality in

employment), is highly contingent on the development of follow-up policies, which themselves have easily enforceable regulations. The constitutional guarantee of equality in employment (Section 15(2)) of the Charter has as its follow-up policy — the Employment Equity Act.

In assessing Section 15(2), emphasis will be placed on how equality in employment guarantees have impacted the representativeness of Canadians from minority ethnic groups. Fundamental to discussing the impact of Section 15(2) of the Charter, are the tenets of Canadian liberalism elaborated in chapter 1; specifically as they relate to conceptions of equality and equality of opportunity.

Arguments against affirmative action also need to be recognized and regarded as legitimate expressions of dissenting viewpoints, even if the content of such viewpoints are unfounded. To this end, a brief discussion of the most prevalent objections to initiatives guaranteeing equality in employment will be explored.

Finally, the impact of the Employment Equity Act which is an outgrowth of the entrenched right to equality in employment will be examined

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Section 1: The Canadian Charter of Rights and Freedoms

<u>Equality and the Charter</u>

The Canadian Charter of Rights and Freedoms (Canadian Charter) is a quintessential liberal document in that it seeks to collect and project the central tenets of liberal ideology (the primacy of the individual, the rule of law, equality etc.) under a single umbrella. Entrenched in 1982 the Canadian Charter's 'Equality Rights' section (Section 15) was not enacted until 1985. Despite the fact that the Charter is the first constitutional commitment to equality made on the part of the Canadian government, it is not the first piece of equality

focused legislation to garner Canadian support. Canada supported and/or ratified several international charters of rights including, the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Economic Cultural and Social Rights. [131]

In Canada the immediate precursor to the Canadian Charter of Rights and Freedoms was the Canadian Bill of Rights. The purpose of the Canadian Charter is not to prevent discrimination between individuals; but rather, by controlling state action, the Canadian Charter prevents individuals form being discriminated against by the state (at both the federal and provincial levels).[132]

The Equality Rights section of the Canadian Charter cannot be regarded without considering several other sections of the Charter. Any comprehensive analysis of Section 15, specifically Section 15(1), requires that Sections 25 and 35, dealing with Aboriginal Rights; Section 23 dealing with Minority Language and Educational Rights; Section 27 dealing with Canada's Multicultural Heritage and Section 28 dealing with rights guaranteed equally to both sexes, be considered. Consideration of theses sections are important because, the way in which these sections are interpreted has potentially significant bearing on how Section 15 is interpreted. To date, because of the limited political analysis conducted on Section 15, and because the above mentioned sections have encountered only limited resistance, political comparisons are sketchy. Developing a comprehensive political analysis incorporating the designated sections is certainly important but, is beyond the scope of this work.

Analysis of Section 15 of the Charter has, for the most part been undertaken by legal scholars interested in how the implementation of the Charter has and will continue to

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[131] Beaudoin and Ratushing pg. 559.
[132]Andiappan, Palniappan, Mark Crestohl and Jang Singh. "Racial Discrimination in Employment in Canada". Relations Industrielles. 44:4 (1989) Pg. 829.

change the discipline of constitutional law. As such, Section 15 despite that it is concerned with equality — a distinctly social and political construct, has undergone what is equivalent to a quantitative, logic based analysis. There exists a very limited body of literature in which an elaboration and/or evaluation of the political and social implications or impact of the Equality Rights section of the Charter has been undertaken.

Section 15 of the Canadian Charter of Rights and Freedoms is divided into two distinct sections. Section 15(1) is concerned with equality before and under law and equal protection and benefit of law; it reads:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.

Section 15(2) is concerned with Affirmative Action Programs and it reads:

> Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, color, religion, sex, age, or mental and physical disability.

As intimated above, within the context of this work, the political and not the legal elements of the Equality Rights section in the Charter will be explored. There exists a wealth of analysis on Section 15(1) because of its legalistic foundations. Conversely, Section 15(2) has been allotted significantly less 'air time'.

Section 15(2) of the Canadian Charter is labeled as concerned with affirmative action programs. Affirmative action in the Canadian context, as defined by the Affirmative Action Directorate of the Canadian Employment and Immigration Commission in 1982 is

> a comprehensive planning process adopted by an employer to: (1) identify and remove discrimination in employment policies and practices; (2) remedy effects of past discrimination through special measures; and (3) ensure appropriate representation of target groups throughout the organization.[133]

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[133]Canada Employment and Immigration Commission. 1986. Visible Minorities: Summary Tables. Ottawa: Employment Equity Branch (March 1986).

The term affirmative action is in practice not used within the Canadian context, as a result of the negative emotional reaction it illicits. The term is strongly associated with notions of "reverse discrimination, or hiring and promotion based on target group membership rather than merit".[134] For these reasons, in her report on Equality in Employment, Judge Rosalie Abella recommended that initiatives designed to increase multi-variant representativeness through the removal of arbitrary barriers and discriminatory practices, should be referred to as employment equity rather than affirmative action policies. The term 'employment equity' will be used for the duration of this work to identify any policy initiatives designed to achieve equality in employment for members of multi-variants; particularly members of minority ethnic groups.

In discussing the political implications of Section 15(2), it is imperative that the role of the Charter with the Canadian political framework be clarified and understood. As expressed above, the Canadian Charter is a quintessential liberal document. Also established above, specifically with respect to the question of equality, is that there exists an ongoing tension between theory and practice within the liberal paradigm. The fundamental dilemma encountered in clarifying the Charter's role in Canadian political and policy discourse, is discerning whether the Charter is intended to function as an end in itself or, whether it is intended to function as a point of departure from which legislation and subsequent policy initiatives are elaborated.

Understood as an end in itself, the Canadian Charter assumes an exclusively legal function and can be evaluated exclusively within a legal context. Evaluation would require the use of legalistic standards which should in theory have limited bearing on political and policy discourse in Canada. With respect to equality in employment in particular, identifying the

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[134]Jian, Harish. 1989. "Racial Minorities and Affirmative Action/Employment Equity Legislation in Canada". Relations Industrielles. vol. 44:593-611.

Charter as an end in itself and thereby exclusively within a legalistic framework, relegates all recourse applications for Charter violations to the judiciary.

According to Kathryn MacLeod from the School of Industrial Relations at Queen's University, when the Charter is understood exclusively in a legal sense and is relegated to the judicial sphere, 5 specific tools can be used to derive remedial measures for Charter violations:

- A public declaration that Charter Rights have been violated

- Compensatory damages can be awarded

- Strike down or modify laws or rules which violate Charter guarantees

- 'Reading-out' or 'reading-down' unconstitutional provisions

- Issue prerogatives writs or injunctions to prohibit conduct that offends the charter or to order positive conduct; mandatory affirmative action programs.[135]

The issue is not that the Charter cannot be subject to legal interpretation, it has proven to be so in various areas; but rather that, in relation to equality rights and especially equality in employment for members of minority ethnic groups, legal precedence has been at best inconclusive, and at worst detrimental to the interests of these communities.[136]

Conversely, if the Charter is regarded as a means to an end, a statement of social and political goals, rather than an end in itself; and is conceptualized as a point of departure for political and policy initiatives, the potential for attaining equality in Canada is augmented. The suggestion is not to remove the Charter from the legal sphere all together, but rather to make political discourse and policy initiatives a primary means of achieving the goals outlined in the Charter.

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[135] MacLeod, Kathryn "The Seniority Principle: Is it Discriminatory" _School of Industrial Relations Research Essay Series No. 11_, 1987.

[136] For in depth discussions of legal precedents in the area of equality rights, consult Beaudoin and Ratushing.

There exist several benefits to relying on the political rather than legal spheres to realize Charter goals. Primary among these benefits is the broader circle of decision-makers involved in the policy formulation process. Theoretically, the pluralist institutions which govern the policy process in liberal democracies permit a diversity of ideological and methodological inputs and as such, the application of a broad cross section of views and interests on policy issues. Implementing the Equality Rights section of the Canadian Charter (Section 15(2)), will help the theoretical assumption of Canadian pluralism and equality to become a practical reality.

There exist four designated groups, who stand to benefit from employment equity policies: women, Aboriginal peoples, the disabled and visible minorities.[137] In order to support employment equity initiatives, one must accept that within Canadian employment systems, there exists discrimination.[138]

Employment equity is ostensibly concerned with the elimination of discrimination; specifically the elimination of discrimination in employment. The Oxford English Dictionary defines discrimination as "unfavorable treatment based on prejudice, especially regarding race, color or sex". Discrimination in employment exists in two precise forms: direct and indirect (systemic). As insinuated by its title, direct discrimination consists of deliberate behavior founded on prejudice against a given group or groups. Indirect discrimination is considerably more difficult to identify because it is often ingrained into the framework of organizational structures, in the form of uniform requirements. The uniformity or 'across the board' application of rules and/or regulations provide a high degree of legitimacy. However, when universal rules have a disproportionately negative effect on specific groups of individuals, based on criteria other than their ability to perfom

[137] Visible minorities were only targeted as a disadvantaged group in 1985. Employment equity initiatives began for the other identified groups as early as 1980.

[138] Library of Parliament, "Affirmative Action/Employment Equity" Current Issue Review pg. 2, 1989.

their roles adequately, these individuals are being subjected to systemic discrimination. The important factor to bear in mind when considering discrimination in employment is, that the intentions of employers are of no consequence. Whether their motivations are admirable or malicious, has no bearing when the results of employer actions are assessed. A discriminatory employment practice, whether or not it is intentional remains discriminatory.

Currently, indirect or systemic discrimination is the barrier to employment encountered most frequently by members of visible minorities. The unfortunate reality is, that it is extremely difficult to prove systemic discrimination. Employment equity initiatives are positive measures concerned above all, with assisting groups previously excluded from or underutilized in employment in most cases on the basis, of race, sex or handicap. Employment equity policies seek to eliminate systemic discrimination as a means of guaranteeing equality of access to employment.

When discussing discrimination in employment, it is important to note that despite the constitutional guarantee of equality as embodied in the Charter, Section 15(2) remains subject to Section 33–the Notwithstanding Clause, and is also subject to the limits outlined in Section 1 of the Charter. This reality furthers the case in support of increased policy and legislation in the area of employment equity, as opposed to relying exclusively on the Charter guarantee.

Designating the Charter as a political rather than legal instrument, whose purpose is to identify ultimate goals is reasonable, specifically in the instance of Section 15(2). As a political instrument, it is understood that on its own, the Charter is unable to apply and enforce the entrenched guarantees. (Such a reality provides a partial explanation as to why the Charter has been regarded as a legal tool to date. In order to bring attention to Charter violations, individuals have been forced to appeal to the courts, generally on a case by case

basis. Note the individualist orientation of the process). Subsequent legislation and/or policy initiatives must be implemented as strategies for goal attainment, i.e. for entrenched guarantees to be applied and enforced. In the area of employment equity initiatives progressive legislative and policy strategies have been implemented. The upcoming section will present several such strategies; as well as arguments against employment equity as a means to setting the stage for the third section of this chapter which will examine and analyze the impact of the employment equity initiatives on the representativeness of ethnic diversity in Canadian structures.

Section 2: Employment Equity Initiatives

Employment equity initiatives, whether administrative or legislative are concrete measures implemented to assure equality in employment for designated groups. Employment equity initiatives seek to (1) eliminate unfounded, systemic barriers to employment; (2) establish guidelines to promote reasonable accommodation and (3) mete out redistributive justice.

Canada's social, political and economic structures are such, that at one time or the next, barriers to employment or, a certain degree of employment disadvantage are experienced by all laborers. If this is the case, why then are employment equity initiatives required for members of minority ethnic groups?[139] Reviewing the history–both legal, economic and social, of minority ethnic groups in Canada, the answer is simple. Members of minority ethnic groups shoulder a disproportionately heavy weight of disadvantage within the employment system; i.e. they encounter more systemic barriers and discrimination in employment than do members of the majority population.

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[139] And other disadvantaged groups

Systemic barriers which have "...a negative employment impact on visible minorities...include culturally biased aptitude tests, lack of recognition of foreign credentials and excessive levels of language requirements...".[140] Significant too is the lack of understanding and preconceived notions about visible minorities generally held among the majority population. Employment equity policies are mandated to uncover and eliminate systemic barriers to employment.

As individuals belonging to various social, economic and cultural groups, we all have personal ideologies, expectations and, defined loyalties which impinge on our ability to receive, value and accept differences in other individuals; and consider them equal to ourselves. Reasonable accommodation, a concept first expanded in the Abella Report (1984), requires that we all work at opening ourselves to the reality, that despite our differences, we are equally valid and valuable to society when permitted equal opportunities and, equal access.[141]

Dr. A.A. Lee, President and Vice Chancellor of McMaster University (Ontario), expressed this sentiment eloquently at the National Conference on Racial Equality in the Workplace: Retrospect and Prospect (March 2-4, 1990).

> It seems clear that if we as members of the human race living in a global community are to bring any genuinely creative force into the ways in which we approach the host of problems surrounding our relations with each other, we are going to have to put behind us many of our professed beliefs and special group loyalties.

Equality means nothing if it does not mean that we are of equal worth regardless of differences in gender, race, ethnicity, or disability. The projected, mythical, and attributed meaning of these differences cannot be permitted to exclude full participation. Today, reasonable accommodation is the driving force behind achieving equality in employment.

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[140] Employment and Immigration Canada, Employment Equity Branch. "Employment Equity Guide for Employers" pg. 8
[141] Huggins, Nadine, Achieving Employment Equity for Visible Minorities in Montreal: Research Summary (1993).

Expectations of reasonable accommodation help to identify discrimination and discriminatory practices within organizations; especially as such discrimination relates to members of minority ethnic groups.

The final purpose of employment equity initiatives is to mete out redistributive justice, i.e. to try and compensate for past injustices. This is achieved by seeking to reflect society at all organizational levels, rather than merely removing barriers to employment access. The slow evolution of our society's concept of fairness in employment has meant that members of visible minorities and other minority ethnic groups have been prevented from participating in the Canadian and Quebec labor force in representative numbers and to their full potential. As such, temporary remedial measures are required to reverse this negative trend. Employment equity policies attempt to ensure that the temporary measures required to introduce members of minority ethnic groups into the work force in representative numbers are developed and implemented.

Arguments Against Employment Equity

Negative reaction in relation to employment equity and the redistributive measures inherent to employment equity initiatives are prevalent. Many otherwise liberal and proactive individuals balk at the redistributive component of employment equity policies; and this despite the theoretical promotion of state sponsored good distribution and redistribution within the Canadian liberal paradigm. For this and several other reasons, it is important to understand what employment equity does not mean.

> First, employment equity does not mean that members of minority ethnic groups are hired or promoted based exclusively on their designated group characteristics. Logically, few companies who value profit, success and expansion will hire or promote unqualified personnel. Rather, employment equity for members of minority ethnic groups seeks to place qualified members of these groups in positions from which they have traditionally been excluded. The goal is not for these groups to dominate the labor force, or to allow incompetent individuals to retain their positions without question, but rather for members of minority ethnic groups to r rticipate in the labor force fairly, in representative numbers and, in all job categories. Finally,

> employment equity is not a means of promoting members of minority ethnic groups over members of the Charter groups or of seeking to make individuals feel personally responsible (guilty) for past injustices. Rather employment equity seeks to promote the recognition that in the employment system, members of minority ethnic groups, have not been competing on a fair and equal footing.[142]

Since the Charter was passed in 1982 and Section 15(2) was enacted in 1985, the Employment Equity Act (1986) has been implemented to provide the necessary policy support for the constitutional guarantee of equality in employment. Because of its legislative base, this policy initiative represents the most progressive maneuver on the part of Canadian governmental institutions to realize the constitutional guarantee of equality in employment. However, the Employment Equity Act is not the only employment equity policy in effect. The Federal Contractors Program (1986) and the Quebec Contract Compliance Program (1987) constitute the most progressive administrative employment initiatives currently in effect.

The Employment Equity Act

The Employment Equity Act is the federal government's only legislated employment equity initiative in support of Section 15(2) of the Canadian Charter. The Act was born out of the Royal Commission Report on Equality in Employment (The Abella Report), released in October 1984. The Abella Report clearly stated that equality in employment could not be realized unless concrete action was taken to make it happen. The first employment equity Bill was tabled in the House of Commons in June of 1985 and was given Royal Assent on June 27, 1986.

The Employment Equity Act requires that federally regulated institutions–mainly from the Banking, Communications and Transportation sectors; and Crown Corporations regulated under the Canada Labor Code, with 100 or more employees implement employment equity

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[142]Ibid.

for disadvantaged groups. In 1991 the Act covered some 353 employers, representing a total of 617 000 employees nation wide.[143]

The disadvantaged groups targeted under the Act are: women, disabled persons, visible minorities and Aboriginal peoples. Employment and Immigration Canada (EIC) is responsible for implementing and administering the Employment Equity Act.

Employer conduct in relation to fostering equality in employment is specifically outlined in Section 4 of the Employment Equity Act.

> An employer shall, in consultation with such persons as have been designated by the employees to act as their representative or, where a bargaining agent represents the employees, in consultation with the bargaining agent, implement employment equity by (a) identifying and eliminating each of the employer's employment practices, not otherwise authorized by law, that results in employment barriers against persons in designated groups; and (b) instituting such positive policies and practices and making such reasonable accommodation as will ensure that persons in designated groups achieve a degree of representation in the various positions of employment with the employer that is at least proportionate to their representation: (i) in the work force or (ii) in those segments of the work force that are identifiable by qualifications, eligibility or geography and from which the employer may reasonably be expected to draw or promote employees.

The Employment Equity Act is also the only employment equity program requiring employers to design equity plans annually, complete with goals and time tables. Plans must be retained by the employer for a minimum of three years. The Act is also the only equity initiative requiring those subject to it to report, on an annual basis regarding the progress they have made in the area of employment equity for designated groups.

Employers submit an annual report to the ministry responsible for employment equity. Reports contain information on the representation of all employees and members of designated groups by occupational category and salary range. The report also contains information about the hiring, promotion and termination patterns of designated groups for

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[143]Ibid.

each year. Failure to fulfill the annual reporting requirement may result in employers being fined up to $50 000. Annual results are submitted in the form of a formal, standardized, statistical annual report. Employers have the option of including a four page written summary, highlighting special company initiatives. Reports are available to the public and are subject to investigation by the Canadian Human Rights Commission (CHRC).

Like all employment equity initiatives, the practical purpose behind the Employment Equity Act, is to support the Charter by eliminating systemic barriers to employment in the Canadian labor force. The main objective of the Employment Equity Act is to guarantee that the Canadian work force is equitable and representative of the Canadian population. The Act works to guarantee that members of the designated groups will not be denied employment because of the color of their skin, their sex, their special ability or their cultural heritage. The Act requires that federally regulated employers and Crown Corporations undertake concrete measures to eliminate systemic barriers to employment; and to achieve a work force which reflects Canada's diversity. The Employment Equity Act requires regulated employers to remove barriers to employment in all stages of the employment process: Recruitment, Selection, Hiring, Training, Promotion etc..

Within the regulations of the Act is the legal requirement, that after the first five years in operation, and every three years thereafter, the Act is to undergo comprehensive parliamentary review. The first review was recently undertaken. "A Matter of Fairness: Report of the Special Committee on the Review of the Employment Equity Act" (the Redway Report) was released in the summer of 1992. The government response to the recommendations made by the Committee have been slow in coming and are still being awaited.

The Federal Contractors Program

The Federal Contractors program was established to encourage employers in the private sector interested in conducting business with the federal government, to also work toward establishing a more equitable labor force by joining the employment equity cause. The Federal Contractors Program which was established soon after the Employment Equity Act in 1986, is the only means by which the Federal government can use leverage to encourage the private sector to practice employment equity. The Federal Contractors Program requires that employers with 100 or more employees, holding contracts for goods and services with the federal government worth $200 000 of more, to implement equity for designated groups. Identical to the Employment Equity Act, the groups targeted for employment equity under the Federal Contractors Program are: women, disabled persons, visible minorities and Aboriginal peoples.

Like the Employment Equity Act, the Federal Contractors Program has as its main objective the establishment of a Canadian work force which is equitable and representative of Canada's (ethnic) diversity. Before companies are permitted to bid for federal contracts, employers must commit to practicing employment equity. Should an employer receive a government contract but fail to implement the required employment equity measures, the result may be the loss of opportunity to bid for future government contracts.

Under the Federal Contractors Program employers are required to undertake concrete employment equity measures. This means employers must work to identify and remove all barriers which systematically prevent members of designated groups from competing equally for employment. Further under the Program, designated group participation is intended to be representative at all employment levels within the organization. Finally, records of progress in the area of employment equity be kept up to date and on site at all times to facilitate on site compliance reviews.

On site compliance reviews are conducted by auditors from Employment and Immigration Canada (EIC). The compliance review process consists of

- Reviewing employer records concerning employment equity initiatives and progress

- Assessing the results obtained by the employer

- Evaluating the level of effort made on the part of the employer to realize the employment equity goals

- Measuring the level of success attained by the employer

If auditors are satisfied with the result of the inspection, the compliance review is complete. However, should the review produce unsatisfactory results, the employer will be notified and means to improving the situation will be recommended. The employer has 12 months to implement suggested changes. Employers may appeal the findings of the EIC compliance review to the Minister of Employment and Immigration. Once an appeal is launched, an independent compliance review is undertaken and the Minister is advised of the results upon completion. Should the independent review also demonstrate unsatisfactory results, the employer in question is excluded from consideration for government contracts.

The Federal Contractors Program was reviewed by the Redway Commission along with the Employment Equity Act. A response from the federal government is pending.

Quebec Contract Compliance Program (Programme L'obligation contractuelle)

The Quebec Contract Compliance Program established in 1987, is an administrative employment equity initiative, sponsored by the Quebec government. The Program is intended to work toward developing a labor force which is more representative of ethnic diversity in Quebec. The stated objective of the Quebec Contract Compliance Program is to correct the inequitable treatment suffered by Aboriginal peoples, women and 'for the time being' visible minorities participating in the Quebec labor force.

Employers with 100 or more employers applying for contacts (i.e. goods and services) or subsidies (grants, sustaining income, etc.) worth $100 000 or more from the Quebec government, are required to set up employment equity programs.

The Quebec Contract Compliance Program operates on a five step system: Employer commitment, program implementation, auditing, sanctions and certification for merit. Prior to processing contract or subsidy applications, the Quebec government ensures that employers have stated their commitment to implementing employment equity on standardized forms which are attached to all Quebec contract or subsidy applications.

The first step to implementing an employment equity program is the assessment of the employer's own behavior. Such assessment requires that the company evaluate its actual employment situation using two step process: First the employer must determine whether members of designated groups are being underutilized within their organizational structure. Secondly, employers must determine whether company rules and practices have discriminatory effects on members of designated groups.

If during the workplace audit, designated group under-utilization is discovered, there are four common elements which if implemented will work to alleviate the situation:

(1) Introducing or increasing equal opportunity measures, such as information dissemination, changing systemic practices favoring certain groups over others;

(2) The implementation of remedial measures to accelerate the corrective process begun by the equal opportunity measures;

(3) The introduction of support measures to assist with employment problems, e.g. counseling;

(4) Timetables and numeric goals are established so that progress and results can be meaningfully measured.[144]

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[144]Gouvernement du Quebec. "Renseignements aux organisations: L'obligation contractuelle un nounveau pas vers l'égalité dans l'emploi".

Based on the assessment results in relation to the discriminatory effects of company rules etc., employers may elaborate an employment equity program. Numerical objectives must be set, appropriate redressment measures to eliminate the under-utilization of targeted group members and discriminatory rules and practices must be chosen. Finally, a viable chronological framework to achieve stated objectives is established and control measures are put in place to evaluate the success of the program.

Within one year of receiving a government contract or subsidy, the result of the organization's self-assessment and elaborated employment equity plan as well as implementation reports are audited by the Quebec Human Rights Commission (QHRC). The QHRC is responsible for assuring that employers comply with the employment equity requirements stipulated under the Quebec Contract Compliance Program.

If the QHRC discovers that an employer has failed to respect their stated commitment to implementing employment equity for designated groups, that employer's eligibility for government contracts and subsidies is revoked for a minimum of two years. Conversely those employers who honor their employment equity commitment are rewarded with a certificate of merit from the Quebec Ministry of Supplies and Services.

The Quebec Contract Compliance Program has been in operation for a relatively short period of time, and has yet to undergo any comprehensive review. As such, conclusive evaluation of the program's impact is impossible at this time. However, as a policy idea, the Quebec Contract Compliance Program proves both progressive and proactive as it seeks to involve the private sector in establishing an equitable labor force.

Section 3: The Impact of Employment Equity Initiatives

As discussed above the practical goal of employment equity initiatives are to provide an enforcement mechanism for the constitutional guarantee of equality in employment and to eliminate discrimination (barriers to employment) encountered by members of designated groups. Discrimination as discussed above is encountered in two forms: direct and systemic. Both the social and political climate in Canada is such that direct discrimination is rarely encountered in the mainstream. Similarly, Canadian employment systems are too sophisticated to blatantly discriminate against designated group members. Rather the discrimination which is prevalent most often is systemic in nature. Systemic discrimination can be discovered at all levels and in all stages of the employment process and are generally couched in seemingly harmless, universal requirements. Systemic discrimination is also a significant reason why the Canadian state is subject to a Charter group hegemony.

The Royal Commission on Equality in Employment (the Abella Commission) was the first government commissioned inquiry into equality in employment in Canada; and is the foundation upon which subsequent legislation and policies were built. Chaired by Judge Rosalie Silberman Abella, the Commission was informed and reported on several of the barriers facing members of disadvantaged groups seeking employment. Barriers faced by minority ethnic groups included:

- Inadequate language and skill training

- Bias-free mechanisms for determining the validity of foreign credentials and experience

- Racism

- Weaknesses in the services and facilities established to integrate into Canadian life

- Cultural misunderstanding and intolerance

- Under-utilization of members of minority ethnic groups with foreign credentials[145]

In 1985, a study conducted by Frances Henry and Effie Ginzberg supported the Abella finding and, went even further. The researchers examined 400 job offers in Metropolitan Toronto. For each job they sent two applicants of equal educational and social aptitudes; one applicant was a member of a visible minority and the other was a member of the majority population.

The results were that white applicants were generally given more attention and treated more courteously than were the members of visible minorities. In fact, visible minorities often never had an opportunity to compete in organizational selection processes because they never get past organizational 'gate-keepers'. Henry and Ginzberg's conclusions revealed "there is an overall ration of discrimination...[of] 3 to 1". Whites have 3 job prospects to every 1 available to a members of a visible minority. Subsequent policies were intended to redress the issues raised by Abella to dismantle the employment barriers encountered by visible minorities.

In April of 1992, the Montreal based Center for Research-Action on Race Relations (CRARR) commissioned a study into employment equity initiatives for visible minorities living in Montreal.

One of the principle objectives of the study was to identify problems encountered in the implementation of employment equity for members of visible minorities. The barriers identified at the end of the study included:

- Managing Inter-Group Tension

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[145]House of Commons, Equality in Employment: Report of the Commission on Equality in Employment, pg. 46-49, (1984).

It was expressed that differences in culture and a lack of knowledge concerning the cultural histories and relations existing between minority groups make tensions which arise difficult to comprehend and therefore resolve.

- Managing Cultural Diversity in Quebec

- An inadequate development of techniques for managing cultural diversity, which are sensitive to Quebec sensibilities.

- Inadequate language skills

- Difficulty understanding cultural norms surrounding Canadian employment processes

- Fear on the part of personnel officers

- Legal action is a primary fear on the part of personnel officers who feel they may be persecuted should they refuse a position to a member of a visible minority. Further, mangers become wary after a single bad experience with a visible minority employee; as such, encouraging them to integrate another visible minority employee on their team often proves very difficult.[146]

Comparing the barriers identified in the Abella Report and those identified in the CRARR study, significant similarities are observed. Inter-group tension, cultural misunderstanding language problems, hesitation to hire and integrate visible minority employees etc. remain barriers to equitable employment opportunities for members of visible minorities (and other minority ethnic groups). Does this mean that policy initiatives have failed?

Reviewing available statistics one can observe that the representation of visible minorities in the Canadian labor force has increased significantly since 1985. Based on the 1992 annual report for employment equity, visible minorities currently participate at a rate of 7.55% within organizations regulated under the Employment Equity Act.[147] The labor force participation rate for members of these communities at the same time was 6.5%.[148]

[146] Huggins, Nadine, Achieving Employment Equity for Visible Minorities in Montreal: Research Summary (1993).

[147] Employment and Immigration Canada Annual Report Employment Equity Act 1992.

[148] Jian, Harish. 1989. "Racial Minorities and Affirmative Action/Employment Equity Legislation in Canada". Relations Industrielles. vol. 44:593-611.

Despite the numerical success achieved under the Employment Equity Act, there exist important problems with the policy on technical, logistic and conceptual grounds. If remedied, the Employment Equity Act would be an even more effective policy instrument achieving greater levels of representativeness for minority ethnic groups in the Canadian tapestry.

Technical problems with the Employment Equity Act are closely related to the equity plans which employers are required to produce, as well as the wording in the Act itself. That employers are required to produce equity plans and ensure their upkeep for a minimum of three years is a valid requirement. However, there exists no mechanism to verify these plans, i.e. to ensure that plans are well designed based on valid internal assessments and set reasonable, meaningful objectives for change. As such, there is no guarantee that employers are actually producing such plans or that plans are realizing maximum potential.

A second technical problem with the Act, stems from the wording of other employer requirements under the Act. It is observed that the "law is ill defined and somewhat loose in that positive policies and practices and reasonable accommodation do not lend themselves to precise interpretation."[149] For example, despite that employers are required to consult with employee representatives regarding the implementation of policies relating to the Act, the procedure for such consultation is loose at best and non-existent at worst. Even when such consultation does occur, once an equity plan is elaborated, employee representatives have no right to access it. As such, equity plans are established based exclusively on the employers perception of what are respectable goals and timetables. Finally, once plans are submitted and as long as equity reports are submitted annually,

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[149]Ibid.

employers are not expected or required to improve the representativeness of designated groups in their organizations.

On logistic grounds the Act is weak because of its limited application. Only employers who are regulated by the federal government (i.e. the communications transportation and banking sectors) and Crown Corporations with 100 or more employees, are subject to the Act. This means that government committees, special government appointments, the federal public service, staff positions in the houses of parliament etc., i.e. positions which carry with them high levels of prestige, power and privilege, are not subject to the Act. Further, small and medium sized businesses, including hotels, clothing chains, restaurant chains etc., who employ significant numbers of Canadians are not subject to equity measures under the Act. These realities limit claims by supporters of the Employment Equity Act, to the effect that the Act has been an absolute success in increasing the representativeness of members of minority ethnic groups into the social and political structures of the Canadian state.

On a conceptual level, the effectiveness of the Employment Equity Act is weakened because of the manner in which it has been presented to Canadian citizens. Instead of being promoted as an improvement upon the current employment system in Canada, a lack of government enthusiasm has resulted in the policy being perceived as yet another bureaucratic nightmare; and as giving certain Canadians special (undeserved) treatment, thereby resulting in a lowering of Canadian standards. These claims are false on all counts as merit and qualification for employment positions remain the foundations of equity policies.

Further, the Employment Equity Act, like most equity policies are presented as exclusionary rather than inclusionary policies. Members of minority groups resent being identified as privileged in difficult economic times and as such, demonstrate disdain and

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disinterest in employment equity. Employment equity needs to be restructured to include eveyone's interests and preoccupations; it must be promoted as a management tool rather than a special measure for 'special' members of the population. Finally, in failing to articulate the root causes of employment disadvantage for designated groups (particularly for minority ethnic groups) the Canadian government has tacitly encouraged the status quo.

It cannot be said that the Employment Equity Act has completely failed in realizing its goals. However because of the problems and weaknesses mentioned above, the Act is not as successful as it could be. Reforms to the Act which would go a long way toward making the Act more effective include: outlining employer requirements more precisely, increasing the monitoring of employer equity plans and making such plans available to employee representatives once they are completed and extending the application of the Act to include at least all government related activities (government appointments etc.). If these improvements are applied greater minority group representativeness will be realized, the Charter group hegemony in Canada will be dismantled, an inclusive framework for nationalist discourse will be derived and Canada's claim as a universal pluralist society which has achieved a level of Social pluralism will be substantiated. These occurrences will bring about *defacto* incorporation of minority ethnic groups in the Canadian state and thereby reconcile aspired to liberal egalitarianism with state practices.

Conclusion

The purpose of this work was threefold: To demonstrate that the Canadian state is unsubstantiated in its claim as a universal pluralist society, because of the existence of a Charter group hegemony and the fact that employment equity initiatives have only realized limited success in incorporating minority ethnic groups into the social and political structures of the Canadian state. In essence, there exists a chasm between the egalitarian aspirations of liberal theory in Canada and the practical functioning of Canada as a liberal democratic state.

There currently exist numerous liberal ideologies, spanning the full political continuum within the liberal paradigm. Despite this fact, most liberals continue to base their theories on the classical works of either John Locke (the father of modern liberalism) and Jean Jacques Rousseau. Still prevalent in all liberal theory are several inalienable tenets: the primacy of the individual, the primacy of liberty, the rule of law and most importantly for our purposes, equality.

As one of the foundations of liberal theory, contemporary conceptions of equality have failed to adequately adapt to the reality of ethnic diversity, as demonstrated by the fact that two of the most renowned theorists of the 20th century (Friedrich A. von Hayek and John Rawls) either discount the factor of ethnic diversity in their work, or fail to deal with it specifically. The Canadian state, despite its theoretical claims to egalitarianism, specifically in relation to minority ethnic groups, has embraced very flawed conceptions of citizenship and incorporation. Ethnic minority groups have been subject to a legacy of inequality inflicted by and/or tacitly supported by the Canadian state.

The Charter group hegemony in Canada is partially to blame for the existence and perpetuation of inequalities against minority ethnic groups. As a result of the dualist nature of the Canadian state, dichotomies such as French versus English, biculturalism, bilingualism etc., have consistently been a part of Canada's history and have facilitated the birth and perpetuation of the Charter group hegemony which is currently in place. The fact the members of Charter groups enjoy a disproportionately large distribution of power, privilege and prestige in the Canadian state, results in members of minority ethnic groups being marginalized. Based on recent demographic trends, and aspirations on the part of the Canadian state to reconcile (egalitarian) liberal theory with state practices, such an unequal distribution of goods within the Canadian state is both unjust and immoral.

It has been established that representativeness in all spheres of the Canadian labor force, will ultimately lead to the full incorporation of minority ethnic groups in the social and political structures and institutions of the Canadian state. Such incorporation is essential if Canada is to substantiate its claim as a universal pluralist society, which incorporates all of its citizens fully and treats all of its citizens equitably.

Before the Equality Rights section of the Canadian Charter of Rights and Freedoms (Section 15(2)) and its follow-up policy the Employment Equity Act (1986) were adopted, equality rights in Canada was subject to the perspectives of the majority populations, based on the choices they made at the polls. With the entrenchment of the right to equality, the equality discourse in Canada entered a new era. However, the entrenched right is only as good as its follow-up legislation.

The Employment Equity Act is identified as a key means to minority group representativeness in the Canadian labor force. However, because of technical, logistic and conceptual weaknesses, the Employment Equity Act may not be reaching its full potential. Reform by way of making the Act more precise in its requirements as well as

more broad in its application are practical ways to improve the policy. In a conceptual sense, the success and acceptance of the Act is dependent upon political will and political priority. The government must promote employment equity not as a burden to employers, but rather as a means to competitiveness in a global marketplace.

The Canadian state has long feared the potential of losing its distinct identity to the United States, yet it has failed to exploit available resources to make a firm stand on the issues. In perceiving that the only ethnic groups to have legitimate claims as Canadians are descendants of the founding fathers, the Canadian state is setting itself up for elimination.

Ultimately, the challenge is launched by members of minority ethnic groups for institutions and structures in the Canadian state to live up to its claims of equality and incorporation. The status quo is unacceptable; political and social structures fail to reflect the demographic changes which are the reality of the state. Further, if the state is to reconcile liberal equality theory with the practice of liberal democracy in Canada, it must rely on proactive, progressive, inclusionary policies — employment equity legislation as embodied in the Employment Equity Act as well as administrative policies such as the Federal Contractors Program or the Quebec Contract Compliance Program are viable options if they are rigorously developed, implemented and enforced.

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THE CANADA ACT AND THE CHARTER OF RIGHTS

CANADA ACT 1982
U.K., 1982, c.11
An Act to give effect to a request by the Senate and House of
Commons of Canada

Whereas Canada has requested and consented to the enactment
of an Act of the Parliament of the United Kingdom to give effect to the
provisions hereinafter set forth and the Senate and the House of Com-
mons of Canada in Parliament assembled have submitted an address to
Her Majesty requesting that Her Majesty may graciously be pleased to
cause a Bill to be laid before the Parliament of the United Kingdom for
that purpose.

Be it therefore enacted by the Queen's Most Excellent Majesty,
by and with the advice and consent of the Lords Spiritual and Tempo-
ral, and Commons, in this present Parliament assembled, and by the
authority of the same as follows:

Constitution Act,
1982 enacted

1. The *Constitution Act, 1982* set out in Schedule B to this Act is
hereby enacted for and enacted shall have the force of law in Canada
and shall come into force as provided in that Act.

Termination of
power to
legislate for
Canada

2. No Act of the Parliament of the United Kingdom passed after
the *Constitution Act, 1982* comes into force shall extend to Canada as
part of its law.

French version

3. So far as it is not contained in Schedule B, the French version of
this Act is set out in Schedule A to this Act and has the same authority
in Canada as the English version thereof.

Short title

4. This Act may be cited as the *Canada Act 1982.*

CONSTITUTION ACT, 1982
Schedule B to Canada Act 1982 (U. K.)

PART I
CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the
supremacy of God and the rule of law:

The Canada Act and the Charter of Rights

Guarantee of Rights and Freedoms

Rights and freedoms in Canada

1. *The Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

(c) freedom of peaceful assembly; and

(d) freedom of association.

Democratic Rights

Democratic rights of citizens

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein

Maximum duration of legislative bodies

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

Continuation in special circumstances

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be

Annual sitting of legislative bodies

5. There shall be a sitting of Parliament and of each legislature at least once every twelve months

Mobility Rights

Mobility of citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

(a) to move and to take up residence in any province; and

(b) to pursue the gaining of a livelihood in any province

Limitation

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence, and

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically

disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Legal Rights

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

10. Everyone has the right on arrest or detention

    (a) to be informed promptly of the reasons therefor;

    (b) to retain and instruct counsel without delay and to be informed of that right; and

    (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

    (a) to be informed without unreasonable delay of the specific offence;

    (b) to be tried within a reasonable time;

    (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;

    (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

    (e) not to be denied reasonable bail without just cause;

    (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;

    (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

    (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and

    (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

14. A party or witness in any proceedings who does not understand

or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

Equality Rights

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Official Languages of Canada

Official languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada

Official Languages of New Brunswick

(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

Proceedings of Parliament

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Proceedings of New Brunswick legislature

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Parliamentary statutes and records

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative

New Brunswick statutes and records

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

Proceedings in courts established by Parliament

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament

Proceedings in New Brunswick courts

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

Communications by public with federal institutions

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

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(a) there is a significant demand for communications with and services from that office in such language; or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Communications by public with New Brunswick institutions

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

Continuation of existing constitutional provisions

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

Rights and privileges preserved

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French

Minority Language Educational Rights

Language of instruction

23. (1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

Continuity of language instruction

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds

The Canada Act and the Charter of Rights

Enforcement

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

General

Aboriginal rights and freedoms not affected by Charter

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763, and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired. [1]

Other rights and freedoms not affected by Charter

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.

Application to territories and territorial authorities

30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

Legislative powers not extended

31. Nothing in this Charter extends the legislative powers of any body or authority

Application of Charter

Application of Charter

32. (1) This Charter applies

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[1] Paragraph 25 (b) was amended by the *Constitution Amendment Proclamation, 1983*. It originally read "(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement."

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THE CANADA ACT AND THE CHARTER OF RIGHTS

(a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and

(b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Exception

(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this section comes into force.

Exception where express declaration

33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

Operation of exception

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

Five-year limitation

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

Re-enactment

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1)

Five-year limitation

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

Citation

Citation

34. This Part may be cited as the *Canadian Charter of Rights and Freedoms*.

PART II
RIGHTS OF THE ABORIGINAL PEOPLES OF CANADA

Recognition of existing aboriginal and treaty rights

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Definition of "aboriginal peoples of Canada"

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.[1]

Commitment to participation in constitutional conference

35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the "*Constitution Act, 1867,*" to section 25 of this Act or to this Part,

[1] Subsections (3) and (4) were added by the *Constitution Amendment Proclamation, 1983.*

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(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.[1]

PART III
EQUALIZATION AND REGIONAL DISPARITIES

Commitment to promote equal opportunities

36. (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to

(a) promoting equal opportunities for the well-being of Canadians;

(b) furthering economic development to reduce disparity in opportunities; and

(c) providing essential public services of reasonable quality to all Canadians.

Commitment respecting public services

(2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

PART IV
CONSTITUTIONAL CONFERENCE

Constitutional conference

37. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within one year after this Part comes into force.

Participation of aboriginal peoples

(2) The conference convened under subsection (1) shall have included in its agenda an item respecting constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those peoples to be included in the Constitution of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on that item.

Participation of territories

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of the conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.[2]

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[1] Section 35.1 was added by the *Constitution Amendment Proclamation, 1983.*

[2] This whole Part was automatically repealed on April 17, 1983, in accordance with section 54 of the *Constitution Act, 1982.*

The Canada Act and the Charter of Rights

(a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and

(b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item.[1]

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[1] Section 35.1 was added by the *Constitution Amendment Proclamation, 1983.*

[2] This whole Part was automatically repealed on April 17, 1983, in accordance with section 54 of the *Constitution Act, 1982.*

PART IV.1
CONSTITUTIONAL CONFERENCES

Constitutional
conferences

37.1 (1) In addition to the conference convened in March 1983, at least two constitutional conferences composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada, the first within three years after April 17, 1982 and the second within five years after that date.

Participation of
aboriginal
peoples

(2) Each conference convened under subsection (1) shall have included in its agenda constitutional matters that directly affect the aboriginal peoples of Canada, and the Prime Minister of Canada shall invite representatives of those peoples to participate in the discussions on those matters.

Participation of
territories

(3) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

Subsection 35(1)
not affected

(4) Nothing in this section shall be construed so as to derogate from subsection 35(1).[1]

PART V
PROCEDURE FOR AMENDING THE CONSTITUTION OF CANADA

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PART VII
GENERAL

Primacy of
Constitution of
Canada

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Consititution is, to the extent of the inconsistency, of no force or effect.

Constitution of
Canada

(2) The Constitution of Canada includes

(a) the *Canada Act 1982*, including this Act;
(b) the Acts and orders referred to in the schedule; and
(c) any amendment to any Act or order referred to in paragraph (a) or (b).

* * *

Repeal and
consequential
amendments

54. Part IV is repealed on the day that is one year after this Part comes into force and this section may be repealed and this Act renumbered, consequentially upon the repeal of Part IV and this section, by proclamation issued by the Governor General under the Great Seal of Canada.

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[1] Part IV.1 was added by *Constitution Amendment Proclamation, 1983* which also added section 54.1: "54.1 Part IV.1 and this section are repealed on April 18, 1987." By this device, Part IV.1 and section 54.1 were both repealed automatically on April 18, 1987.

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* * *

Commencement of paragraph 23(1)(a) in respect of Quebec

59. (1) Paragraph 23(1)(a) shall come into force in respect of Quebec on a day to be fixed by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

Authorization of Quebec

(2) A proclamation under subsection (1) shall be issued only where authorized by the legislative assembly or government of Quebec.

Repeal of this section

(3) This section may be repealed on the day paragraph 23(1)(a) comes into force in respect of Quebec and this Act amended and renumbered, consequentially upon the repeal of this section, by proclamation issued by the Queen or the Governor General under the Great Seal of Canada.

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Source: Mandel, Michael. 1989. The Charter of Rights and the Legislation of Politics Canada. Toronto: Wall and Thompson Inc