The Concept of Collective Rights in Quebec

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Abstract Aspects of Quebec’s political and legal system that have been characterized in terms of “collective rights” often rely upon a mischaracterization of that concept, especially in terms of strict definitions of that concept. One result of that mischaracterization is the tendency to perceive the relationship between Quebec and Canada in terms of a conflict between individual and collective rights claims, particularly in relation to language. Those perceptions have resulted in a tendency to identify Quebec as non-liberal and anti-individualist. However, understanding the distinction between group interests (which all liberal societies seek to manage and promote), claims to sovereignty, and a meaningful definition of rights and liberties may reveal a Quebec that is much more liberal and individualist than popular claims and misplaced judicial semantics might, otherwise, indicate.

Certain features of Quebec’s political and legal system have been characterized in terms of “collective rights” or “group rights.” This category has included, in reference to Quebec, language protections and policies, duties to assist other persons, guaranteed social services, and, even, various expressions of sovereign identity, itself—including separatist claims. Likewise, the concept of “collective rights” has been highlighted within the Canadian constitutional tradition. In reference to Quebec, though, this category has assumed a particular prominence, both because of Quebec’s strong identity in relation to Francophones as a group and perceptions of Quebec’s traditional political culture that have been associated with communitarian and, even, “feudal” influences that are regarded as non-liberal and anti-individualist in nature.

But these “collective” or “group” rights have been, frequently, misunderstood and, as a result, misclassified within both Canada and Quebec (Cousineau 1999, 147-168; Morton 1985, 71-84). Typically, they actually represent individual rights that are particularly exercised by certain groups of persons, or policies (rather than rights) that are collectively applied, or privileges rather than rights, or an expression of the sovereign will rather than a right or freedom invoked against the governmental representative of that sovereign will, which is of general relevance to all ideological interpretations in this respect (Biersteker and Weber 1996, 1-21; Troper 2001, 115-121). This misclassification has special implications for Quebec, particularly in terms of the interpretation of its laws and policies and the way it is perceived (or misperceived) by the rest of Canada.

Therefore, it is important to understand and correctly apply the concept of collective rights as they relate to Quebec. That process should reveal that much of Quebec’s laws and policies, even in the area of language protection and promotion, may involve matters that are collective in application or refer to the special status that
rights and liberties confer but that are not, in general, true collective or group rights. Understanding that distinction is important, not only because it attempts to alleviate the inflation of rights language—and the use of that language to reframe political and social discourse by artificially creating realms of policy exclusion, which is a universal problem of rights discourse (Bell 1999, 849-856)—but, also, because it seeks to undermine misimpressions of Quebec that may be grounded upon faulty popular perceptions, misguided critical analysis, or, even, stereotypes. That analysis might seem to be parochial but it could have substantive implications in this respect.

This controversy is more widely applicable than merely to Quebec. The concept of collective rights has been attached to Canada in various ways. Some commentators have framed this area of Canadian jurisprudence in terms of a basic relationship and, even, antagonism between individual and collective rights, especially with the Canadian Charter of Rights and Freedoms (Elkins 1989, 699-716; Magnet 1986, 173-192; Herrera and Doise 2001, 739-761). Other commentators have attached it to the legal culture and practices of Quebec, based upon traditional conceptions of Quebec society as having been less influenced by liberal democratic norms and values than the rest of Canada (Galipeau 1992, 74-77). The fact that collective rights have been associated, frequently, with language rights and self-determination is especially relevant to the manner in which this discourse has been attached to Quebec (Paulston 1997, 73-85). Therefore, it is useful to focus upon this particular aspect of the collective rights discourse to assess the appropriate, or inappropriate, application of this specific concept of legal theory.

The theoretical definition of “collective” rights has been addressed extensively by many distinguished scholars. This concept generally has remained ill-defined, especially in relation to the more theoretically meaningful conceptualization of individual rights, both human and civil. The term “collective rights” denotes a rights claim that belongs to a group, rather than a person or human being. Such claims have been made with particular frequency in relation to the activities of labor unions (including a collective right to strike), cultural group activities (especially in terms of aboriginal peoples), and the appeal of nations, within an international law environment, to self-determination. There is a large and diverse body of literature from which this definition has been derived, much of which has been the product of Canadian scholarship. These sources have explored this concept particularly from a philosophical, as well as a narrowly legal, perspective (Buchanan 1993, 89-108; Corlett 1994, 237-259; Kymlica 1991, 239-256; Shapard 1990, 299-308). Because this concept is associated with a sense of collective identity, the fundamental values upon which it is based often have been linked to a broader communitarian approach to liberal democratic thought with its search for the “common good.” That approach has been particularly contrasted with a classic liberal or (as conventionally expressed) “libertarian” approach to this ideological tradition (Feinberg 1992, 220-224; Benson 1991, 257-291; Eisenberg 1995, 146-147).
politically defined society) to deny certain persons their individual rights of self-expression, including values of personal identity and self-actualization, especially among philosophical libertarians (Mill 1978, 53-71).

On the other hand, the concept of collective rights also has been cited as a means of enhancing individual empowerment through the protection and reinforcement of the capacity of persons to differentiate themselves from other members of society, which process serves as a source of personal prestige, self-confidence, and pride (MacIntyre 1981, 22-34; Olson 1982, 17-35). These persons also find a source of political strength through group membership because collective efforts can prove to be more effective than the struggles of an individual participant against the overwhelming prospect of mass participation, elite dominance, and institutional power. In fact, the combination of preserving and promoting the freedom of association with other individual civil rights and liberties (especially freedom of expression) have been recognized as essential components of a “true democracy” (also labeled as a “polyarchy”) and the process of conflict resolution that occurs within it (Dahl 1991, 71-80). It is a liberal theme that is recognized particularly within a Canadian context, where it has been acknowledged that “[g]roup participation fosters [individual] identity, belonging and a sense of community” (Magnet 1989, 767).

Collective rights are designed to protect the political activity and power of these groups and the individual members whom they represent.

However, this theoretical tradition has not, necessarily, been transferred successfully to the realm of Canadian constitutional jurisprudence. The use of the term “collective rights” has been conspicuous yet it is difficult to find evidence that Canadian jurists who employ the term truly understand its significance or, even, its meaning. Despite the fact that this legal concept has been enshrined within the Canadian Charter of Rights and Freedoms, it is possible to argue that its inclusion has been a response to a political objective that has been superimposed upon a legal and judicial system in a theoretically inconsistent manner. Therefore, a reference to collective rights is, very often, merely an invocation of individual rights that are particularly relevant to certain groups or, otherwise, an expression of a collective interest, rather than an actual “right” (Elkins 1989, 702-708; Woehrling 1985, 50-92).

Nonetheless, there are instances in which Canadian jurists have described the concept of collective rights in a theoretically accurate manner, particularly in relation to educational protections. However, even in these instances, it is possible to argue that the same objective could be reached by using the rules of libertarian jurisprudence. Indeed, two cases that employ the language of a collective rights perspective in an arguably superfluous manner include Attorney-General of Quebec vs. Greater Hull School Board, et al. (15 D.L.R. 4th 651 (1984)), and Reference re an Act to Amend the Education Act (25 D.L.R. 4th 1 (1986)). References to language rights within the Canada Constitution Acts, while they generally are cited as being examples of “collective rights,” easily can be interpreted as protecting the rights of individual members of society to function in the “lingua franca” of their choice (Penton 1983, 179-182; Tarnopolsky 1982, 437-438). Even the language rights of the québécois people can be interpreted in a manner that is consistent with claims of self-determination (in other words, a sovereignty claim) or consistent with the goals of a federal system, rather than in terms of a “collective right” (Dion 1976, 26-30). Similarly, self-determination (including in the form of the adoption of policies that support national “values” and a national identity) also is distinct from collective rights, though it has been unnecessarily labeled in that way (Donnelly 1989, 147-149; Walzer 1992, 359-364).
Legislation and judicial decisions in the area of language rights would appear to offer an excellent source for evaluating collective rights. Francophones within Quebec are perceived to be in a contest with Anglophones and Allophones to preserve their identity (as echoed by numerous scholars and commentators), lending itself to that obvious perception that language policy, there, is a matter of group, or collective, rights (Bauer 1994, 8-11; Chevrier 2003, 118-162; Karmis and Gagnon 1996, 435-468). However, this area has been addressed, overwhelmingly (both in terms of political rhetoric and jurisprudential discourse), in relation to the concepts of sovereignty and individual rights and liberties (Gibbins 1988, 38-80). Perhaps the most controversial legal and political assertion of linguistic interests has been found within Quebec’s Charte de la langue française, which imposed a “French only” policy upon the public and commercial institutions of Quebec (Coleman 1986, 197-207; Hamers and Hummel 1994, 127-152; Thomson 1995, 69-82). But that charter declared that the protection of the French language, through its exclusive public and commercial use, was intended to protect the sovereign identity of Quebec, as distinct from the “collective rights” of Francophones. Quebec, therefore, is understood to be a sovereign society consisting of individual persons and groups—though some commentators expressly disagree with that assessment (Joy 1985, 93-95)—rather than a singular collective entity (Bernard 1978, 24-26; Guindon 1988, 138-145).

Langue distinctive d’un peuple majoritairement francophone, la langue française permet au peuple québécois d’exprimer son identité.

L’Assemblée nationale reconnaît la volonté des Québécois d’assurer la qualité et le rayonnement de la langue française. Elle est donc résolue à faire du français la langue de l’État et de la Loi aussi bien que la langue normale et habituelle du travail, de l’enseignement, des communications, du commerce, et des affaires.

L’Assemblée nationale entend poursuivre cet objectif dans un climat de justice et d’ouverture à l’égard des minorités ethniques, dont elle reconnaît l’apport précieux au développement du Québec.

L’Assemblée nationale reconnaît aux Amérindiens et aux Inuit de Québec, descendants des premiers habitants du pays, le droit qu’ils ont de maintenir et de développer leur langue et culture d’origine.

Ces principes s’inscrivent dans le mouvement universel de revalorisation des cultures nationales qui confère à chaque peuple l’obligation d’apporter une contribution particulière à la communauté internationale (1977 Que. C. 5 préambule).³

The emphasis upon the relationship between “le peuple québécois”—Le Dictionnaire général de la langue française (1996, 1,191) identifies the French word “peuple” as being synonymous with both “nation” and “populace”—and minority groups signifies a conventional liberal conception of the relationship between the sovereign and individual subjects of its legal authority—a relationship described by political philosophers who represent the earliest stage of liberal thought (Hobbes 1982, 228-239) and, also, embraced by political philosophers who represent a later and more communitarian perspective (Rousseau 1975, 233-237). The fact that the sovereign represents an “indivisible body” is especially pertinent to this concept, including from the utilitarian perspective (Austin 1885, 3-7). From all of these perspectives, though, the relationship between sovereign and society, as an entity,
are distinct (Lloyd 1987, 170-180). The language of this preamble may refer to non-Francophones as collective entities but it also identifies linguistic interests within the context of an official language of society as a whole. Therefore, the official culture of the state and the nation that it represents differs from the demands of other cultural and linguistic groups and individuals. The cultural and linguistic identity of the nation is one that is imposed historically through the assertion of sovereign legitimacy and it claims to confer those benefits upon all members of society, rather than being defended as the protection of a group right (Smith 1981, 52-58). Its identification with the desires of other nations within the international community reinforces this belief that this charter is defending the principle of national sovereignty, rather than group rights.

This perception has guided language policy in other countries, including the United States, where the desire to establish English as the only official language is not posited as being either an establishment of collective anglophone rights, an abridgment of collective minority rights, or, necessarily, a violation of American libertarian values (Note 1991, 325-352). The belief is part of an evolution of Québécois national identity that language policy reflects an expression of sovereignty dominated this issue within both Quebec and the rest of Canada (Behiels 1986, 61-96) and it was revealed, clearly, within the judicial challenge to the Charte de la langue française.

The decision that most effectively undermined the original Charte de la langue française—which was struck down by the Supreme Court of Canada for violating the freedom of expression provisions of the Canadian Charter of Rights and Freedoms and, subsequently, replaced by a new charter that invoked the “notwithstanding clause” of the Canadian charter in order to override that specific federal prohibition (Gouvernement de Québec 1993, 20-32)—was the 1988 case of Attorney-General of Quebec vs. Valerie Ford, et al., in which five business owners challenged that part of the language charter, which forbade the display of all commercial signs that were not written in French. The Quebec Government wanted to preserve the cultural distinctiveness of Quebec society against the pervasiveness of businesses that were dominated by its anglophone minority. The subsequent adoption of language rights within the Canadian Charter of Rights and Freedoms (Canada Constitution Act 1982, schedule B. sec. 16-23) was done, in part, to address this sort of linguistic restriction ([1988] 2 S.C.R. 712 (1988)).

But Quebec jurists did not rely upon Canadian rights protections, in this instance, for they found that section 10 of Quebec’s Charte de la langue française (which restricted commercial expression) conflicted with section three of Quebec’s Charte des droits et libertés de la personne (1975 Que. c. 6, sec. 3). The initial decision of Judge Boudreault emphasized this point, especially as that section protects both the “freedom of opinion” and the “freedom of expression” and he extended its protection to commercial, as well as other categories of public, speech. He compared this analysis with the implied interpretation of American jurisprudence that reached a similar conclusion (18 D.L.R. (4th), 711, at 727-729), noting, with special emphasis, the constitutional protection of commercial speech in Bigelow vs. State of Virginia (421 U.S. 809 (1975)). He also compared this sort of protection to similar individual rights protections that are provided by the European Commission of Human Rights, the European Court of Human Rights, and the United Nations Universal Declaration of Human Rights (18 D.L.R. (4th) 711, at 720-724). The Quebec Court of Appeals, in the 1986 opinion of Judge Bisson within the companion case of Attorney-General of Quebec vs. La Chaussure Brown’s, Inc., et al., arrived at the same conclusion concerning the individual rights protection of language expression that Quebec, Canadian, and international standards
provide, especially in terms of the “double protection” that the Quebec Charter of Human Rights guarantees in this area (36 D.L.R. (4th) 374, especially at 378-400).

The Supreme Court of Canada confirmed this approach. The per curium opinion addressed, in particular, the Quebec Government’s contention that the restrictions upon English language rights in the *Charte de la langue française*, in order to preserve the “visage linguistique” of Quebec society, represent an acceptable limitation under the conditions specified by section one of the *Canadian Charter of Rights and Freedoms* (Canada Constitution Act 1982, Schedule B, sec. 1) and section 9.1 of the Quebec charter (1975 Que. c. 6, sec. 9.1). Both sections sanction limits upon rights and liberties that are deemed to be necessary and acceptable within a democratic society, although the latter clause emphasizes a possibly broader need of citizens to maintain respect for majoritarian values, including “l’ordre public et le bien-être général” of the people of Quebec.  

The s.1 and s.9.1 materials establish that the aim of the language policy underlying the Charter of the French Language was a serious and legitimate one. They indicate the concern about the survival of the French language and the perceived need for an adequate legislative response to the problem. Moreover, they indicate a rational connection between protecting the French language and assuring that the reality of Quebec society is communicated through the “visage linguistique.” The s.1 and s.9.1 materials do not, however, demonstrate that the requirement of the use of French only is either necessary for the achievement of the legislative objective or proportionate to it ([1988] 2 S.C.R., 712, at 778-779).

The opinion then identified the overriding consideration as being rooted in an individual freedom of expression. “The human right or freedom in this case is the freedom to express oneself in the language of one’s choice, which has been held to be recognized by s.3 of the Quebec Charter. In this case, the limit imposed on that right was not a justifiable one under s.9.1 of the Quebec Charter” ([1988] 2 S.C.R., 712, at 787). The per curium opinion in the following case of *Devine vs. Attorney-General of Quebec* (which also challenged the Quebec French-only sign policy) confirmed this ruling ([1988] 2 S.C.R. 790).

The only judicial ruling that seems to refer to language and linguistic identity in terms of alleged collective rights is the 1982 Quebec Court of Appeal case of *Protestant School Board vs. Attorney-General of Quebec* ([1982] C.S. 673). Chief Judge Deschênes compared section 73 of the *Charte de la langue française* (often called the “Quebec clause”), which limited anglophone education solely to the children of parents who lived there prior to its enactment, and section 23 of the *Canadian Charter of Rights and Freedoms* (popularly called the “Canada clause”) which guarantees that parents have the right to have their children educated in the parent’s native language or the language of the parent’s own primary school instruction. The Quebec Government argued that the “Quebec clause” was protected under the “reasonable limits” exception of section one of the Canadian charter. He seems to make a semantic error of confusing the relationship between Quebec society and minority interests with a “collective right” of the Québécois people that is in conflict with the individual rights of anglophone parents.

[I]l y a incompatibilité entre la clause-Québec édictée à la charte québécoise et la clause-Canada contenue dans la charte fédérale. L’article 1 de la charte canadienne a une portée générale et s’applique donc à l’article 23; le fardeau de
prouver que la clause-Québec satisfait aux conditions stipulées par l’article 1 incombe au Québec. Or, cette clause [l’article 23] ne peut être interprétée comme une simple restriction entrant dans le cadre de l’article 1 et la Cour ne peut accepter l’argument voulant que la négation de certains droits individuels puisse se justifier comme une conséquence de la restriction de droits collectifs: la clause-Québec doit donc céder ([1982] C.S. 673, at 674).  

The conclusion that the “Quebec clause” could not be defended as a “reasonable limit” also was reached by the Supreme Court of Canada. But that opinion insisted that the “Canada clause” protects individual parents against Québécois social policy, rather than Québécois “collective rights.” The per curiam opinion stresses this point by comparing language restrictions to other constraints that the state can impose upon the rights and liberties of citizens.

The provisions of s. 73 of Bill 101 collide directly with those of s. 23 of the Charter, and are not limitations which can be legitimized by s. 1 of the Charter. Such limitations cannot be exceptions to the rights and freedoms guaranteed by the Charter or amount to amendments of the Charter. An Act of Parliament or a legislature which, for example, purported to impose the beliefs of a state religion would be in direct conflict with s.2(a) of the Charter, which guarantees the freedom of conscience and religion, and would have to be ruled of no force or effect without even considering whether such legislation could be legitimized by s.1. The same applies to Chapter VIII of Bill 101 in respect of s.23 ([1984] 2 S.C.R. 66, at 88).

The Quebec Government of Premier Robert Bourassa responded to this judicial setback by amending the language charter (resulting in Bill 178), which included the insertion of the “notwithstanding clause” of the Canadian Charter of Rights and Freedoms, Canada Constitution Act, sch. B, sec. 33, 1982. This clause permits federal and provincial governments to suspend the applicability of certain sections of the Canadian charter, (including the section two guarantee of freedom of expression) in a manner that immunizes, for five years (when it expires or may be renewed) the legislation against constitutional challenge (Weiler 1984, 51-75). The adoption of Bill 178 was, ultimately, a decision for a political policy to “trump” a civil right (Levine 1989, 1-16; Russell, Knopf, and Morton 1989, 558-559).

The 1986 Supreme Court of Canada case of Société des Acadiens vs. Association of Parents raised this potential controversy of the “collective” nature of language rights ([1986] 1 S.C.R. 549). Chief Justice Dickson’s concurring opinion differed from the majority opinion in terms of his belief that a “right to speak” also imposes a corresponding duty that the state should be able to hear and understand that speech.

Though couched in individualistic terms, language rights, by their very nature, are intimately and profoundly social. We speak and write to communicate to others. In the courtroom, we speak to communicate to the judge or judges. It is fundamental, therefore, to any effective and coherent guarantee of language rights in the courtroom that the judge or judges understand, either directly or through other means, the language chosen by the individual coming before the court ([1986] 1 S.C.R. 549, at 566).

He suggested that language rights are not merely individualistic but his conclusions in this area remain vague and, in any case, he did not assert that they are collective rights. Justice Wilson sympathized with the social nature of
language rights but she ultimately expressed her concurring opinion in terms of the rights of individual litigants and the social goals of Canadian and New Brunswick societies.

It is evident that linguistic duality has a crucial role to play in social and cultural development in New Brunswick and that heightened public expectations with regard to that role are reflected in the Charter as well as in provincial legislative attempts to expand and protect the exercise of language rights. Against this backdrop, the inequality of status of a litigant who must present his or her case to a bench that is not fully able to respond must eventually give way to the escalating standard of s.16(1) and (2) ([1986] 1 S.C.R. 549, at 645).

The other area of confusion appears to occur in terms of misidentifying sovereign self-determination as collective rights claims, especially in contrast with a more precise legal and constitutional status of aboriginal autonomy (Morse 1985, 3-9). In fact, it is possible to argue that the claims of First Nations regarding “collective rights” are, actually, claims of political sovereignty (Elliott and Fleras 1992, 153-195). These claims resemble the sort of political arrangements that appear to govern the modern Native American reservation system that has been developed within the United States. That perspective is evident in terms of aboriginal property claims, especially in relation to land jurisdiction (Kabra 1990, 18-22; Note 1988, 556-563.

This broader issue is tied to other political considerations. In particular, it can be attached to the politics of identity and difference that are, arguably, distinct from an understanding of rights as more narrowly (and, perhaps, more properly) defined as a basis for liberal legal theory (Eisenberg 1994, 3-21). The attachment of the concept of collective rights to Quebec national identity will, undoubtedly, persist, as it has in terms of other applications of this legal definition (Kymlicka 1996, 34-48. Nonetheless, in the interest of theoretical clarity, it continues to warrant further evaluation.

Another source of Quebec’s fundamental legal tradition that arguably represents a collective right can be found within the Charte des droits et libertés de la personne du Québec. Chapter 1, section 2 of that charter provides a “Good Samaritan” clause that imposes a duty upon all members of Quebec society to assist anyone in immediate danger or distress. Although similar laws have been passed by other jurisdictions, including within the United States (Wellman 2001, 735-759), this clause is distinguished by its prominence among Quebec’s body of law, arguably occupying a fundamental position and reflecting a foundational legal and political principle that could be compared to a constitutional convention. This clause differs from rights protections found within typical liberal democratic societies in its requirement of positive action that is imposed upon its citizens.

Tout être humain dont la vie est en péril a droit au secours.

Toute personne doit porter secours à celui dont la vie est en péril, personnellement ou en obtenant du secours, en lui apportant l’aide physique nécessaire et immédiate, à moins d’un risque pour elle ou pour les tiers ou d’un autre motif raisonnable (Que. 1975 c. 6, a. 2).

Again, though, the attachment of the designation “collective rights” to this requirement demonstrates a difficulty that occurs when such specific theoretical concept is attached in such a broad manner, especially upon pre-determined expectations. The concept of a social duty is not the same thing as a right, although they do exist in relation to each other— in a non-Western context, the concept of a
“reciprocal duty” (attached to the Mandarin Chinese word gīrī) defines all social and political relationships, providing an entirely different basis for approaching this general subject (McHugh 1998, 44-62)—especially as the claim to exercise a right generally imposes a response in the form of a duty that has been articulated by prominent legal theorists as emanating sometimes from other persons and, more often, from the state (Dworkin 2007, 171-283). In any case, the duty, if imposed, is an individual one and it is a civic obligation that can be compared to other examples, such as jury duty or military conscription (Martin 1972, 680-702).

Much of the confusion in addressing this general subject of collective rights can be attributed to the contentious issue of identifying Quebec’s overall political culture. Many scholars and commentators have tended to label Quebec as a society that is more prone to perceiving itself in collective, rather than individualistic, terms. That interpretation has ranged from claims that Quebec represents a historical remnant of feudal influences (McRae 1964, 234-244) to a particularly profound reflection of a communitarian tradition as classically articulated by Jean-Jacques Rousseau (Dufresne 1990, 170-173). As a result, some observers have asserted that Quebec’s cultural heritage is more inclined toward a collective identity (even when the liberalism of Quebec is acknowledged, it often is qualified as being “less so” than the rest of Canada), especially as reflected within its legal and political institutions (Galipeau 1992, 74-75). That inclination could account for a greater willingness to apply the term “collective rights” toward legal protections and promotions that are, actually, individual in their true application or not, accurately, rights (Chevrette 1972, 403-449).

That political cultural approach also frequently misjudges the extent to which Quebec is, indeed, a liberal democratic society. The perspective of a “collectivist” Quebec and Canada is grounded in the “fragment theory” of Louis Hartz, which contends that the dominant cultures of former colonial societies reflect the ideals and values of those persons who settled them and established their prevailing political, economic, and social institutions. The Canadian variation of this theory contends that the United States has embraced the values of seventeenth century English liberalism, while Canada reflects the more collective vision of eighteenth and nineteenth century “toryism” and Quebec has adopted the hierarchical tendencies of sixteenth-century France. This theory has been applied to both Canada and Quebec, in the latter case with an emphasis upon the influence of the Catholic Church and the seigneurial system (Arnpolous 1984, 35-40; Horowitz 1968, 29-44; McRae 1964, 234-274). That contention has influenced a general tendency to treat Canada as a communitarian culture, particularly in contrast with the strong libertarian traits of the United States (Taylor 1985, 183-229).

However, other scholars have been very critical of the “fragment theory” of Hartz and Horowitz in this respect, arguing that it is too simple and ignores other evidence (Forbes 1987, 292-296), while other scholars have offered convincing arguments that Quebec has been, and continues to be, a liberal society (Dion 1987, 8-17; Monière 1977, 38-41, 170-182). Indeed, Quebec has embraced liberal principles throughout its modern history (Dion 1987, 8-17). It is true that undemocratic practices (including the overrepresentation of rural constituencies) and the dominance of certain governing elites who imposed traditional values and used institutions such as the Roman Catholic Church as a substitute for a public social “safety net” were unmistakable features of Quebec politics for several decades (Lintau et al. 1991, 70-87). However, the rapidity with which Quebec society embraced the policies and objectives of La Révolution tranquille (Dickinson and Young 2003, 305-344; Latouche 1974, 525-526; Quinn 1979, 5-7; Sloan 1965, 3-18; Thomson 1984, 403-
444) and the strong protection of rights and liberties advanced by Le Chart<br>de droits et libertés de la personne du Québec (and not des personnes) indicates a strong,<br>underlying liberal attachment that has persisted within this society and continues to<br>direct its law, economics, and politics (Behiels 1985, 1-27).

The category of collective rights does exist but its scope, from a more critical<br>perspective, appears to be far narrower than it often has been applied, both by popular<br>acclaim and, even, by many scholars and expert commentators. While this tendency<br>might be defended as a representation of broader characteristics of Quebec society, it<br>also could be criticized as an advancement of certain stereotypes that have been linked<br>to it and influenced responses from the rest of Canada. Future analysis in this area<br>ought to be confined to a more critical application and understanding of its<br>meaning and implications (especially relating to subjects such as labor law) while<br>the general approach to Quebec’s tradition of rights and liberties also can be explored<br>within a more critical context.

1. Although the terms “classic liberal” and “libertarian” are treated, frequently, as being<br>roughly synonymous, they are not precisely the same ideological concepts (though they are<br>extremely close), at least not in the strictest philosophical sense. This is a fine distinction that has<br>been noted in connection with Robert Nozick’s famous approach to this subject (Nozick 1974, 520-523). It is a controversy that has been further addressed by other scholars (Sampson 1978, 93-97). Nonetheless, as a conventional convenience, the two terms may be used, interchangeably, within this analysis.

2. This perspective provides a basis for arguments that seek to protect the interests of<br>minority groups within a democracy, including in terms of the introduction of a method of<br>proportional representation (Mill 1958, 102-126). It also is consistent with a theoretical<br>explanation of rights as connected to societies that are created to enhance the struggle for its<br>members to assert their autonomy (Dworkin 1996, 10-15).

3. “The French language, the distinctive language of a people who are, in the majority,<br>Francophone, allows the Quebec people to express their identity.

“The National Assembly recognizes the desire of the Québécois to guarantee the quality<br>and influence of the French language. It is resolved to make French the language of state and<br>law, as well as the normal and common language of work, instruction, communication,<br>commerce, and business.

“The National Assembly intends to pursue this objective within a climate of justice and<br>openness in relation to ethnic minorities, and it recognizes their precious contributions to the<br>development of Quebec.

“The National Assembly extends recognition to the Amerindians and Inuit of Quebec,<br>who are the descendants of the first inhabitants of the country, of the right to maintain and<br>develop their original language and culture.

“These principles are consistent with the universal movement of appraising the value of<br>national cultures, which confers to each people the obligation to make a particular contribution to<br>the international community.” [This translation is provided by the author]
4. Nonetheless, despite claims that it did not violate the civil liberties of non-Anglophones, Arizona’s attempt to sanction an “English only” policy through the adoption of article XXVIII of the Arizona Constitution was declared to be a violation of federal constitutional guarantees of equality and due process by the United States Supreme Court in Maria-Kelley F. Yniguez, et al. vs. State of Arizona (69 F.3d 920 (1994)). This finding echoed precedents that also upheld the individual rights of American citizens who speak a minority language, including Meyer vs. State of Nebraska (262 U.S. 390 (1923)), Bartels vs. State of Iowa (262 U.S. 404 (1923)), Yu Cong Eng vs. Trinidad (271 U.S. 500 (1926)), and Farrington vs. Tokushige (273 U.S. 284 (1927)).

5. This clause may be compared to the abstract constitutional powers that have been assigned to the federal government to promote the “Peace, Order, and good Government” of Canada, Canada Constitution Act, sec. 91, 1867. The “communal” and “deferential” implications of this federal “reserve powers” clause (especially in contrast to the American constitutional emphasis upon the libertarian ideals of “life, liberty, and the pursuit of happiness”) were evaluated, and limited in scope, by the early precedents of Citizens Insurance Co. of Canada vs. Parson, 7 A.C. 96 (1881), and Attorney-General for Ontario vs. Attorney-General of Canada, 22 A.C. 348 (1896). The distinctive qualities of this residual power are considered in Hogg 1999, 12-20, and Laskin 1969, 65-75. However, despite noting the possible difference in interpretation between section 1 of the Canadian Charter and section 9.1 of the Quebec Charte des droits et libertés de la personne, both Quebec and Canadian jurists appear to treat them as being, essentially, synonymous concepts, as expressed in Attorney-General of Quebec vs. La Chaussure Brown’s (36 D.L.R. (4th) 374, at 380) and Attorney-General of Quebec vs. Ford ([1988] 2 S.C.R. 712, at 775-777).

6. “There is an incompatibility between the Quebec clause enacted within the Quebec Charter and the Canada clause contained within the federal Charter. Article 1 of the federal Charter has a general scope and is thus applicable to article 23; the burden of proof that the Quebec clause satisfies those conditions stipulated by article 1 falls to Quebec. However, that clause [article 27] cannot be interpreted as a simple restriction entering within the framework of article 1 and the Court cannot accept the proffered argument that the negation of certain individual rights can be justified as a consequence of the restriction of collective rights: the Quebec clause thus must give way.” [This translation provided by the author]

7. “Every human being whose life is in danger is entitled to help. Every person must provide help to those whose lives are in danger, personally or by getting help by bringing necessary and immediate physical assistance short of risk to her or third persons or of another reasonable motive.” [This translation is provided by the author]

Bibliography


Marc V. Levine (1989, Spring). “Language Policy and Quebec’s ‘visage française’: New Directions in la question linguistique.” Quebec Studies, 8 (1).


**Cases Cited**


*Attorney-General of Quebec vs. La Chaussure Brown’s, Inc., et al.*, 36 D.L.R. (4th) 374


*Citizens Insurance Co. of Canada vs. Parson*, 7 A.C. 96 (1881)


*Regina vs. Big M Drug Mart, Ltd.*, 1 S.C.R. 295 (1985)


*Yu Cong Eng vs. Trinidad*, 271 U.S. 500 (1926).