Immigration, Multiculturalism, and the Social Contract

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Since the failure of the Meech Lake constitutional reforms and the crisis of national unity prompted by the most recent Quebec referendum, the Canadian Multiculturalism Act has been subjected to particularly intense and hostile scrutiny. While some of the criticism of this policy reflects merely parochial adherence to particular cultural or religious traditions, some of it has raised more significant doubts about the internal coherence, efficacy, and overall desirability of the policy. Most importantly, the multiculturalism policy is faulted for attempting to pursue two simultaneously unachievable goals, viz., to integrate ethnic minority groups into the dominant institutions of the society, while at the same time to protect them against various pressures to assimilate to the dominant culture. Critics have pointed out that social institutions and cultural values are interdependent. Not only do cultural value systems provide the central legitimations for social institutions, but the internalization of these values through socialization processes provides agents with their primary motivation for conforming to institutional expectations. This means that integrating an agent into a system of institutions can only be achieved by assimilating the agent to its underlying cultural system.

From this, it is easy to conclude that the multiculturalism strategy, by trying to split these two processes off from one another, is bound to create problems. On the one hand, if the policy is effective in helping minority groups resist assimilation, it will have the unfortunate consequence of lowering the level of social integration. This will result in an overall reduction in the organizational capacity of the society, along with an increased need for coercion to maintain social order. On the other hand, if the policy is effective in achieving the integration of minority groups into the dominant institutions, it may have the effect of provoking considerable resentment, particularly among first-generation immigrants who may feel that there was some misrepresentation of the terms under which their citizenship was to be obtained. The multiculturalism policy, in this view, contributes to the psychological disarming of cultural minorities, allowing the government to pursue more effectively a covertly assimilationist agenda.

1. The multiculturalism policy commits the government to remove any barriers impeding the integration of ethnic minorities into a variety of primary social institutions; to maintain a stance of official neutrality vis-à-vis the particular cultural practices and commitments of its citizens; to promote the preservation of heritage languages; and to treat cultural diversity as an important social good. See Multiculturalism and Citizenship Canada, The Canadian Multiculturalism Act: A Guide for Canadians, C96-53 (1990).
If the critics of multiculturalism are right, there are two obvious policy directions that can be taken. One could either limit immigration to people who share a certain amount of cultural heritage with members of the dominant cultural group, or else engage in a sort of frank ethnocentrism toward immigrants, saying in effect, "if you want to live here, prepare to become like us." But many people find these options unnecessarily constrained. One of the primary goals of liberalism has been to design social institutions that can be legitimated in a way that remains neutral among a certain relevant plurality of conceptions of the good. If this is possible, then there is no obvious reason why shared values should be required in order to secure an adequate level of integration into the core social institutions.

The reason liberals would want to maintain this neutrality stems from the widely shared moral intuition that while a society can reasonably demand that immigrants "play by the rules" of its existing institutional structure, it would be entirely unreasonable to demand that immigrants adopt the culture, and in particular, the religion, of its most populous group. In order to defend this intuition, I would like to begin by sketching a theoretical framework that shows why a contractualist theory of justice licenses the former and not the latter demand. Having outlined this theory, I then show that the multiculturalism policy—which is widely understood to license cultural, but not structural pluralism—is broadly consistent with these basic principles. Finally, I suggest some of the ways in which the policy could be clarified in order to eliminate much of the confusion surrounding its precise scope and intent.

I. The problem of immigration

Following Will Kymlicka, I use the term "ethnic" group to refer to any cultural group (presumably minority) formed through immigration. A "national" group, on the other hand, refers to a cultural group produced through colonization or settlement (in the Canadian context this includes the British, French and Aboriginal populations). 6 The multiculturalism policy is widely understood to determine only the status of the former. 7 This means that in order to address issues of justice as they pertain to ethnic minorities, we must first determine the status of immigrants.

One of the reasons that liberal theory has traditionally been very weak in addressing the issue of multiculturalism is that it has had very little to say about immigration. On the one hand, prominent liberal theorists like John Rawls begin elaborating basic principles of justice by assuming a closed society—"entry into it is only by birth and exit from it is only by death." 8 Rawls introduces this as a simplifying assumption, and has only recently considered the implications of lifting

7. The fact that both French and Aboriginal groups have criticized the policy as a surreptitious attempt to reduce their status to that of another ethnic minority is evidence that the policy is, in principle, not intended to do so. Also, it is worth noting that in the United States, blacks who were introduced to the continent as slaves do not fall clearly into either category.
it. However, a variety of other liberal theorists have argued that the limitation of the social contract to the internal relations of the nation-state is arbitrary. They have therefore suggested a global application of the contract model (here the "original position"). From this, they infer that agents so circumstanced would choose to permit a relatively unrestricted right of movement. Joseph Carens offers the following series of considerations in support of this view:

First, the right to go where you want to go is itself an important freedom. It is precisely this freedom, and all that this freedom makes possible, that is taken away by imprisonment. Second, freedom of movement is essential for equality of opportunity. You have to be able to move to where the opportunities are in order to take advantage of them. Third, freedom of movement would contribute to a reduction of political, social, and economic inequalities. There are millions of people in the Third World today who long for the freedom and economic equality they could find in affluent First World countries.  

Thus, insofar as liberal theorists do suspend the assumption of a "closed society" and consider the issue of immigration, they tend to come to the conclusion that states have no right to impose immigration controls, i.e., to exclude foreign nationals who express an interest in securing residency or membership. This conclusion is so widely at variance with not only the actual practice of all nation-states, but also the moral intuitions of at least a very broad segment of their populations, that it has prevented many liberals from making any productive contribution to the debates over specific immigration and naturalization policy questions. Since liberals have had difficulty accommodating the notion of immigration control within their normative framework, this has meant that much of the substantive philosophical discussion about the treatment of immigrant groups has been conducted by theorists of a more broadly communitarian persuasion. The latter usually regard the cultural integrity of the community as an intrinsic good, and so have no difficulty justifying immigration controls. In this view, it is legitimate for the community to employ coercion in order to secure or promote a particular shared conception of the good. Insofar as the introduction of individuals who do not share this conception into the community would threaten the provision of this good, the community is justified in imposing restrictions on mobility and membership.  

Because the communitarian position justifies limits on immigration by citing its deleterious effects upon the attainment of particular shared goods, and because these goods are normally assumed to have acquired special importance for the community by virtue of its shared cultural tradition, it follows quite naturally that immigration will be acceptable only insofar as immigrants are willing to assimilate to

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the dominant cultural pattern. This means that apart from any empirical claims about the relationship between assimilation and integration, communitarians regard assimilationalist policies as legitimate precisely because they justify immigration control through reference to the negative effects generated by the presence of unassimilated minorities.

This situation makes it very difficult to defend the idea that immigrants can legitimately be required to integrate, but not assimilate, since the standard liberal view justifies almost no demands, while the communitarian view places no principled limit on the demands that can be made of immigrants. The first step in reconstructing the moral intuitions underlying current state policy is therefore to articulate a version of liberal theory that justifies immigration control.

II. A liberal defence of immigration control

Those liberals who endorse a global application of Rawls’s contract procedure fail to take seriously Rawls’s claim that the “basic structure” of society forms the natural subject for a political conception of justice. Rawls uses the term “basic structure” to refer to the central economic, political and social institutional structure of the society. This forms the natural subject of justice because it is this institutional structure that secures and reproduces society as a system of social cooperation across generations. This is accomplished not only because these institutions exercise a socializing influence in such a way that agents come to be motivated by an underlying sense of justice, but also because these institutions specify sanctions for failure to conform to the expected behavioural pattern. Institutional structure both expresses and enforces a particular conception of justice. Thus Rawls argues that:

A constructivist view such as justice as fairness, and more general liberal ideas, do not begin from universal first principles having authority in all cases. In justice as fairness the principles of justice for the basic structure of society are not suitable as fully general principles: they do not apply to all subjects, not to churches and universities, or to the basic structures of all societies, or to the law of peoples. Rather, they are constructed by way of a reasonable procedure in which rational parties adopt principles of justice for each kind of subject as it arises.

Because justice as fairness is designed to specify a conception of justice for the basic institutional structure of a society, insofar as there is no basic institutional structure at an international level, there are no grounds for applying this particular theory. This is not an idiosyncratic feature of Rawls’s view. In general, social contract theories are intended to provide a specification of what is right under the assumption of full compliance. Rawls introduces the compliance assumption by treating the basic structure as subject. Other contractarians, including Immanuel Kant, David Gauthier, or Jürgen Habermas, provide different accounts of how

14. Supra note 9 at 46.
15. At the level of international relations, Rawls explicitly outlines a “nonideal” version of his theory to deal with situations involving noncompliance. Ibid. at 52.
compliance is to be secured. Nevertheless, they all agree that the contractual deliberations are conducted under the assumption that they will be respected.

This means that in the absence of an effective system of international law, it is not obvious that general contractualist principles can currently be applied to govern relations among peoples. If we understand the term “society” in Rawls’s sense, as a system of social cooperation, then there is an important sense in which relations among nation-states fail to constitute a global society (since the adoption of baggerty-neighbour policies by states is often subject to neither internal constraint nor external sanction). Thus even if social contract principles would recommend a system of global relations in which freedom of movement among nations was guaranteed, there is no reason to think that such principles should be respected by any state in the absence of an effective institutional structure that can provide reasonable guarantees of compliance among the others.

Because of this, there is a striking disanalogy between the right to freedom of movement within a state, and the right to movement between states. For instance, if states lifted immigration controls in the current global context, they would open themselves up to a variety of forms of harmful predation. All states provide, either directly or indirectly, a variety of public goods, i.e., goods to which individual access is difficult or impossible to control. However, few of these goods are public in the strict sense, since access can often be limited to those occupying a certain geographic area. More commonly, access is restricted to individuals maintaining active membership, i.e., citizenship. Membership status can then be coupled with certain obligations, in particular, the duty to contribute to the taxation revenues used to supply these goods.

States exercise control over their public goods both by limiting territorial residence to active members and by directly limiting services and resources to members. If the former type of control were not exercised, the society would find itself open to exploitation in a variety of ways. Consider the following analogy: residents of the downtown core of many cities complain about being exploited by those living in the suburbs, who generally use all of the municipally-funded downtown infrastructure (roads, police, public transport, etc.) but do not pay for it. Similar circumstances would arise in an international context where residency and use of infrastructure were not linked to citizenship.

This problem cannot be solved by permitting open access to territory, but making citizenship (and hence taxation) mandatory for all those who choose to take advantage of it. This is because state planning of public resource allocation is normally calculated over the entire life-cycle of citizens. This means that the annual contribution that each individual citizen makes through taxation does not directly “pay” for the services and resources that the citizen enjoys in the same year. For instance, most citizens who live in states with socialized medical care “overcontribute” for most of their adulthood, then become massive consumers of medical services in

the last five years of their life. Allowing individuals an unrestricted right to “sign up” as citizens at any point would make it impossible to provide such goods. No welfare state could survive if people chose to spend their childhood and retirement in a welfare state, yet their working lives in a low-taxation state with minimal public services.

It is not just that life-cycle planning would be impossible without immigration control. States also attempt (somewhat less successfully) to ensure the provision of public goods for future generations, by such measures as encouraging a high rate of savings, controlling public debt, preventing long-term environmental degradation, implementing population control measures, etc. If parents could count on being able to send their children off to different countries, this would be much more difficult.\(^7\) China, for instance, has dedicated considerable social resources to restricting its population growth. This is a particularly difficult policy to enforce, since the incentives for any one individual to free-ride (i.e., break the “one-child” rule) are very high. But if China could count on an ability to export its surplus population to less crowded parts of the world, the incentive to control it would be considerably diminished.

The situation within federal states is quite different, precisely because the national government has the legislative authority to prevent free-riding. For instance, the Canadian provinces are responsible for making welfare support available to all residents. At the same time, this arrangement gives each province an incentive to encourage welfare recipients to emigrate to other provinces, and to discourage them from immigrating. This recently led the provinces of Ontario and Alberta to engage in a competitive lowering of rates, designed in part to transfer a segment of the welfare population to other provinces. The province of British Columbia, which then began to experience a rapid swelling of its welfare roles, responded by imposing what amounted to a form of immigration control, viz., a three-month residency requirement on welfare eligibility. The federal government subsequently intervened in an attempt to overturn this policy and prevent further escalation. But among sovereign states, there is no international agency with the power to act as the national government does in a federal republic. This means that states which provide public goods often have no way of avoiding exploitation from their neighbours other than through limiting immigration. Because of this, immigration control can be thought of as a way of giving a national group something analogous to a property right over its public goods.

This analysis does not provide a categorical defence of immigration control, but only a contextual defence, given the absence of effective international law.\(^8\) (And one can see in the European Community how the development of stronger transnational institutional structures leads quite reasonably to a relaxation of controls on movement.) There is, however, a weaker argument to be made for immigration

\(^{17}\) It is considerations such as these that motivate Rawls to endorse the right to limit immigration, supra note 9 at 57.

\(^{18}\) It is important to note that this is not a Hobbesian claim: “given that nations exist in a state of nature, there is no justice among them,” but rather the Kantian one: “given that nations exist in a state of nature, compliance with the rules of justice cannot be expected.”
control, one that would retain its force even under world government. This is an argument that has been developed by Kymlicka to justify the granting of self-government rights to minority groups in multi-national states, but which, as we shall see, applies equally to all national groups in an international context.

Kymlicka argues that people have a reasonable interest in protecting the integrity of their culture. This interest stems from the fact that culture provides a horizon of significance for all agents that makes certain of their choices meaningful. According to Kymlicka, "we decide how to lead our lives by situating ourselves in these cultural narratives, by adopting roles that have struck us as worthwhile ones, as ones worth living." Disruption of this cultural context can lead to various social problems typical of what Durkheim called "anomie." Thus the integrity of the culture can reasonably be defended, not—pace the communitarians—in the name of particular cultural values, but rather in the interest of retaining a stable system of cultural values.

Liberals should be concerned with the fate of cultural structures, not because they have some moral status of their own, but because it’s only through having a rich and secure cultural structure that people can become aware, in a vivid way, of the options available to them, and intelligently examine their value. Without such a cultural structure, children and adolescents lack adequate role-models, which leads to despondency and escapism, a condition poignantly described by Seltzer in a recent article on the adolescents in Inuit communities.

Because a given culture is defended, not in terms of specific values it endorses, but rather in terms of its value for members as a context of choice, this analysis does not give members a legitimate interest in protecting the culture against change, but only against certain forms of external disruption. The ability of a culture to serve as a stable context of choice depends upon its effective institutionalization, “in schools, media, economy, government, etc.” Forcible disruption of these institutions through external interference impairs the ability of the national group to effectively reproduce its culture. Thus the primary upshot of the interest in cultural integrity is to give national groups what Kymlicka calls “self-government rights,” i.e., rights to determine the general character of their primary public institutions, and to require integration into these primary institutional patterns.

In Kymlicka’s terms, this means that cultural groups can legitimately enforce measures to protect their culture from the effects of external interference, even though they cannot impose internal constraints on their own members in order to enforce particular values. Since many cultural practices, including language use, are only viable given a certain territorial concentration of practitioners, in many cases external protections can only be secured through residency restrictions. Kymlicka cites North American Native communities as an example, where the

21. Supra note 6 at 76.  
22. Ibid. at 27-30.
power to prevent non-Aboriginals from purchasing land on reservations is an important policy lever for the protection of Native culture.

While Kymlicka develops his position as a defence of minority rights within multi-national states, it clearly has application to the international case as well. Immigration control provides members of national groups with a set of external protections against disruption of their culture. Naturally, people have a tendency to grossly overestimate the scale of the disruption caused by immigration. A framework such as this could, however, provide principled grounds for allowing national groups to resist forms of immigration that amounted to colonization. Thus it would not give a state the right to limit immigration whenever some segment of its population “feels” that its culture is threatened. Often, mere changes in the culture are interpreted as the effects of external disruption. In order for a set of changes to qualify as a threat to a cultural context, they would have to play a demonstrable role in the disruption of some primary institutional structures that serve an important functional role in the reproduction of the culture.

In summary, the two arguments presented here provide a liberal defence of national sovereignty, including the right to control immigration under specific circumstances:

* Given the absence of international controls to prevent predatory emigration policies, states have license to protect themselves from the effects of such policies through the use of immigration controls.
* Even in the case of a global civil society, cultural groups would be justified in retaining various forms of territorial sovereignty, including rights to control immigration, in cases where this is essential for the protection of their culture against external disruption.

III. Liberal neutrality

There are two primary mechanisms by which nations can obtain new members: through birth and through migration. It is widely accepted that states are under an obligation to accept as members those who enter by birth, but are not under any obligation to accept as members those who seek to enter through migration. From the liberal-contractarian point of view, it is easy to see why this should be so. There are a variety of nuances, but the most important point is that entry into the society among the former group is involuntary, while the entry of the latter is voluntary (or being born into a society is a circumstance, while moving into one is a choice).

It is the involuntariness of people’s inclusion into a society that forms the cornerstone of the contractualist reconstruction of the normative foundations of the state. In the contractualist view, agreement forms the normative basis of any moral

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23. The examples that spring to mind most readily are the European colonization of western Canada in the late 19th century, and of Palestine during the British mandate, which were both technically achieved through immigration (although there was significant use of force in both cases). Kymlicka’s argument suggests that it was not only the use of force that rendered these episodes morally objectionable. Even if they had been achieved peacefully, the disruptive effects upon the indigenous cultures would, in both cases, serve as legitimate grounds for opposition.
or political obligation. Thus, for the contractualist, a promise or a contract, freely entered into by all parties, represents the paradigm instance of a binding moral obligation. However, not all obligations can be of this type, since the terms of our social interaction are not all explicitly agreed upon, and our entry into them is often not under conditions that we have voluntarily accepted. It is in order to handle cases of this type that the device of a hypothetical contract is introduced.

The purpose of this device is to provide a general normative standard against which de facto social obligations can be evaluated. Thus a particular obligation, although not freely incurred among agents, remains binding if it would have been the object of an agreement of all affected ex ante, or in some state in which the agents’ particular circumstances are absent. For the contractualist, obligations that are grounded in actual agreement, whatever their content, have a strong prima facie claim to rightness. On the other hand, obligations that are not grounded in actual agreement, in order to be considered just, must meet the standards of a hypothetical agreement. The conditions under which a hypothetical agreement can be secured will normally be much more exacting than those under which actual agreement can be achieved. For instance, while actual agents often make mistakes, and agree to do things that it is not in their interest to do, their agreements nevertheless remain binding.Attributing a mistake to a hypothetical agent, on the other hand, would be arbitrary and unmotivated. Similarly, actual agents may secure advantageous agreements thanks to various features of their circumstances that place them in a privileged position. In a hypothetical contract, in which it is not yet known how things will turn out, i.e., where circumstances are factored out (as in a Rawlsian original position), arrangements of this type would not be accepted.24

As a result, involuntarily incurred obligations must meet a much higher standard in order to be considered binding. For instance, insurance companies routinely engage in a practice called “cherry-picking” within a population, where membership in the scheme is restricted to those who pose the least risk. When the relationship between the company and the client is entirely voluntary, this practice is tolerable. If, however, the insurance market was monopolized by one company that excluded competitors by force, it would not longer seem acceptable. The situation is similar with states. Since national governments claim territorial sovereignty, and maintain a monopoly on the use of force within this territory, all those born within its confines are effectively forced to deal with that government. This means that the laws of the state, in order to be legitimate, must satisfy the standard of a hypothetical social contract.25

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24. In bargaining terms, actual agreements take the status quo as the initial bargaining point, whereas social contracts take some idealized point.
25. In the early history of social contract theory, some theorists maintained that insofar as each citizen possessed a right of exit from their country of residence, political obligations were in fact all voluntarily incurred. However, it was quickly pointed out that the costs associated with emigration are so high that nationality is de facto involuntary. Hume argued, for instance, that while passengers on a ship at sea have a “right of exit,” viz., jumping overboard, it is not a live option. It should therefore be kept in mind that the distinction between voluntary and involuntary is determined by some notion of which options an individual could reasonably be expected to exercise.
According to the liberal view, this standard requires that laws treat all citizens equally, regardless of their circumstances. This requirement is thought to flow directly from the condition that the agreement be one which all reasonable persons could accept, although the preferred mechanism for deriving this constraint varies.²⁶ The relevant consequence, for our purposes, is that equality requires that the state retain a degree of neutrality toward the different goals and projects that individuals may pursue. In this view, each agent is motivated by some conception of the good life, some set of values, that determine the overall direction of her particular goals and projects. However, it is also regarded as a fact about society that there is considerable disagreement among individuals concerning the nature and priority of these values, and that there is no generally acceptable procedure for resolving these disagreements.

Nonetheless, while the values that each individual upholds are, in an important sense, subjective, they are not considered the product of individual choice. Values represent the criteria that agents apply when making decisions, they are not themselves the product of such a decision. This means that, in the liberal view, the state cannot officially sponsor one particular conception of the good life, since this would in effect impose costs on those who do not share this conception, due merely to the circumstances in which they find themselves. For instance, in the Rawlsian view, agents behind a veil of ignorance, who do not know what their conception of the good life is, would not endorse an institutional structure that privileged any particular conception. (This is why a voluntary association like a club can be committed to particular values, but an involuntary association should not.)

On the standard sociological view, the importance of cultural tradition is that it serves to transmit a set of shared values from one generation to the next.²⁷ Given this definition, and given that the liberal state must remain neutral between rival value-systems, the immediate consequence is that the state must remain neutral among the range of cultural traditions to which its citizens may belong. This is what underlies the liberal claim that the state cannot demand the assimilation of its citizens to one particular culture. On the other hand, there is no problem with requiring that citizens integrate into the dominant institutions, since these institutions, insofar as they are just, satisfy the criteria of the social contract, and so represent a set of binding political obligations. The legitimacy of the demand for integration is very closely related to the illegitimacy of assimilation, precisely because the content of liberal institutions is given by the terms under which cooperation can be secured among those who differ over their conceptions of the good.

Thus the requirement that agents not be required to assimilate is a central component of the liberal tradition. It is precisely because liberal institutions are neutral between different conceptions of the good that they can be accepted by all under conditions of equality, and hence can form the basis of binding political obligations. In the communitarian view, by contrast, the legitimacy of political systems is

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derived directly from the value systems that they institutionalize. It is because commu-

nitarianst only recognize forms of justification that make direct reference to par-
ticular values that integration and assimilation then appear to be equivalent 

processes.

IV. Minority Rights

With this account of liberal neutrality in place, the question is now precisely 
how the commitment to this political ideal should be effectively institutionalized 
in the context of a multicultural society. The biggest mistake, at this point, would 
be to assume that the liberal commitment to neutrality requires that the state treat 
all citizens in the same way. Kymlicka, among others, has shown that a culturally 
undifferentiated system of rights and laws can have the effect of systematically dis-
advantaging members of minority cultural groups. He presents the following, rather 
ingenuous argument.28 Ronald Dworkin has proposed a thought experiment in which 
agents, shipwrecked on a desert island, are each given the same amount of currency, 
then asked to bid for island resources in a competitive auction.29 The allocation that 
results under Walrasian equilibrium will be “envy-free,” i.e., no agent will prefer 
his neighbour’s bundle of goods to his own. Kymlicka asks us to imagine a case in 
which the same auction is run, but agents are not aware that they are bidding 
against members of different cultural groups. Once the auction is over, it is revealed 
that there are two cultural groups participating, one of which significantly outnum-
bers the other. Kymlicka argues that because of the various advantages associated 
with, e.g., territorial concentration, this will result in many members of the minority 
group envying the bundles owned by members of the cultural majority. But if the 
auction is rerun, the new allocation will result in every member of the society receiv-
ing a bundle that they prefer to the bundle they received under the first allocation. 
This is because members of the minority group will have to bid harder and pay 
more for some goods, allowing members of the majority culture to pick up their 
former possessions at lower prices. The result is an unexpected windfall for the 
members of the majority culture, since they were not dissatisfied with their initial 
bundle, but receive a bundle that is even better.

The moral of the story, according to Kymlicka, is that those who have the bad 
luck of being born into minority cultural groups can be systematically disadvantaged 
in their pursuit of life goods. In the case outlined above, equality might require 
a system that redistributes some of the majority group’s windfall gains to members 
of the minority culture. This means that in order to treat all citizens equally, the 
state may develop a system of group-differentiated entitlements and obligations. 
Kymlicka suggests that these differentiations will take two primary forms: 1. self-
government rights, and 2. polyethnic rights.30 The difference is that the former deter-

28. Supra note 19 at 188.
29. Supra note 26 at 285.
30. Kymlicka also includes a third class of “special representation rights,” but these are not especially 
relevant to the current argument. See supra note 6 at 37.
mine aspects of the basic institutional structure of society, while the latter come into effect once this basic structure has been determined, and prescribe specific policies intended to remove obstacles that might prevent members of minority cultures from integrating into this structure. This means that self-government rights accord members of cultural minority groups the right to set up a variety of parallel institutional structures in cases where sharing institutions with members of the majority culture would leave them systematically disadvantaged. Thus the first class of rights licenses various forms of structural pluralism, while the second does not.

The type of situation that Kymlicka has in mind for the allocation of self-government rights includes the situation of Québécois and aboriginal First Nations. In cases such as these, the preservation of the traditional French civil code in Quebec, or the use of “sentencing circles” in criminal law proceedings on reservations, are justified by the fact that uniform application of the British common law system, or of European-style penal codes, would disadvantage members of these minority groups. Thus self-government rights give members of cultural minority groups the right to resist integration into institutions that unfairly benefit members of the majority culture. Naturally, in cases where these rights are not recognized, basic liberal principles provide legitimate grounds for secession from the nation-state. This is a simple consequence of the view that social institutions which do not treat agents equally fail to satisfy the conditions of the hypothetical social contract, and therefore do not generate binding political obligations.

This sort of institutional pluralism can usually be accommodated through some form of federalism, with group-differentiated rights and entitlements corresponding to the territorial jurisdictions of subsidiary political units. Thus, pluralism is incorporated into the basic institutional structure through variation at lower levels of jurisdiction. This satisfies the requirement that members of minority cultural groups be treated equally in the basic structure. However, these territorial divisions will never correspond precisely to the distribution of the relevant cultural groups, as the case of French-Canadians outside Quebec, or Natives “off the reservation” attests. Nonetheless, since the basic structure continues to satisfy the reasonable requirements of a theory of justice, members of minority cultural groups are still bound by the obligations generated by the institutions in their residential jurisdiction. This will generate local inequality, insofar as they will be disadvantaged by their minority status. For this reason, it is important that they not be further disadvantaged by unnecessary barriers to their integration. Thus a framework of

31. Similarly, there is a system of resource redistribution, since English-Canadians subsidize various institutions committed to the preservation of the French language, just as members of both linguistic majorities provide transfers to Aboriginal communities.

32. Hence the ambiguity in the term “sovereignty” as it is used by Québécois and Natives. In the Canadian political lexicon, the demand for sovereignty is a demand for self-government rights, i.e. accommodation through group-differentiated institutional structures. However, since this demand is usually backed by the threat of secession, the separatist can easily be confused with the separatist. The difference is that the separatist’s threat to secede is a legitimate liberal response to the denial of self-government rights, while the separatist’s unconditional demand for secession is usually the expression of a desire to develop or maintain ascriptive forms of solidarity.
polyethnic rights are necessary to minimize the inequality generated by the imperfect implementation of schemes of group-differentiated rights.

So far, this analysis deals with the development of group-differentiated rights in order to treat equally those who have the bad luck of being born members of a minority culture. However, this description clearly does not apply to immigrants, since the fact that they become cultural minorities within the société d'accueil can hardly be described as bad luck. Roughly speaking, their status as cultural minorities is not the product of circumstance, but rather of choice. For this reason, and in accordance with the volenti non fit injuria principle, ethnic minority groups have no right to compensation or special institutional accommodation in order to offset the disadvantages stemming from their status as minority cultural groups. The conditions under which immigrants secure admittance to society are not involuntary, and are therefore governed by explicit rather than hypothetical agreements. For this reason, the strict criterion of equality generated by the hypothetical contract need not apply. This is why immigrants can legitimately be required to integrate into the basic institutions of society, even if these institutions are not ones that serve to reproduce their traditional cultural patterns. Naturally, they can avail themselves of all the established internal mechanisms for changing this structure. The key point is simply that they have no right-based claim to special institutional arrangements to protect their heritage culture as a “context of choice,” e.g., through exemption from segments of the criminal law. A consequence of this view is that an immigrant secessionist movement would be illegitimate.33

Naturally, the fact that immigrants are not automatically entitled to self-government rights does not mean that they cannot be granted them. In cases where there is a strong national interest in securing immigrants, it might be thought worthwhile to accord immigrant groups something akin to national rights. Special institutional arrangements were made for Hutterites and Mennonites in western Canada. However, given the potentially enormous cost of administering such arrangements, not to mention sheer impracticability, it will seldom be in the interest of any nation to grant national rights as an incentive to immigration. For the most part, immigrants enter the society as individuals or families, without the expectation that they will be able to reproduce the basic institutional structure of their country of origin. The fact that they agree to these terms generates a strong presumption in favour of their legitimacy.

However, the fact that the terms of immigration are not governed by the strong conception of equality derived from the social contract does not imply that they are constrained by nothing other than the mutual advantage of the parties. This would create the potential for all sorts of abuses, particularly given the economic duress that leads many individuals to immigrate. In section II, it was argued that nations do not have an unlimited right to reject migrants, but are able to do so only in order to protect citizen from two types of harm (negative externalities in the public sector and disruption of core mechanisms of cultural reproduction). It is therefore

33. The case of immigrants participating in the Quebec separatist movement is controversial, precisely because it presents a borderline case.
reasonable to suppose that immigration agreements should be constrained by the requirement that any departure from the strict equality standard must be motivated by the need to protect against the relevant harms. For instance, the need to protect the state from various forms of exploitation can be appealed to in order to justify, e.g., the temporary exclusion of immigrants from non-contributory entitlement programs, the "point-system" for entry, and so on. Similarly, the requirement that immigrants integrate can be justified by the reasonable interest of citizens in protecting their culture as a "context of choice" against external disruption.

The central category of group-differentiated rights that pertains to immigrants are polyethnic rights. Even though the cultural minority status of immigrants does not entitle them to special institutional arrangements within the basic structure of society, they are nevertheless entitled to have any unreasonable barriers to their integration into this institutional structure removed. The logic here is the same as that which justifies the extension of polyethnic rights to national minority groups outside their regions of primary territorial concentration, viz., the gratuitous inequality generated by creating a basic institutional structure that treats all citizen equally, but then demanding integration on terms that imposes special costs on members of minority cultural groups. Naturally, in the realm of actual immigration policy this general framework is subject to a wide range of variation and nuance. The objective here is to make a primary normative cut between the status of national and ethnic minority groups, and provide a justification for some of our central intuitions regarding the lesser bundle of rights accorded the latter. However, two exceptions to this primary division are significant enough to bear mentioning: second-generation immigrants and refugees. Members of both groups are members of minority cultural groups, but neither through choice. Following the logic of the above argument, this would appear to be grounds for granting them self-government rights. This would be an awkward consequence, since these types of institutional arrangements are extremely difficult to design and administer.35

I would like to suggest a way in which this consequence can be avoided, although I am less than sure about my answer in the case of refugees. As far as second-generation immigrants are concerned, there are no grounds for according self-government rights, because the purpose of according such rights is to protect the institutional structure that reproduces a certain minority cultural pattern. In cases where the first generation of immigrants has opted for arrangements in which they are expected to integrate, they will not be maintaining such an institutional structure, and so there will be nothing for their children to reproduce. This means that any

34. In Rawlsian terms, self-government rights take effect at stage one, the determination of the basic structure, while polyethnic rights are relevant at stage two, the implementation of this basic structure. See supra note 8 at 140-44.

35. The position of blacks in the United States is unique in that they have a legitimate claim to self-government rights (having been originally brought to the Americas involuntarily), but lack territorial concentration, thereby making it near-impossible to institutionalize these rights through the usual federal structures. Affirmative action programs in the United States can be seen as an attempt to build structural pluralism into every major social institution, in such a way as to respect the legitimate anti-integrationist claims of the black community. In this respect, American and Canadian affirmative action programs have very little in common, since the latter are almost invariably aimed at promoting integration, rather than helping minorities resist it.
cultural patterns they have been able to pass on to their children will be ones that can be reproduced within the informal sphere, i.e., not through the basic institutional structure. Insofar as this is the case, second-generation immigrants will be able to reproduce what they have internalized of the minority cultural pattern without special institutional accommodation. Naturally, this does not detract from the second generation’s demand for an aggressive program of polyethnic rights.

In the case of refugees, there is a more serious problem. The fact that refugees become members of the society through involuntary circumstances is acknowledged in a variety of ways, e.g., the state’s limited “cherry-picking” options, direct access to non-contributory entitlement programs, etc. Refugees are regarded as having an automatic right to something close to full citizenship, on the grounds that their entry into the society is as involuntary as that of an individual born into it. However, since they are already fully socialized, they cannot simply be expected to assimilate to the dominant cultural pattern. This means that, insofar as they have the bad luck of forming a minority culture group, they should be entitled to certain forms of compensation, up to and including the right to opt out of basic institutional structures. However, since this would dramatically increase the costs associated with accepting refugees, and would quickly produce an unmanageably complex system of political institutions, it is something of an unhappy conclusion. One way to avoid the outcome would be to argue that since naturalization remains voluntary, the state could impose certain terms on the transition to full citizenship, which could include forfeiture of self-government rights.

V. Some Needed Clarifications

This distinction between self-government and polyethnic rights brings the goals of the Canadian multiculturalism policy into much sharper focus, since the Multiculturalism Act is clearly intended only to secure the latter. Self-government rights give cultural minorities a legitimate claim to establish group-differentiated institutions within the basic structure of society. This claim is grounded in the fact that their status as members of a minority culture would leave them systematically disadvantaged if forced to integrate into a set of undifferentiated institutions. However, since immigrants choose to become members of the society knowing that they will be members of minority cultural groups, they have no claim to special accommodation or compensation in the basic institutional structure. The voluntary nature of this choice means that the terms of their entry into the society is not directly governed by the conditions of hypothetical agreement, and is therefore not governed by the strict equality provision associated with the social contract.

However, insofar as states have only a conditional right to reject migrants, the departure from the standard of equality must be motivated by a desire to protect citizens from certain identifiable harms. The requirement that immigrants integrate can be regarded as a form of external protection of the ambient culture. The demand that they assimilate, on the other hand, would have to be regarded as an internal constraint. Both represent a departure from the strict liberal standard of equality, but the former can be justified as the exercise of reasonable self-government rights.
on the part of citizens of the société d’accueil.

This analysis provides normative foundations for the widely shared understanding that the Multiculturalism Act does not license structural pluralism. For instance, the demand from the Muslim World League that Canadian Muslims be governed by Islamic, rather than Canadian family law, received considerable attention because it identified precisely the type of purposes that the Multiculturalism Act was not intended to serve.6 What the act outlines are rather a set of polyethnic rights, i.e., rights designed to assist members of cultural minority groups to integrate into the basic institutions of society. This is coupled with an affirmation that certain core liberal principles will not be abrogated, viz., that the state will not enforce any particular cultural tradition or conception of the good, that certain spheres of privacy will be respected, etc. In short, it ensures that immigrants will not be required to assimilate.

The anti-assimilationist component of the act is motivated by the liberal commitment to neutrality among rival conceptions of the good. However, it is important to realize that liberal neutrality need not be neutral in effect.”7 The neutrality of a particular social arrangement means that it does not directly enforce a particular conception of the good life, and that it seeks to mediate rival conceptions in a way that is at least roughly acceptable to all. However, it is entirely conceivable that certain cultural patterns and value-orientations cannot be effectively reproduced without enforcement. This will make them incompatible with liberal forms of social organization, not in the sense the agents will be unfairly disadvantaged by their adherence to them, but rather in the sense that they will lack the social mechanism required to reproduce them across generations.

Thus the Muslim World League may have been perfectly correct to argue that uniform enforcement of Canadian family law would lead to the erosion of certain traditional Islamic values. Liberal family law is widely thought to have led to the erosion of traditional Christian family values as well. In fact, there is a broad range of cultural forms that appear to be unstable in the context of liberal institutions. The fact that liberal societies are unwilling to directly enforce patriarchal authority in domestic affairs creates an obvious problem for many traditional value-systems. But liberal societies also generate a number of more subtle pressures, e.g., the level of mobility required by the labour market disrupts the extended family, the widespread availability of rental housing creates “exit options” from the parental home for many young people, and so on. This means that integration into Canadian society will often result in a significant change in the value-systems of immigrants over generations.

The point is that this change in values need not arise because other, “Western” values are being foisted upon them. It may arise because all individuals in the society are constrained by the requirement that they abide by basic institutions that are acceptable to all. This means that, as Francis Fukuyama puts it, immigrants are often faced with the task of changing the type of sociability they practice “from

36. Supra note 3 at 139.
an ascriptive to a voluntary form.” One effect of this will be that value systems that cannot be reproduced without direct institutional enforcement will be “filtered out.” In a North American context, the changes that this brings about are more obvious in the case of non-Western immigrants, particularly those who come from culturally homogenous societies, simply because the “filtering” process has been operating on value-systems of European origin for a lot longer.9

The long-run effect of this will be a narrowing of the differences in the value systems between members of a liberal society, simply because every value system is subject to the common set of constraints imposed by the basic institutional structure. But it would be highly misleading to regard this as a form of assimilation. The correct term would be liberalization, which we can use to denote an endogenous transformation that renders cultural value systems institutionally compatible with a plurality of other cultural forms. The failure to distinguish assimilation from liberalization, or to run the two together under the heading of “Westernization,” has a tendency to make the process appear considerably more sinister than it need be. With this distinction in hand, it can be argued that the multiculturalism policy is lacking in clarity on two points. While its broadly anti-assimilationist intent is obvious, it is less clear that the policy is intended to promote integration and liberalization.40 Clarifying this complex of relations would be advantageous, for the following reasons:

1. Integration. If the demand that immigrants integrate into the existing institutional framework was rendered more explicit, it would make it impossible to interpret the Act as conferring self-government rights upon ethnic minorities. This would greatly simplify the task of finding a constitutional accommodation for Quebec and First Nations. Most importantly, it would render explicit the fact that the self-government rights of, for instance, the Québécois, is not due to their status as a French-speaking minority within Canada, but is due to the fact that there is an entire social system, i.e., government, mass media, education system, etc. that functions in French, which institutionalizes and reproduces a distinctive, identity-conferring French-Canadian culture. The focus on language obscures the difference between Québécois, who possess a fully institutionalized culture, and minority ethnic groups, who do not. This creates resistance to constitutional accommodation, motivating arguments of the form “If we do this for the French, next it will be the Chinese, etc.” The focus on self-government rights would legitimize something like the “two nations” conception of the federation that forms the dominant interpretation in

39. The extent to which European-stock value systems have been liberalized in North America is often underestimated. Michael Lind, in The Next American Nation (New York: Free Press, 1995), has documented the way that Anglo-Americans in the early twentieth century complained bitterly about the flood of immigrants from the “unassimilable” Irish, German, Italian and Polish races. Most younger North Americans now find this sort of talk hard to take seriously, although it retains considerable currency in Europe proper.
40. Although this may be more a problem of perception than reality, since passages like 3(1)c, which commits the Government of Canada to “promote the full and equitable participation of individuals and communities of all origins in the continuing evolution and shaping of all aspects of Canadian society, and assist them in the elimination of any barrier to such participation,” supra note 1 at 12, are hard to read as anti-integrationist.
Quebec (although correcting for the omission of aboriginal peoples, this would have to be a “three nations” conception).41

2. Liberalization. Potential immigrants could also be more clearly advised that integration into the major Canadian institutions will be incompatible with certain cultural forms, and will probably require considerable willingness to adjust normative expectations. For instance, evidence suggests that many immigrants seriously underestimate the impact that growing up in a different country will have upon their children, and of the potential for disagreement over questions of value that this may generate. Most obviously, many immigrants underestimate the extent to which growing up in a society without formally institutionalized sex-discrimination will reduce their daughters’ subsequent willingness to conform to traditional gender roles. These effects could be more effectively advertised, e.g., by publicizing the rates of out-group marriage among members of ethnic minorities. Advance notice of this type could reduce the sense among some immigrants that they or their children have been subject to some form of covert assimilation.

VII. Conclusion

The preceding analysis may help to resolve what appears to be a paradox in the outcome of Canada’s multiculturalism policy. While the Multiculturalism Act is often faulted for emphasizing differences, creating ethnic ghettos, and promoting general disorder, at the level of inter-ethnic relations Canada remains the model of a well-integrated multicultural society. It is not insignificant, for instance, to note that Canada has a rate of elective naturalization more than twice as high as any other immigrant nation.42 Furthermore, there is the inescapable irony that, as former Quebec Premier Jacques Parizeau correctly noted, the “ethnic vote” was pivotal in the defeat of Quebec’s most recent bid for separation. Certainly ethnic groups are doing more at the moment to keep the country together than members of the founding English, French and Aboriginal nations. The reason for this is not hard to find. By rendering explicit the commitment to liberal neutrality, the Multiculturalism Act helps to generate a presumption that the basic institutional structure of the society is fair to all citizens. It is precisely this presumption of fairness that serves to legitimate these institutions, which in turn licenses the demand for integration. It is by not requiring that ethnic minorities adopt the majority culture that the society is able to legitimately require that they conform to the prevailing institutional expectations. When combined with the fact that the polyethnic rights licensed by the multiculturalism policy help to remove arbitrary barriers to this integration, the net effect of the legislation is to reduce the level of friction associated with the process of social integration.

In the background of this argument is my conviction that a contractualist theory provides a better framework for the analysis of these issues than any of its current

41. Or 533 nations, depending on how you count.
rivals. First of all, the choice/circumstance distinction, which follows from the contractualist emphasis on agreement as the central normative category, serves as a simple device for drawing a principled distinction between self-government and polyethnic rights, and therefore of distinguishing the situation of national and ethnic minority groups. This provides a way of making extensive institutional accommodations for Quebec and First Nations, without having to make the same arrangements for every other cultural minority. Second, the liberal strategy of avoiding disputes over questions of the good life provides theoretical grounds for claiming that social policy can coherently promote integration without requiring full-blown assimilation. This provides a good way of establishing limits on tolerance, without the discomfort associated with simply imposing “our” system of values.

43. It should be noted that although a “communitarian” writer like Charles Taylor recognizes this distinction (he refers to “first-level” and “second-level” diversity), he has no principled way of drawing it. Instead, he relies upon the observation that ethnic minority groups simply do not “want” self-government rights, while Québécois do. Charles Taylor, Reconciling the Solitudes (Montreal & Kingston: McGill-Queen’s University Press, 1993) 181.