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Federal Electoral Boundary Redistribution and Official Language Minority Representation in Canada

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Dedication

~ Dedicated to my mother, Diane Carmel Léger, for instilling in me the importance of using writing as a tool in sustaining and promoting Acadian identity ~

Acknowledgements

Abstract

This thesis explores the meaning of effective representation for Official Language Minority groups in Canada. After examining different theories of representation and describing the evolution of Canada's system of representation since Confederation, we turn to the federal court case of *Raîche v Canada* to better uncover the recent discourse around federal representation for groups identified as "communities of interest" or "identity." As the first court case in Canadian history to overturn the redistribution proposed by a Federal Electoral Boundaries Commission based on a community's linguistic rights, *Raîche v Canada* set a precedent for defining communities of interest and identity to include Official Language Minority groups. In this sense, it set the groundwork for asserting more substantial consideration of these communities' rights in the electoral boundary redistribution process and for ensuring more effective representation for national minorities within federal institutions. While *Raîche v Canada* demonstrates a significant step forward in realizing meaningful representation for communities of interest and identity, this thesis concludes that achieving effective representation for Official Language Minority groups will require the reimagining and redefinition of representation in Canada.

Introduction

In modern democracies the popular vote is seen as the only legitimate way to determine who will form the government of a given country. In Canada, this means electing representatives, individuals who can gather together in a common space to determine the nation's laws and policies in the best interest of the people or more specifically in the best interest of their constituents, those they were elected to represent.

Though the notion of representation, and more specifically the rule of representation by population with which western democracies are most often affiliated, seems to be a fairly straightforward concept, in reality the particular ways in which systems of representation are designed have a significant influence on the resulting system of government, political climate and culture, and distribution of political power.

In fact, upon examination, it is apparent that representation by population is not and cannot be applied in its pure state in our imperfect world. In most cases people pay homage to representation to population, but it not actualized and in fact deviations from the principle of voter equality are in many cases expressly included in national laws and policies.

There are many normative reasons for this compromising of absolute individual voter equality. In this essay, one prominent reason will be examined in depth, the will to protect the voice and interests of minorities that could otherwise be silenced by the tyranny of the majority. Since Confederation, Canada has pursued a conception of representation which balances the pursuit of the equality principle with a desire to provide inclusive and effective representation for all its citizenry.

The intention of this thesis is to explore the meaning of and pursuit of effective representation in Canada, in particular as it relates to official language minority groups. To do so it will focus on a case study where, in the name of protecting a community of interest/identity, a federal court overturned the New Brunswick Electoral Boundary Commission's decision to alter the boundaries of the constituency of Acadie-Bathurst. By exploring the details of this case and its implications for official language minority representation, this work aims to contribute to the evolving definition of the concepts of community of interest/identity for the future review of electoral boundaries as well as to revisit and reaffirm the values underlying the Canadian political community. There is thus a normative component to the undertaking of such a study.

Organization

To begin, this thesis will examine the Canadian system of representation and its effectiveness in creating a political space where the voices of Canada's diverse groups can be expressed and incorporated into the country's governance. This will require discussing the meaning of representation and how various systems of representation create different political realities. Chapter 1 will therefore be devoted to representation theory and will discuss the differences between the delegate, trusteeship, and mirror systems of representation. It will explain the influence these systems of representation have on the distribution of political power within a society and how they help determine which voices are heard and which may fall to the wayside. The chapter will conclude by inferring that if the ideal in a democracy is for the people to participate in the governing of their country, a system should attempt to maximize this participation by ensuring access to the deliberative forum for all voices and viewpoints existing in the polity.

Chapter 2 will explore the Canadian system of representation in particular, including how the country's system has evolved since Confederation in 1867. To do so it will draw from the scholarly literature on this topic. This chapter will also focus the reader's attention on the process of electoral boundary redistribution and how this process can contribute to or detract from effective representation depending on how it is undertaken. The *Electoral Boundary Readjustment Act* will be shown to be an important tool in ensuring that the Canadian process of redrawing electoral districts successfully balances the equality principle with the pursuit of effective representation.

In order to examine electoral boundary redistribution and its impact on official language minority groups in Canada, Chapter 3 will introduce the background for our case study by describing the historical circumstances of Acadians in New Brunswick. By detailing the demographic reality of this French Canadian minority group as well as their pursuit of rights as official language minorities, this chapter will set the stage for Chapter 4.

This next chapter will discuss our case study, the federal court case of *Raîche v Canada*, which took place in 2004. The events leading up to *Raîche v Canada* and the details of the actual court case are examined.

Building on the four previous chapters, Chapter 5 will provide the bulk of this thesis by analyzing the case of *Raîche v Canada* in detail, as well as its implications for the future of electoral boundary redistribution and effective representation in Canada.

The last chapter in this thesis will be devoted to discussing the pursuit of linguistic security and more effective representation for Canada's official language minority groups. In this context it will explore several possible mechanisms for

improving the representation of these groups, ranging from minor adjustments to the current system to more radical options such as electoral reform.

Methodology

With the next decennial census and the subsequent electoral boundary redistribution rapidly approaching, it becomes more important than ever to uncover and apply the lessons learned from the last redistribution of federal electoral boundaries. It is essential, also, that academia, politicians and the Canadian public in general continue to reflect upon the normative implications of electoral boundary redistribution and encourage an active discourse surrounding the future of representation in Canada.

Most of this thesis has been based on the scholarly literature discussing electoral systems and linguistic minority groups, as well as documents relating to the case of *Raîche v Canada* so graciously shared with the author by the office of Yvon Godin. By examining these sources, discussing the evolution of representation in Canada, and touching on social mobilization theory, this thesis will try to carve out a more workable definition of communities of interests and identity for future electoral boundary commissions to consider when adjusting constituencies after the decennial censes. This in turn will provide the basis for speculations on the optimal institutional methods for ensuring effective representation for linguistic minorities in Canada.

Normative conclusions and assumptions

The assumptions from which this study is undertaken support a pluralist approach to defining representation and insist that "effective representation" is not compatible with absolute equality of votes according to the equality principle. Instead representation is defined as a balance between maximizing the equality of individuals while protecting and assuring a substantive definition of equality for national groups.

Protecting Francophone minority communities (or any minority) will be concluded to require sacrificing absolute voter parity in the name of effective representation. In order to achieve these protections, legal frameworks such as those of the *Electoral Boundaries Readjustment Act* and the *Official Languages Act* will prove central in justifying this compromise to Canadian society at large. To effectively use these legal tools to defend their rights to effective representation, official language minority groups must be recognized as "communities of interest or identity". In order for their claims to be successful, official language minorities should center their arguments on this very legitimate ground for differential treatment and representation.

To ensure that representation in Canada reflects Canadian democratic values and continues to do so despite their changeable nature in a dynamic society, a rigid legal framework for determining appropriate minority protection mechanisms is unsuitable. Instead, nation-wide guidelines should be established to ensure that the same principles are at the base of all electoral boundary redistributions. Without developing some principles for commissions to use as reference points losing the voice of certain groups is guaranteed to occur.

Achieving effective representation goes hand in hand with the need to attain effective political participation and empowerment for national minorities. This will require more presence in Canada's political institutions, but also more autonomy for these groups to develop their communities. Acadians, as official language minorities, are still trying to carve out their place in the Canadian federation as well as their relationship with the rest of Canadian society. The federal government will serve an important enabling role in their ability to do so by ensuring that theoretical and practical tools be exercised to allow these communities to self-actualize. While the recommendations for

ensuring effective representation and community development are suggested at the end of this thesis, as with all important political questions in the country, the appropriate way forward should be determined by a thorough study and dialogue on the values and principles Canadians wish their country to embody. We live, after all, in a democracy.

Chapter 1 Representation theory: the Foundation of Modern-day Democracy

Representation is the cornerstone of modern democracy. The idea that certain individuals act on behalf of and in the interest of larger groups of citizens in assemblies of public debate and decision-making is a central and foundational concept in democratic states; particularly, in a world where direct democracy is considered impossible and impractical as a functional way of governing large territories and populations. Yet something so central to political life as we know it has many different actualizations, and the way in which we determine who may be a representative, what their mandate is or what their effective purpose should be, how they are chosen, and who gets to choose them demonstrates how varied concepts of representation truly can be. The fact is that the many factors involved in different systems of representation have an enormous impact on the outcome and the end product of what a particular democracy will look like.

The complex nature of representation is burgeoning as people realize just how the rules and goals of the game influence which voices get heard and how public discourse evolves. Different kinds of representation allow for different winners and losers, and while the idea of public discourse, debate, and democratic governing are pure in principle, they seem impossible to actualize in the idealistic forms they were envisioned.

In order to understand the meaning of representation in Canada, it is necessary to delve into theory of representation and to comprehend the multiple forms of representation that do exist and that can exist. It is this illumination which should prove the purpose of this chapter.

Classic Theories of Representation

If we assume to discuss only elected representation in this section, and place aside appointed positions, there are two main categories of classic representation: delegate theory and a trusteeship view of representation. John Courtney adequately describes delegate theory as encompassing the idea that "elected members are obliged to speak, act and vote on behalf of their constituents," and will be held to account if they fail to do so in the next election.[1] Essentially this means that their primary duty is to reflect the views of those who elect them. This contrasts significantly with the trusteeship or Burkean view of representation which puts no obligation on the representative to convey the views of their constituents if they are divergent from his/her own conception of what is best for the constituency and the polity at large. Instead, this latter view of representation allows more flexibility for the representative to balance the needs and desires of constituents with those of the nation as a whole; something very important in a federal state such as modern-day Canada.

A worthwhile vote

An essential contention when discussing representation lies in two very different definitions of what constitutes a valuable vote. Most modern democracies pay homage to the principle that parity of voting power and adherence to the equality principle is the foundation behind fair elections and equal rights for citizens, which are so necessary in this form of government. The equality principle assumes that:

> If each adult citizen is to have the right to vote, then in the interest of equality those votes should be roughly equivalent in value. Thus in an electoral system of single member constituencies, those constituencies should have roughly similar populations to ensure that some citizens' votes are not more valuable than others[2]

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[1] John Courtney, *Elections*, The Canadian Democratic Audit, Vancouver :UBC Press, 2004, p. 132.
[2] Russell Alan Williams, "Canada's System of Representation in Crisis: The "279 formula" and Federal Electoral Redistributions" *The American Review of Canadian Studies,* Spring 2005, p. 99.

In opposition to this model stands the pluralist approach to representation which requires a certain level of deviation from absolute parity of voting power to ensure that the various views, ideas, and concerns of the population are adequately reflected in their elected assemblies and not simply silenced by an aggregate majority. The pluralist approach is more of a relative equality approach in that it recognizes that minorities (religious, ethnic, ideological etc) can inadvertently be discriminated against by electoral systems which favour majority rule and can effectively 'organize out' many voices. As Anne Phillips explains:

> One standard formulation of political equality is that 'everyone should count for one, and none for more than one'; compared with 'some people should count for more than the others; this looks self-evidently right. The appealing simplicity is as always, deceptive. 'Count for one' sounds like a broadly procedural matter, to be achieved by ensuring that each individual carries the same voting weight as the next. But what of those individuals who form a permanent minority, whether in their constituency or in the society as a while? What if their preferences are always discounted, because they happen to vote in the wrong place? Does counting equally refer only to our starting positions, or does it extend to our influence on outcomes? Does emphasis on individual equalities also extend to equalities between social groups? As arguments about electoral systems amply confirm, political equality can lend itself to a wide range of interpretations, some of which focus on equalizing the size of different voting constituencies, others on equalizing the probability that each other will cast the deciding vote, others still on ensuring that each voter has equal influence on the composition of the government elected.[3]

Defining the "In-crowd"

The First-Past-The-Post electoral system, in which constituents elect a single representative with only a plurality and not a necessarily a majority of votes, has been criticized in many contexts for failing to effectively serve and reflect the will of the people, something that many liberal democracy advocates assume to be synonymous with majority rule.

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[3] Anne Phillips, *The Politics of Presence*, London: Oxford UP, 1998, p. 30-31.

When discussing representation it seems clear that if only a plurality and not a majority of voters select the winning candidate, the views of the remaining (majority) electorate could be left without a voice in the elected assembly; this certainly holds true if one assumes a delegate theory of representation. Of course, a pluralist approach to politics would assume that different groups within a constituency would ally or organize together to mobilize enough votes to control the seat if they were dissatisfied with the level of representation they received and that different groups would exercise power at different points in time. It could also assume that an elected representative would balance competing interests to try to assure that a satisfied electorate across the board would secure him or her a seat in future elections.

Realistically, however, a majoritarian system will naturally remain majoritarian and systematically organize 'out' the same interests for as long as societal divisions are based on ethnic or other ascribed characteristics. Groups divided from the larger society on the basis of inherent traits and not (necessarily) political views or opinions will likely remain in minority just by virtue of basic numerical minority status within the polity (unless they experience a miraculous and beyond normal population growth rate). Pluralism relies on interests and ideas within society being more or less popular over time and it is this malleability of political positions which allows the system to favour different interests over time. These pluralist assumptions are not applicable to the fixed nature of minority status as determined by ethnic factors, for example, something that is in no way chosen or changeable.

While the views of these groups could change, adapt, and conform (especially of individuals within these groups) to follow a pluralist model of political access, it is unlikely that political views and opinions specific to questions such as ethnicity or

language will ever become majoritarian. Thus a pluralist approach to political power is not applicable to Canadian minority groups in our current discussion; the systematic discrimination and need for affirmative actions remains constant through time and space in this multinational and polyethnic country. Instead, effective representation for all Canadian citizens requires actively insisting upon the representation of the values, ideals, and worldviews of Canadians regardless of their political weight.

Canada and its Burkean system of representation

Since our political values require us to take account of a variety of interests and *balance* these within ridings as well as within the federation, it seems clear that a pure delegate system of representation does not exist in Canada. Federalism is necessarily a compromise, as it delegates powers to different levels of government to allow for shared and self-rule. It is highly unlikely that a delegate system would be compatible with this necessary compromise nor that it would prove effective in this country, well-known to have one of the strictest levels of party discipline among Western democracies. If members of parliament are bound to follow party lines, for a *nationally* united front, then they are unlikely to be able to convey the particular views of their constituents (even if these were uniform) and fight solely for these. Instead, a trusteeship representation system is actualized in Canada, which emphasizes the national, regional, and local needs that must all be taken into account in the interest of a common good which, as mentioned previously, befits a federal kind of government.

The danger with a trusteeship vision of representation, especially in a system with strong party discipline, is that since their position requires them to balance a number of interests and considerations; it is much more difficult to hold individual representatives accountable for their decisions and evaluate their service as a representative than it would

be if their sole purpose was to reflect the will of the majority of their constituents. While the government in power is assumed to be held accountable at each election through the doctrine of responsible government, individual members (of any party) rarely effectively distinguish their political performance from that of their party; whether or not they would like to. The party of course, as a national body, has a variety of interests to accommodate and, in this sense, national parties in Canada often serve as brokerage parties that balance a variety of interests in keeping with a pluralist approach to politics. However, in a two and a half party system, this means that many smaller, or more localized interests can be ignored.

Another problem with trusteeship representation is that it is based on the idea that an individual politician, who is influenced by personal bias and lived experience, will be able to be an omniscient judge of what constitutes the greater or common good for his constituents. This essentially means that a representative is seen as a benevolent actor who will purposely invest time and effort to step outside the views of those who effectively elected him (the dominant plurality in the riding) and try to sympathize with the needs of constituents of different races or ethnicity, gender, linguistic groups, age etc. Such a paternalistic and noble ideal is difficult to achieve and unlikely to exist in modern, fast-paced, competitive politics. Perhaps more importantly it is something difficult to achieve when this representative, understandably, concentrates on serving and speaking to the needs and concern of the majority or plurality of constituents in order to be reelected. Further, some groups would argue that they cannot be understood or truly represented by someone who does not have the same background, worldview, or lived experience as them regardless of the effort made by such an individual; instead they

advocate a system of representation whereby a representative is in essence a reflection of their views and community needs.

Mirror representation: an alternative which can overcome structural barriers?

Over time other types of representation have been imagined and realized in addition to those described as the two classic theories of representation (delegate and trusteeship). As Courtney mentions, "[m]irror, descriptive, or ascriptive representation draws on the idea that the composition of an assembly should map a society's principal socio-demographic characteristics," a concept that draws increased support in the pluralistic and multicultural society which characterizes the 21st century.[4] While the idea of the composition of the assembly of representatives matching roughly with the characteristics of the people may seem a logical manner by which to transcend the traditional under representation of many segments of society due to structural barriers, many critiques of this idea raise pertinent considerations.

Central to critiques of mirror representation is the fundamental liberal idea of absolute equality and the argument that defining members of society by their ascriptive traits can serve not only to distort the interests of individuals and create fission in society, but also to discriminate against the multi-faceted individuals that are so common in today's world. Indeed, forcing an individual to choose a certain part of his or her identity with which to identify and to serve as the basis for all his or her political representation in federal institutions could clearly create a severe problem for the ideal of democracy as imagined in the western world. It also forces members of society to fall into line with 'their community' as such and limits their freedom to develop and support interests that may not conform to the unified vision of others holding similar traits. This theory

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[4] Courtney, *Elections*, p. 134-5.

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assumes that the interests of the individual are synonymous with those articulated by leaders of the community; something which could create issues of accountability as well as resentment within these groups, as will be discussed later on. This obligation to identify with a single part of one's identity when participating in federal politics (most notably when voting) is also something that would clearly be problematic in a multinational state such as Canada: the obvious example being to force Quebeckers to choose between their French Canadian identity and their allegiance to Canada as a whole or as a member of another identity group.

Exploring the other critiques inherent in mirror representation requires that the argument for absolute equality be more appropriately addressed. Subscribing to a theory of mirror representation naturally limits the ability of all members of society to serve as representatives, though it espouses the opposite vision. If it is designated that a certain ethnic makeup be part of the criteria determining the composition of the elected house for example, the ability of members of other groups to be elected or of voters to elect someone outside their "trait" group becomes limited in the interest of mirroring society as precisely as possible. Of course in this sense, an idea of merit and an idea of the equality of human beings regardless of their race, sex, religion etc can be considered compromised by some; a 'fair chance' is not offered to all members if society. How seats would be allocated and which communities were deemed worthy of a certain number of seats would indeed be a complicated process to determine, as doing it to reflect the number of people defined by each set of defined characteristics (a sort of representation by population) would likely favour the majority in the end anyways; or, if mechanisms to ensure all different groups were to have a representative were implemented, it could serve to discriminate *against the majority* by limiting their ability to be represented as such. It

goes without saying that there is a high risk that mirror representation could move the polity away from trusteeship representation and reinforce self-interested, stubborn, and brinkmanship-like political behaviour by community representatives at the expense of the 'national good;' indeed as with most concepts – pivotal to the outcome of such a system would be the values and intentions of the actors involved in its implementation and practice.

The proper functioning of our system is reliant upon ideas of deliberative democracy by proxy, concepts which support the idea that debate need not be seen as an adversarial battle to be won, but as a discourse where many different views and opinions are presented and effectively listened to by all parties involved with a common will to find the most universally pleasing and appropriate solution. Again such a concept relies heavily on the good will and good faith actions of individuals; it proves a very noble ideal for our representatives to aspire to.

The argument that groups would instead resort to insular actions and that the intrinsic equality of citizens would be compromised under a system of mirror representation can be refuted by those who subscribe to principles of affirmative action and equal opportunity, however. Those who believe that it is not necessarily merit that allows many to obtain powerful positions, but instead institutional and political structures based on a patriarchal and exclusionary society that existed when most modern institutions were conceptualized, will argue that some institutional mechanism must ensure protectionary clauses that allow traditionally marginalized groups to overcome structural barriers until such a time as these institutions become less discriminatory. They do not believe that, despite all the good will and intentions of representatives, minority interests will truly be factored in. Scholars such as Iris Marion Young and Anne Phillips

assert that "persons from one perspective or history can never completely understand and adopt the point of view of those with other group-based perspectives and histories"[5] and that "[w]hen policies are worked out *for* rather than *with* a politically excluded constituency, they are unlikely to engage with all relevant concerns."[6]

Clearly mirror representation would require redefining the electoral and representation system as we know it, at least in Canada, to create the conditions for electing a parliament that reflects the various characteristics of society. Whether or not we can forego our current system of representation in favour of a new or reimagined one, will be a matter for the people to decide, and could lead to a massive overhaul of the First-Past-The-Post system currently in practice in Canada. But, for a moment, let us imagine that mirror representation would be instituted successfully in the Canadian system and explore one more caveat in this theory.

Accountability has become a popular term in the 21st century, certainly in Canada. If we discuss the concept in relation to mirror representation, the potential pitfalls of the theory in this respect are very concerning. Assuming that a member of parliament in a system of mirror representation were somehow elected by a formula which allowed different communities to elect candidates from their own background (a complicated suggestion), there would be a very real problem in that a representative would be acting in the best interest of their community *as they saw it* and perhaps not represent the variety of viewpoints existing amongst its members. Community solidarity would be the basis of such a representational system, and individuals with interests or views divergent from the stated objectives of the community or those of its leaders would not only risk not having their voice heard or being able to hold representatives to account in elections (which can

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[5] Iris Marion Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship" in *Ethics* 99, January 1989, p. 258.

happen in our current system too), but also risk being labelled traitors to the group for acting in a 'self-interested' manner and diverging from the 'united' front. The freedoms of expression, thought, and many other freedoms central to Canadian democracy could be very easily compromised in such a system. This is without mentioning issues as to how potential representatives would become eligible for office and the problems of discrimination this could present, nor the complicated manner in which electoral lists and districts would be have developed and maintained. This would entail defining who is and who is not a member of a community in an institutional manner, which threatens to clash with the self-identification of individuals and prevent them from self-actualization in their perceived identity as members of the community.

For all the criticisms which can be presented against mirror representation, the intentions of its supporters are most often not to divide society or influence segments of society to act in their own best interest to create a stalemate in parliament (and likely mimic the problems inherent with a delegate theory of representation whereby compromising for the national interest is often a concern secondary to local interests) but instead to bridge structural gaps and allow the many voices of citizens to be voiced and heard with equal weight. Its ultimate goal is to increase the political participation of under represented groups and ensure that their representatives accurately defend their viewpoints in public debate. This overview of mirror representation is lacking the in-depth analysis which it merits, due to the alternative focus of this paper on electoral boundary redistribution and the current system of representation in Canada. These basic criticisms, however, are important to note so as to demonstrate the challenges faced in developing what may be considered a more just or fair system of representation. Those

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[6] Phillips, p.13.

who believe in the merits of mirror representation are likely trying to develop a society that supports a more modern, substantive definition of equality in the hopes that historical injustice and discrimination will become a thing of the past; however, the best way of ensuring this end seems ever more elusive once the above criticisms of mirror representation are elaborated.

Deliberative Democracy

The ultimate goal of mirror representation is to ensure a truly deliberative democracy that allows all voices in society to be expressed, heard and listened to. In this sense it reflects the renewed importance attributed to deliberative democracy in recent decades as solutions have been sought to reconcile opposing views in society, be they based on ethno-linguistic, socio-economic, religious, or ideological background, or on other divisions in society.

Deliberative democracy is intended to ensure that by discussing and weighing the different view points on various issues which citizens may hold, all relevant opinions and stances will be duly considered as part of the process of decision-making for the polity. By allowing all voices to be effectively expressed in public debate and their concerns to be discussed, assessed, and attributed some value (or at least lip service) by other deliberants, groups and individuals are more likely to feel that their participation in the democratic process has some impact on decisions taken for the polity and thus feel satisfied that democracy is indeed running its due course. This exercise in political participation substantiates their citizenship.

The most important enabling factor of deliberative democracy, without which it achieves none of its idealistic goals, is the will of participants to listen to and engage with the ideas of others. Participants will clearly not leave their group identity or lived

experience at the door, but will balance these with a 'public spiritedness,' with their desire to achieve a greater good. As Iris Marion Young asserts, this requires participants to be "open to listening to the claims of others and not [be] concerned for their own [or own group's] gain alone. It is possible and necessary for people to take a critical distance from their own immediate desires and gut reactions to discuss public proposals."[7] Instead of entering the deliberative assembly with the intention of advancing their own group's interests regardless of the expense to the polity as a whole, representatives must have the objective of bridging gaps between groups and a "commitment to the need and desire to decide together the society's politics [which in turn will foster] communication across those differences."[8]

It seems most practical, considering Canada's particular circumstances, federal nature, and diverse population, to maintain a trusteeship vision of representation for the time being while attempting to renew the ideals embodied in theories of deliberative democracy. As testified by Jean-Pierre Kingsley in 2002, Canada's then chief electoral officer, "l'histoire du Canada repose sur des compromis"[9] and effective discourse is central to accommodating the diversity so characteristic of our society. The spirit of compromise and a willingness to dialogue will be of constant importance in maintaining Canada's pluricultural and multinational conviviality. Trusteeship representation seems the most effective way to ensure that the needs of individuals and communities, of municipalities/local interests and national ones are all considered and balanced for the good of all. In a federal country there really is no other option that would allow the system to function properly. We must hope and believe in the idealistic vision which

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[7] Young, p. 258.
[8] Ibid.

holds that representatives will indeed take it upon themselves to present and consider the multiple viewpoints and needs of constituents and Canadian citizens as a whole in a sober, balanced, and benevolent manner.

It is important to balance various interests and not be narrow-mindedly fighting for the interests of one locale without considering impacts on the whole. A trusteeship view of representation allows the representative to serve as the middleman between the political world and citizens more effectively, balancing and communicating interests between the two. While other arrangements could and should be made to ensure more affirmative action in terms of access to politics for historically marginalized group members and their voices, the basis of Canada's political arrangements should, for the time being, remain one upholding this trusteeship vision of representation.

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[9] Elections Canada, Notes pour une allocution de Jean-Pierre Kingley "Conférence pour les presidents, les membres et les secretaires des commissions de délimitation des circonscriptions électorales fédérales. » Ottawa, le 13 mars 2002. p. 3.

Chapter 2 Canadian Representation and the Drawing of Electoral Boundaries

Something that undeniably influences the composition of parliament is the way in which electoral boundaries are drawn. The fact that the country is divided into federal constituencies has a significant impact on who can be elected to its house of representatives. Indeed, the most obvious example and one which will serve as the basis of this thesis, is that ethno-linguistic minority groups can be either divided into constituencies in ways which perpetuate their minority status and effectively extinguish their voice, or in ways which make them the majority in their district and have a concrete influence in who is elected to represent them.

In Canada, deviation from the equality principle of voting, which supports an ideal of one person-one vote, is a tradition dating back to Confederation. At this time ensuring adequate representation of the two major national groups, French and English Canadians (Aboriginals were not accorded status as a national group in Eurocentric 19th century Canada), was the primary principle underlying the conceptualization and development of our current system of representation. Since Canada's confederation, the equality principle has been considered an important but not *the most* important factor in developing the electoral system. This compromise between absolute individual equality and a pluralist approach to representation has been continuously justified and entrenched by appealing to Canadian values of tolerance and justice. This historical precedent set by confederation, which prioritized a variety of societal beliefs and not blind adherence to the equality principle, evolved not only to ensure effective representation to bridge the Francophone-Anglophone divide, but soon to ensure that the voices of regions and other interests were actively exercised in the elected house as well as the appointed Senate.

The Senate: a valid form of mirror representation?

A quick note about the Senate proves necessary here as this thesis mostly discusses electoral systems of representation at the expense of appointed systems which can serve an important and complementary role. Having an appointed house of representatives allows for guaranteed representation for key interests that may not find their voice in an elected house, due to the bias of an electoral system or even of a system of electoral boundary distribution. These considerations include regional representation, one of the main reasons for the Senate at Canada's founding, as well as the ethno-linguistic and socio-economic interests which have increasingly become an important part of Senate nominations.[10] In fact, the Senate is based on an idealistic notion that senators will be good-will members of society representing and speaking to a variety of interests, but intent upon integrating these into a united vision for the common, national good. Unlike elected representatives, those in the appointed senate can adhere to such a vision and also defend the needs of various populations in the country without the concern of losing electoral support, which makes them more likely to uphold their sense of what is just and right for minorities.[11] It does however fail the accountability test, a value that goes hand in hand with majoritarian democracy; a necessary compromise, perhaps?

The Senate in many ways follows the principles of mirror representation without the messy business of developing and implementing new electoral systems, though some would argue it fails the accountability test due to the appointment process by which communities have no say in who becomes their representative while the political party in power (and the Prime Minister more accurately) seems to exercise complete discretion in

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[10] David E. Smith, *The Canadian Senate in Bicameral Perspective*, Toronto: University of Toronto Press, 2003, p. 36

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this matter. The way the Senate currently functions is judged by many not to live up to the above-mentioned ideal, yet with a few changes to the appointment process the Senate could potentially contribute to ensuring that the interests of Canada's diverse population are heard, debated, and have an influence of national policy decisions. Appointed representation and parallel assemblies is an important consideration when outlining a future vision for minority interest protection, and something that will be revisited in this capacity at the end of this thesis.

The continuing evolution of Canadian Representation: How it all works

> Les individus sont importants, mais les communautés – qui sont composées d'individus – le sont tout autant. La *Loi sur la révision des limites des circonscriptions électorales,* comme les autres lois et les usages et traditions de la société canadienne, tente de maintenir un équilibre entre les intérets des individus et ceux de la société.[12]

In "Canada's System of Representation in Crisis: The '279 formula' and Federal Electoral Redistributions," Russell Alan Williams explains that in addition to guaranteed representation for Quebec (the confederation compromise), the senatorial clause states that no province should ever hold less seats in the elected house than they did in the senate in 1915. This gives guaranteed representation to provinces with relatively declining demographic trends. Guaranteed representation was further defended under the 279 formula, whereby no province should ever have less seats than held in 1976 (also known as the grandfather clause). The most recent addition to the representational formula has been the 1985 *Electoral Boundaries Readjustment Act.* All these examples of Canadian electoral history reflect moments where a pluralist approach to representation was favoured over absolute equality in the minds and actions of Canadian lawmakers.

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[11] Ibid, xi
[12] Le Comité permanent de la procédure et des affaires de la Chambre. *Trentième Rapport a la Chambre des Communes,* le 7 octobre 2003, section 33.

In practice this means that after allocating one seat to each of Canada's three territories, the national electoral quotient is determined by dividing the total of the remaining ten provinces' populations by the number of seats in the House of Commons existing in 1985 (282 – 3 = 279) and attributing seats on this basis (of population) to each province. After this, the above-mentioned grandfather and senatorial clauses are applied, which alters the number of seats allocated to each province by providing top-up seats to provinces with declining demographic trends. These protective clauses can create gross variation in the number of people each riding contains from one province to the next. In addition to this, provincial quotients are rarely comparable between ridings, firstly because numerical equality is practically impossible, and secondly because of a variety of factors that must be taken into account in addition to numbers, such as geography and communities of interest or identity.

Williams fears, however, that Canadians have perhaps gone too far with this process and have significantly compromised the importance of equal votes. He argues that, though constitutional challenges to Canadian representation formulas have been unsuccessful in the past, this is only because there was an "assumption that these deviations were 'minor,'"[13] something no longer the case.

He is not the only scholar to express concern that the good intentions which have tempered the equality principle since Canada's founding have gone too far in trying to accommodate the plurality of interests now existing in the country. Since the current electoral legislation will inevitably exacerbate interprovincial disparities more and more as the populations in Alberta, British Columbia and Ontario grow while those provinces with declining populations maintain their higher than numerically-warranted levels of

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[13] Russell Alan Williams, p.122.

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representation, Williams argues that it is just a matter of time before a *Charter* challenge

under the equality rights section (section 15) will be successful in dismantling this

skewed pluralist approach to representation and in forcing a rethinking of Canadian

representational values. This would, however, depend once more on which is judged

more valuable to Canada and Canadians: absolute equality or the values and conditions

underlying Confederation and its national compact. When viewed this way it seems clear

that the constitution, the untouchable supreme law of the land, would trump the recently

introduced *Charter* on this question. Instead, any successful legal challenges would have

to be directed at the constitutionality of the *Electoral Boundaries Readjustment Act 1985*

which is an ordinary federal statute.[14]

Kent Roach concedes that the equal right to vote under the *Charter* will be used in

a variety of court challenges as to the constitutionality of current representation formulas.

He finds it unlikely, though, that any of these challenges will prove fruitful for the

plaintiffs. Along the lines of John Courtney who argues that the country has a more

pragmatic, pluralist and group based form of "effective representation" that can be traced

back to confederation, Roach argues that the historical importance of a pluralist approach

to representation cannot be ignored in the Canadian context. In fact, the guaranteed

provisions "are a legitimate component of our constitutional values;" he emphasizes that

they are the consociational conditions of agreement to confederation and, thus, the basis

of our country as we know it; as such they cannot be abandoned or challenged lightly.

Roach insists that the first line of defense for the electoral system as we know it is section

one of the *Charter* itself, which insists that "The *Canadian Charter of Rights and*

Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable

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[14] Andrew Sancton, "Eroding Representation-by-Population in the Canadian House of Commons: The Representation Act, 1985," *Canadian Journal of Political Science* 23(3), Sept. 1990, p. 456.

limits prescribed by law as can be demonstrably justified in a free and democratic society."[15] These 'reasonable limits' on the absolute equality of votes can be defended due, for example, to the desire to avoid interethnic tensions, to ensure equal voice for disadvantaged or historically disadvantaged populations, or to acknowledge the interests of less statistically popular but no less valuable viewpoints (such as those of rural residents). The fact that the laws which put in place our current system of representation merited constitutional protection and required a constitutional amendment to entrench them, indicates that the ideas behind a pluralist approach to representation are seriously important to Canadian values as historically asserted, and to the federation and its functioning; avoiding the tyranny of the majority was and remains a key Canadian concern.

The point to be emphasized here, is that the equality principle and the pluralist approach to representation are equally valid types of representational ideal-types, but adherence to one or the other is only judged better to the extent that it accurately reflects the values of a country and its population; we should therefore reflect again on questions of values and ideal visions of Canada. Roach argues that this historical purpose and intent behind Canadian legislation means that "'one person, one vote' will not be the constitutional standard for distribution and districting in Canada."[16] This assertion is supported by a statement articulated by Supreme Court Justice Beverly McLachlin whereby she asserts that "parity of voting power, though of prime importance, is not the only factor to be taken into account in ensuring effective representation."[17] Despite their

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[15] Canada. *Canadian Charter or Rights and Freedoms*. 1982.
[16] Kent Roach, "One Person, One Vote? Canadian Constitutional Standards for Electoral Distribution and Districting." in David Small, ed., *Drawing the Map-Equality and Efficacy of the Vote in Canadian Electoral Boundary Reform,* vol. 11 (Royal Commission on Electoral Reform and Party Financing, 1991), p. 65.
[17] Reference Re Provincial Electoral Boundaries (Sask.) (1991) 81 D.L.R. (4th), 35.

assertions regarding the importance of effective representation, the judiciary realizes that questions of Canadian values underlie what constitutes meaningful representation to them, and that the rules governing the delineation of electoral boundaries is a matter for the representatives of the people to debate and decide; it has thus been, on the whole, deferential with regards to such questions.

Representation and the courts

The role of the courts in defining the justice of our current representation system and the Canadian values by which such justice is evaluated is clear, and while deciding on the constitutionality of laws is a traditional role for the judiciary, defining the rights of citizens to certain kinds of representation that reflect what they deem to be Canadian values is only a recent initiative of our upper courts. Whether or not judicial activism and the increased involvement of the judiciary in defining the direction of the country is a positive or negative evolution in our democracy is the subject of large debate, what is important to note here, however, is that since the *Charter* this branch of government undeniably plays a much larger role in Canadian politics and has become a new focal point for citizens and groups interested in exerting their political voice. The courts have become a new venue for political activity, be it through direct challenges to particular policies and laws by interested actors or through their status as interveners and legitimate stakeholders.

The courts can be viewed as a protection against the tyranny of the majority that threatens to exist in our majoritarian political system, as citizens can appeal to the rights enumerated in the *Charter* if they feel these are infringed by the elected assembly or the legislation and policies it puts in place. In this sense it can also serve to protect the rights

of minorities, though usually not as members of communities so much as individual citizens who possess the same fundamental rights as all other Canadian citizens.

Looking to the courts for justice seems logical,. However when this justice involves particular policies or situations it is only in relatively recent history that the courts are considered a legitimate venue for deliberation. The idea that citizens and groups of citizens have rights which are (for the most part) inviolable by governments and that the judiciary serves as the protector of these rights, is a concept born out of the so called *Charter revolution* that followed the constitutional entrenchment of *the Canadian Charter of Rights and Freedoms* in 1982. Without debating the merits or degree of judicial review currently existing in Canada, it can be noted that since the *Charter* took effect going to the courts seems to have become a popular avenue for groups seeking change. Whether or not this is because lobbying politicians and parliament has become less effective in responding to minority concerns than in the past, was always ineffective, or has become ineffective due to the increased purview of the courts following the *Charter revolution*, the reality is that interest groups are now taking advantage of multiple forms of social mobilization in tandem; lobbying the courts is almost always part of this strategy. Miriam Smith asserts that "the restructuring of Canadian political institutions" with the advent of neoliberal globalization "has closed down traditional avenues of access and influence and opened up others. Litigation as a political strategy and courts as a site of policy change are more important than ever before for collective actors."[18]

A pluralist approach to politics would have us believe that the resources required by social groups to achieve or at least express their desired change are distributed equally

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[18] Miriam Smith, *A Civil Society: Collective Actors in Canadian Political Life*, Peterborough:Broadview Press, 2005, p. 14.

across society. The reality is that many social movements and their relative resources are influenced by historical, situational, and institutional factors; these trajectories have ensured that groups have differential access to resources and thus the ability to wield political influence or at least get their views recognized. This effectively organizes some interests into traditional politics and requires those organized 'out' of mainstream political activity to pursue other means of action.

There are many forms of new political activity that further interests not expressed in official political institutions, including a variety of social protests, petitions, lobbying, and using the media to name a few. Perhaps due to the perceived democratic deficit that seems to be plaguing democratic countries of the world in recent years, disenchanted citizens are turning to forms of political action aside from traditional voting, participation in political parties, and lobbying. In practice, social groups often employ a wide variety of these strategies to maximize their visibility and chances of success. When their interests get tried in courts of law, however, a substantive message is sent to the group as well as to society at large as to the legitimacy of their fight and their claims. In this sense using the courts as a venue for social change can be risky, especially if these claims reach higher courts and ultimately the Supreme Court of Canada.

For groups to pursue issues in the courts they must, however, possess adequate resources as the court system is not free of charge and the resources a group possesses can determine whether or not they can fight the battle to the end. Indeed, in the case of *Raîche v Canada*, the residents and organizations appealing the decision of the Federal Electoral Boundary Commission of New Brunswick financed the case out of pocket, something many minority groups or marginalized interests simply cannot do. With the cancellation of the court challenges program in September of 2006 the ability of groups

to protect and defend their interests and rights will likely be significantly marred in the future. [19] This is regrettable, since the courts have proved one of the most effective ways of protecting and advancing minority rights in our society. As Linda Cardinal reflects, the program "a permis aux minorités de langue officielle de bénéficier d'un appui logistique et financier important et de gagner plusieurs batailles juridiques. »[20] Legal recourse has worked well for francophones in Canada, and " le droit joue ainsi un rôle politique indéniable. Il est porteur de garanties, [...i]l donne des armes à une partie plus faible sur le plan politique. » [21]

In addition to financial resources, though, human resources are a key factor in the success of minority interests in the courts; without enough committed people and people-hours much of the information provision and witness services which are essential to submitting and presenting a strong case can become impossible tasks.

Access to the courts and the case of Acadie-Bathurst

It is important to note that, in order to take advantage of the court system to advance a minority interest, groups require access to the judiciary. Attaining such access is certainly not self-evident and rallying enough support and attention to be considered meritorious of a hearing is perhaps where the constituency of Acadie-Bathurst in north-eastern New Brunswick distinguished itself from other aggrieved parties after the Federal Electoral Boundary redistribution of 2003. In the case of *Raîche,* to be examined in detail shortly, the court overturned the Federal Electoral Boundary Commission for New

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[19] Court Challenges Program of Canada website. < http://www.ccppcj.ca/e/ccp.shtml>. Accessed February 1st 2009. The court challenges program was set up in 1978 to provide financial assistance for important court cases that advance language and equality rights guaranteed under Canada's Constitution,
[20] Linda Cardinal, « Les minorités francophones hors Québec et la vie politique au Canada : comment combler le déficit démocratique? » dans J.Y. Thériault, A. Gilbert, et A. Cardinal, *L'espace francophone en milieu minoritaire au Canada,* Montreal :Fides, 2008, p. 385-430.
[21] Johanne Poirier, « Francophones et Minoritaires au Canada : Nouveaux Enjeux; Nouvelles Problematiques ---Au-delà des droits linguistiques et du fédéralisme classique : favoriser l'autonomie

Brunswick's proposed redistribution in the name of protecting the community of interest/identity existing in the riding of Acadie-Bathurst, thus protecting the rights of a official language minority to effective representation.

It seems, upon examination, that the reasons for a successful ruling in *Raîche* come from a variety of factors, a 'perfect storm' combination of circumstances. While social mobilization theorists are often divided on whether internal or external factors are responsible for a social group's success or lack thereof, the case of Acadie-Bathurst exemplifies how the holistic political environment surrounding the issue, the framing of the issue and the focused nature of a group's claims is responsible for successful action.

Indeed as will be examined in chapter 4, the case of *Raîche v Canada* benefited from the effective mobilization of social actors, the local population, and the constituency's member of parliament; the relatively recent revolution of French Canadian rights assertion and the *Official Languages Act*; all of which created an atmosphere conducive to expanding official language minority group rights and representation in Canada.

The political opportunity structures and resources which allow a group to succeed are an important factor in the equation. Another important consideration in social mobilization theory is its focus on whether a group is more likely to succeed in creating political or social change through moderate or disruptive actions.[22] Which method of mobilization is most effective is entirely contextual and depends on the status of the political environment with regards to a particular issue or group. In a contemporary western democratic setting, where we are discussing the rights mobilization of a group

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institutionnelle des francophones minoritaires du Canada' » dans J.Y. Thériault, A. Gilbert, et A. Cardinal, *L'espace francophone en milieu minoritaire au Canada,* Montreal :Fides, 2008, p. 513-562.

that is not currently oppressed in any overt and shocking manner, a group is likely better off making moderate demands which are justifiable in law and to which the general public may prove sympathetic. In the case of francophone minority groups in Canada, social actors would be in theory better off drawing attention to and emphasizing values which build on Canadian traditions of bilingualism and substantive equality, than to establish an adversarial relationship. Yet a balance is to be struck between arguing to common principles and the brinkmanship politics that has been shown effective in the case of some nationalist movements, such as Quebec. In order to discuss the best method of securing the rights of Francophone *minority* communities in Canada, their particular circumstances and the historical evolution of these must be considered in greater detail.

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[22] Marco Giugni, "Introduction: How Social Movements Matter: Past Research, Present Problems, Future Developments" in Marco Giugni, Doug McAdam, Charles Tilly eds. *Social Movements, Protest, and*

Chapter 3 A History of Francophone New Brunswick

Canada, pays bilingue. To be more specific, country with two official languages, both of them confined to rather separate spheres and contained within more or less distinguishable territorial entities. Interactions between the two official language populations are limited to certain areas of the country, and most notably the federal capital– where they are legally required to have equal status in federal government institutions and affairs. However, the number of Canadians who *are* bilingual is disproportionately made up of citizens identifying French as their mother-tongue. Canada is a diglossie: a country with asymmetrical bilingualism where, of the two major linguistic groups, one is largely bilingual while the other has remained largely unilingual.[23]

In 2006, only 17.4% of Canadians reported themselves as able to conduct a conversation in both official languages; yet when analyzing French Canadians specifically this number was higher than in their Anglophone counterparts, 35.8% of Quebeckers claim to be bilingual and an impressive 83.6% of Francophones outside Quebec claimed this status. [24]

As of the 2006 census, over one-fifth of the Canadian population no longer claimed one of the country's official languages as their mother-tongue, though almost all (98%) of the population are capable of speaking either English or French or both.[25] The remaining 80% percent of the population have one of the official languages as a mother-

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Contention Vol 10. London:University of Minnesota Press, 1999, p. xvi.
[23] Maurice Basque et Nicole Barrieau et Stéphanie Coté. *L'Acadie de l'Atlantique.* Société Nationale de l'Acadie, Centre d'études acadiennes, Centre Internationale de Recherche et de Documentation de la Francophonie. Moncton, NB:McCurdy, 1999, p. 89.
[24] Statistics Canada. *The Evolving Linguistic Portrait, 2006 Census,* 2006, www12.statcan.ca/english/census06/analysis/language/decle.cfm
[25] Ibid.

tongue; they are Anglophones (57.8% of the Canadian population) and Francophones (22.1% of the Canadian population).[26]

New Brunswick, the only province where bilingualism is officially guaranteed in legislation, is a small province with only 729 997 inhabitants in 2006; it holds just over two percent of the Canadian population as a whole (31 612 897 in 2006).[27] This Eastern province is dominated by an English-speaking population (64.7%), who share the territory with the Francophones who constitute most of the remaining population, approximately one-third (32.7%) of New Brunswick's residents.[28] These Francophones are mostly of Acadian descent.

New Brunswick's Francophone and Anglophone populations remain fairly divided in terms of their territorial location in the province. The Acadians are concentrated along the northern and eastern coastlines, while English-speaking residents tend to occupy the western, central and southern areas of the province. The South-East is an area that has a fairly strong concentration of both groups, and these two linguistic worlds meet in the relatively bilingual city of Moncton (again likely more accurately described as a diglossie than a bilingual city). The province's northern area surrounding the city of Bathurst is also a place where both groups have a significant presence and interact together. This settlement pattern appears to reflect historical community development, whereby Acadian fisherman and farmers remained near the coast and established their communities there, while the south and western areas harbour a large number of Loyalists who migrated from the thirteen colonies after the American war of Independence (see Appendix A for a map of New Brunswick based on linguistic demographics).

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[26] Ibid.
[27] Statistics Canada. *2006 Census.* 2006, www12.statcan.ca/English/census06.cfm

If we examine the areas of New Brunswick as they are parceled off into the province's ten federal electoral ridings (which significantly effect/reflect the perception of 'regions' of the province) New Brunswick can be said to be made up of three francophone districts, one bilingual district (in the aforementioned south-eastern hub) and six Anglo-dominated ridings (See Appendix B for current electoral map). Thus, Anglophones maintain a dominant political presence and representation for the province at the federal level. The area where Francophones are the most concentrated in their own-right without being seen as part of a larger bilingual community is in the north-eastern riding of Acadie-Bathurst (84% Francophone and 15% Anglophone);[29] an area which has fought significant legal battles to protect its Acadian identity, as will be discussed further in a few moments. First, however, it proves necessary to understand how New Brunswick's demographic profile came to be, more specifically how the province's history has led to the modern political circumstances that influence the province. In order to do this, we reflect back over four hundred years.

A brief historical portrait of New Brunswick

One of the four signatory provinces to the confederation of Canada in 1867, New Brunswick has a long and rich history of cultural interactions between its Aboriginal populations, French settlers (Acadians) and English-speaking colonists.

This history dates back to an era where Canada's Aboriginal populations were still recognized as sovereign nations to be respected as trading partners and neighbours for newly arrived settlers. New Brunswick is also a land which flourished (along with neighbouring modern day Nova Scotia and Prince Edward Island) as an agricultural and fishing territory for Canada's first French settlers, the Acadians. New Brunswick is a

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[28] Statistics Canada. *The Evolving Linguistic Portrait, 2006 Census.*

territory which would later be passed back and forth between the English and French crown until eventually it became a permanent English colony that welcomed Loyalist refugees from the American Revolution. All these major development happened in New Brunswick's history before it became a Canadian province, and indeed before Canada even existed as an idea.

New Brunswick's historical development can be imagined as a reflection of larger changes and happenings in Europe and in the colonial administrations of France and England, but there is a particular history to this region which is often unexplored by many Canadians and virtually unknown outside the country's borders.

New Brunswick's history, as with that of many colonial establishments has a dark side which is rarely uncovered, examined, or discussed in adequate detail. Setting aside the atrocious genocide and abuse suffered by its Aboriginal populations for another discussion of colonial regimes, the moral stain of the genocide and deportation of the Acadian people remains understudied and unaddressed.

Who are the Acadians?

In 1604, the famous explorer Samuel de Champlain sailed across the Atlantic to establish the first French settlement in North America. While the death of many of his crew due to the unforgiving winter, disease and a lack of adequate provisions was a harsh reality, the colony established at l'Île Ste-Croix is considered to be the beginning of the establishment of a permanent French presence in North America. The French crew left the island after surviving the cold season, crossing the bay to found a new settlement at Port-Royale in 1605, in modern-day Nova Scotia. Thus began the history of the Acadian people.

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[29] Yvon Godin, speaking notes to the *House of Commons Standing Committee on Procedure and House Affairs on the matter of the 2003 electoral boundaries redistribution.*, personally provided, p.1.

French Catholic settlers hailing mainly from Western France, Acadians came to the exciting new world to carve out relatively simple lives in simple communities as farmers and fishermen. While the colonial administrative centre was located in the far off and rapidly growing settlements of Mont Royal (modern day Montreal) and Quebec (modern day Quebec City), the Acadian settlements remained rather removed from the influences of the French crown, French culture, and the effects of these in France's North American colonies. Instead they established themselves in relatively autonomous, small and insular communities where they traded with natives and went about their daily business of farming and fishing to maintain a subsistence-oriented lifestyle.

Soon enough, likely due in part to their remote location and isolation from France and its societal changes and influences, the Acadians developed and expressed a separate identity tied to their new home in this new land. While they were still technically under the rule of the mother land and maintaining many of the symbols and traditions of their patria, they began to develop an identity more specifically reflecting their lives in Acadie.

Due to this aforementioned isolation from the colonial administration as well as their fairly modest expectations for 'the good life,' Acadians seemed to have been surprisingly unphased by the constant transfer of their lands between the British and French crowns as part of larger colonial wars. They seemed to have been generally indifferent to whichever regime was in power so long as they were free from existential threats and life in their communities remained unaltered. [30] In general, their passions were not stirred by politics far-removed from their locales since their connection to Europe and its affairs had been diluted over time. These are of course generalizations about a people whose personal loyalties and sentiments several hundred years ago cannot

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[30] Carl A. Brasseaux, *"Scattered to the Wind" Dispersal and Wanderings of the Acadians, 1755-1809,* The Center for Louisiana Studies. Lafayette:University of Southwestern Louisiana, 1991, p. 2-4.

be accurately measured or reflected, yet the recorded attitudes and actions of Acadians of the time seem to support this fairly passive engagement in the affairs of England and France.

The Seven Year War of 1756-1763 and the events immediately preceding its declaration changed Acadian history forever. It is during this war that France's North American colonies that would one day make up Canada, were transferred to British rule one final time.

While Acadian territory was under English control for about forty years prior to the war (since the 1713 Treaty of Utrecht), these lands had been passed between the two imperial powers so many times since settlement had begun at the beginning of the 17th century, that the people had agreed to remain neutral so as to be able to live peaceable lives. While they were still a francophone and Roman Catholic population, the Acadians were not interested in fighting a foreign war.

Nevertheless, the British authorities in Halifax and in nearby British colonies, primarily under the tutelage of the notorious Governor Charles Lawrence, persisted in posing the Acadian presence as a threat to British power and developed a plan of action against the Acadians.[31] After demanding a pledge of allegiance to the British crown, which some Acadians gave willingly while others insisted upon their commitment to neutrality as being sufficient, the British colonial authorities persisted in their portrayal of the Acadians as an ominous threat to their rule. They soon commanded the removal of Acadians from their lands and their deportation to places around the world, most notably the thirteen colonies, Louisiana (then under Spanish rule), the Caribbean, and to France. By the time of the deportation in 1755, which was prior to the official commencement of

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[31]James Laxer, *The Acadians: In search of a homeland.* USA: Doubleday Canada, 2006. p. 89-90.

the actual Seven Years War, many Acadians had lived in Acadie for well over a century and had developed the land, through much hard work, from marshes and woodlands into a profitable farming zone. They were well-established and attached to their communities.

The deportation came as a shock. Acadian men were deceptively lured into churches and forts which would serve as temporary prisons while their villages were burned. As their homes were engulfed in flames, they and their families were separated and forced onto ships destined for ports around the world. This unjust tragedy did not stop many Acadians from trying to stay in Acadie, however. Some hid with their Mi'kmaq (Aboriginal) allies throughout the war, and still more Acadians who had been deported embarked on the long journey back to their homeland from exile.[32]

Despite the persistence of many Acadians to remain in or to return to Acadie, they would never again know the peaceful prosperity of their communities as they had during the 17th century. Since they were under British rule prior to the war, the Acadians did not have the advantage of negotiating surrender or of being granted certain rights as a conquered population. Indeed unlike the French Canadians in more populous French colonial centers, the Acadian population did not have the numbers, presence, nor the political will to receive any kind of concessions in exchange for their obedience as peaceable British subjects. The more densely populated and well-established settlements in what would eventually be known as the province of Quebec, however, were accorded the right to maintain their religion, language and lands after the fall of Quebec City in 1763. The Quebec Act of 1774 served to further entrench these minority rights for these French speaking subjects. All three of these rights were systematically denied to the

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[32] Laxer, p. 90-91.

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Acadian population and would be for centuries after their resettlement in their homeland.[33]

While both francophone groups maintained their identity, with the notable support and influence of the Catholic Church and its institutions, they were also both systematically discriminated against under the Canadian confederation of 1867. While Quebec was accorded provincial status, Acadians were constituted as citizens of the Anglophone-dominated provinces of New Brunswick and Nova.Scotia. Both the populations in these provinces and in Quebec were, however, ruled by the Anglophone elite and all economic and political opportunities remained dominated by Anglophones regardless of provincial boundaries. Francophones were not only excluded from prominent positions in government and the resources to develop thriving economies in their communities, but were in a constant battle to assert the rights promised them at confederation such as the right to Catholic schools.[34] They also had no effective tools to combat the ethnically and regionally based poverty that so many marginalized Francophones became associated with.

Achieving rights for and improving the status of their linguistic communities would prove an uphill battle indeed. Acadians who returned to their lands or came out of hiding after the Seven Years War found that they were legally denied, as French Catholics, the right to own land.[35] Many returned to the settlements which their families had worked so hard to carve out of a daunting wilderness, to find them occupied by newly arrived English-speaking settlers, mostly Loyalists seeking a new life after the

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[33] Laxer, p. 91-92.
[34] Laxer, p. 91-92. Also, in a couple of legal cases related to the right to catholic schools, the Judicial Committee of the Privy Council ruled that these were not protected by s. 93 of the *Constitution Act, 1987* as they were not protected by law prior to Confederation. The first of these cases was *Ex parte Renaud*, 1872-73, 14 NBR 273, the rulings of which were confirmed by *Maher v. Town of Portland*, 1874.
[35] Laxer, p. 114.

American Revolution. Most Acadians set up their new lives in dire poverty, becoming in essence serfs and servants to the new settlers– dyking and farming their former lands to survive.

As the Acadians began to redevelop their communities and turn lands judged undesirable by new British settlers into their future farms, the Acadian identity was once again present and growing in what is now eastern Canada. This identity was by no means thriving however, and there was great pressure for Acadians to assimilate. Their religion and language were belittled and suppressed through the rest of the colonial period and well into the Canadian era. Yet without the tools, organization, or prosperity to contest their treatment, assimilation became the best bet for improving one's living situation.

While, as mentioned previously, the Catholic Church helped preserve the identity of Acadians, these French Canadians remained a politically marginalized and perhaps obedient people under the power of the Church and its institutions until the social revolutions of the mid-20th century.

Regaining francophone rights in the 1960s: the quest for equal opportunity

The 1960s were a turbulent time in North America, when minority groups were asserting their rights to equality vis-à-vis the dominant white, male, and Anglophone population. Inspired by the success of the civil rights movement in the United States, French Canadian leaders developed visions of equality and of national empowerment of their own. Movements on both sides of the border pursued equal opportunity and sought respect in political, economic and social spheres. In Canada, strong political leadership as well as a surge in well-educated French Canadians, allowed for the call for immediate change and action to be heralded by francophones in Canada.

In New Brunswick, the French Canadian rights movement was inspired and accelerated by the first Acadian Premier elect, Louis Robichaud or *P'tit Louis* as he was affectionately nicknamed. Robichaud and his Liberal government are principally remembered for his famous 'equal opportunity' crusade, which aimed at improving the abysmal living conditions and marginalization of New Brunswick's economically disadvantaged communities, which were disproportionately Acadian. In pursuing this vision however, Robichaud had to appeal to the sixty-five percent of the New Brunswick population that was Anglophone and to win their support for his reforms in education, social services and the economy.[36] This meant framing the issues not as ones benefiting a particular cultural group, but instead as progressive actions to improve the lives of New Brunswick residents as a whole; it also meant affirming and supporting Canadian unity in an era that would have to contend with a radical separatist movement associated with French Canadians.

Robichaud's equal opportunity measures involved a massive restructuring of education at the primary and secondary levels as well as ensuring access to education in both official languages.[37] Having quality education dispensed to all children in New Brunswick regardless of the economic status of the community was a priority for the Premier, since it would prove the basis for their ability to participate effectively as citizens and as actors in the development of New Brunswick's economy; he insisted children receive "education which the province can afford, not the community."[38] The Acadian Premier was also instrumental in the creation of the Université de Moncton in 1963, the first Francophone institute of higher education supported by the province of New Brunswick and public funds rather than being reliant on the Church.

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[36] Laxer, p. 200.
[37] Louis Robichaud, "We must move! We must Act," radio address, Feb 9th 1967.

Francophone members of the legislature during the Robichaud era vigilantly assured the rest of the members of the assembly as well as the general population that "the French-speaking element has no other aim than that of getting ways and means to maintain their cultural and religious traditions,"[39] in order to reassure those weary of events in nearby Quebec; expanding Francophone rights seemed dangerous to many Anglophones who were suspensefully following the more dramatic events in the neighboring province.

The main Francophone demands in New Brunswick were for language recognition, a fair share of public employment, equitable redistribution of seats in the legislature and bilingual public schooling.[40] Partnered with the call for Francophone rights always came a reassertion of unity, however, emphasizing that New Brunswickers would be "one people with equal rights and equal opportunities for all."[41]

Yet many Anglophones persisted in perceiving the Francophone rights movement as a threat and protested the reforms as displays of favoritism towards the Acadians, critiquing the provincial government for "robbing Peter to pay Pierre."[42] Robichaud vigorously defended the reforms, arguing that the denial of equal opportunity to New Brunswickers was in fact a denial of democracy, and would doom some New Brunswickers to live as second-class citizens.[43]

While 'equal opportunity' helped revive and empower Acadians politically through rhetoric and institutional reforms, the events of the late 1960s and of the 1970s

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[38] Richard Wilbur, *The Rise of French New Brunswick*. Halifax: Formac, 1989. p. 207.
[39] Quoting Jean Fortin in Richard Wilbur. p. 191.
[40] Wilbur, p. 191-2.
[41] Quoting H,H. Williamson in Richard Wilbur, p. 212.
[42] "The Other Revolution," Canadian Broadcasting Corporation radio address by Louis Robichaud, December 17th 1965.
[43] "The Other Revolution"

would be more focused on active political lobbying and protest to demand increased change at an accelerated pace.

Acadian Activism

The Acadian civilian protest movements of the 1960s and 1970s were by and large peaceful and confined to university groups and lobbyist activities. Premier Robichaud articulated New Brunswick's official position on violent protest actions, which was supported by the majority of Acadians, asserting that they did not support violent separatist measures, such as those of the Front de Libération du Quebec (FLQ),and stood behind Prime Minister Pierre Trudeau's invocation of the War Measures Act in 1970.[44] This is one clear instance where two Canadian Francophone populations and their demands for increased equality and rights diverged. While many Québécois nationalists no doubt also denounced the violent actions of the FLQ, Acadian activists not only condemned the acts but also saw the benefit of contrasting their methods with those of the FLQ when appealing to the greater New Brunswick population. As Clarence LeBreton argued: "we're not bombing anybody, ok, and the Acadians won't bomb anybody, we don't believe in that kind of negotiation…we're asking and we're asking like decent people."[45] Acadians would appeal to the good will of their co-citizens and common values of democratic rights, something that would make their demands seem less threatening and more reasonable to the Anglophone population. Whether or not this attitude was the best choice for achieving optimal respect and rights is hard to determine, as the revolutionary attitudes which can be argued to have better protected Francophone identity in Quebec would likely prove impossible to adopt for the Acadians who were indeed a minority in the territory and political spaces they were contesting. It must be

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[44] Laxer, p. 226.
[45] "The Robichaud Generation" Canadian Broadcasting Corporation Television, June 29th 1985.

remembered that Quebec had the advantage not only of numbers and territory, but of historical precedent – they had always been accorded at least limited rights and autonomy within their borders.

Despite the calmer attitudes of many Acadians, the Acadian student population in New Brunswick was very responsive to more radical Québécois activism and "for young Acadians, this was far more exciting and meaningful than Louis Robichaud's slowly-evolving Program of Equal Opportunity. Nowhere was this Quebec influence felt more keenly than at Université de Moncton."[46] In fact, it was two Québécois (Jacques Belisle and Jacques Moreau) attending l'Université de Moncton who were responsible for the students' most infamous act of defiance – the presentation of a pig's head to the francophobic mayor of Moncton, Leonard Jones. The students at l'Université also presented the mayor with the Royal Commission on Bilingualism and Biculturalism report in city hall in 1968 and held a sit-in and occupation of a campus building in 1969 organized by the Ralliement de la Jeunesse Acadienne.[47] Much of the non-student Acadian population, however, resented the Québécois influence on the Université de Moncton and condemned this "intellectual imperialism" that seemed detrimental to a more pacifist and diplomatic progression for achieving their Francophone rights.[48]

Clearly the nationalist movements developing in Quebec had a profound influence on the tactics used by Acadians to assert and demand their own recognition and rights as French Canadians, and they can often be examined in parallel to each other.

The rise and demise of an Acadian political party

The Parti Québécois, formed in 1968, was in fact a party advocating Quebec separatism and gained an immense amount of support among a mobilized sovereignist

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[46] Wilbur, p. 227.
[47] Wilbur, p. 229.

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contingent of the population. The Acadian reaction to the Quebec separatist movement was mixed and some Acadian areas located near the Quebec-New Brunswick border were considering the possibility of annexing themselves to an independent Quebec. Parti Québécois leader René Lévesque would, however, dramatically affect the Quebec-Acadie relationship when he frequently downplayed the achievements of Acadians and insisted that Francophones outside Quebec were "a lost cause."[49] Claude Bourque, as a supporter of Acadian nationalism, stood proudly defiant of Quebec's Premier and defensive of his people:

> A people, it is said, has a soul. The Acadian people has a soul, has a destiny and has its dreams. If the past has failed to destroy the Acadians, no René Lévesque is going to order the Acadians to fade away and blend into the people of Quebec, not even if Quebec should become independent. Acadians have chosen New Brunswick as their home – twice. We have every intention to stay here, to grow and flourish here.[50]

While Acadians were not advocating separatism in their own province, due to the historical differences in their identity as well as due to their demographic reality and lack of institutional capacity at the time, they did form their own political party not long after the creation of the Parti Quebecois.

The Parti Acadien, founded in 1972, advocated not a separate state but a separate province for Acadians, which would involve dividing New Brunswick in two. The contrast with Quebec nationalism and that of Acadians is quite telling: even the most extreme contingent of Acadian nationalists was committed to *remaining a part of Canada*. They advocated the renegotiation of the terms of the federation instead of aiming to negotiate their way out. The Parti Acadien allowed for the coexistence of Anglophones and Francophones, but advocated duality in New Brunswick, for example

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[48] Wilbur, p. 242.
[49] Wilbur, p. 262.

their goal of preserving separate education systems and organizations instead of all these being bilingual showed their desire to defend French community identity as such, instead of accepting what seemed an inevitable transition from French identity to bilingual identity and then to assimilation.[51]

The Parti Acadien was also originally collectivist and socialist in nature, but like the Parti Québécois they soon expanded their goals to be inclusive and representative of all potential nationalistic supporters. In this way and others, the young Acadians that formed the party were heavily influenced by their neighbors to the West, intently following media coverage of Québécois nationalism and learning from the actions of their fellow French Canadians. They also profited from a more rigorous and advanced education than their parents, as the first generation of Acadians to have benefited from the newly accessible high schools and university created under Robichaud's administration.

While the movement could be seen as born out of the momentum of the Acadian nationalist movement he started with his quest for Acadian rights in the province, Louis Robichaud did not support the party but said it members were "doomed before they start[ed]", no doubt because of the economic and political situation in New Brunswick as well as due to his personal commitment to the unity of the province.[52] In this period, however, Robichaud was no longer Premier of New Brunswick, as Richard Hatfield and the provincial Conservatives had wooed the Francophone population (in addition to their traditional Anglophone base of supporters) in the election of 1970. Since then, Hatfield had demonstrated genuine sympathy for the Acadian cause by allocating funds for the construction of the Acadian Historic Village near Caraquet, funding a Francophone

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[50] Quoting Claude Bourque in Richard Wilbur, p. 263.
[51] Laxer, p. 234.

television station within the province, recognizing August 15th as Fête Nationale Acadienne, flying the Acadian flag on all public buildings, and most importantly by entrenching New Brunswick's official bilingualism in sections 16 through 20 of the 1982 *Canadian Charter of Rights and Freedoms*.[53] Richard Hatfield's apparent commitment to advancing Acadian identity and rights, created a sense of satisfaction with New Brunswick's existing political parties among many Acadians. Few saw supporting the Parti Acadien as the unique or optimal way of expressing nationalist sentiment. In fact, the Parti Acadien received only 4.89% of the vote in 1974 and 7.97% of the vote in 1978; considering the Acadian population of New Brunswick was roughly one third of the population this illustrates the party's limited support among Acadians at the time.[54] The logic behind a small localized minority creating a political party to advance its needs in a First-Past-The-Post system also eluded many Acadians; why would they risk alienating the Anglophone population at the very moment when they were making significant gains through existing parties already considered legitimate and respected by all New Brunswickers? The Parti Acadien was essentially dismantled in 1982 with the constitutional entrenchment of official bilingualism; it could no longer compete with the successful brokerage parties that the traditional Canadian political parties had become.[55]

Still, the Parti Acadien likely contributed to the acceleration of the movement towards Francophone rights in New Brunswick. As Johanne Poirier suggests: "[i]l n'est toutefois pas impossible que la "menace" présentée par un mouvement sécessionniste (intra-provincial) ait contribué à l'avancée notable des droits linguistiques des Acadiens,

[52] Wilbur, p. 257.
[53] Wilbur, p. 259-260.
[54] Société des enseignantes et des enseignants retraités francophones du Nouveau- Brunswick, *Memoire presente à la Commission consultative sur la gouvernance de la société civile acadienne et francophone du Nouveau-Brunswick*, Richibouctou, NB, le 24 mai 2006, p. 4.
[55] Laxer, p. 242.

y compris la reconnaissance de l'égalité des communautés francophones et anglophones au Nouveau-Brunswick."[56] These rights achieved, however, the party's usefulness seemed limited and so Acadian political activity since 1982 has been channeled primarily through the existing system of political parties and has remained fairly low key.

Yet while many of their rights are assured under federal laws such as the *Official Languages Act*, it can often prove dangerous for official language minority groups to believe they are safe from cultural assimilation and the dilution of the rights it has fought to assert. Indeed when the threats to identity are not extreme and daily life appears to continue as usual, minority groups will concern themselves less and less with apparently minor political developments and minor amendments of legislation. They may assume that, since democracy has been effectively achieved, the days of battling for respect and equal rights are over, that the evolution of laws and institutions is really just 'politics as usual'. They risk developing a tacit and passive attitude towards government and political activity if threats to their everyday lifestyle and existence are not apparent. But it is precisely when minorities develop such a reassured mentality that the attack on their identity can prove most precarious and most successful; constant vigilance is required in protecting and asserting minority rights. Seemingly innocent and routine actions by Canadian institutions, such as the decennial redistribution of Electoral Boundaries, can otherwise pass unnoticed by minorities until they find themselves the victims of its effects. Acadians in New Brunswick would receive such a rude awakening.

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[56] Poirier, p. 27.

Chapter 4 The Road to *Raîche v. Canada*

Acadian communities in Northern New Brunswick have a strong sense of their identity and of the links between their residents. These ties are based on historical presence in the region as well as a common language and culture which have been preserved despite their minority status in the country and province.

In the early 1990s and again ten years later, these important ties and relationships between communities would be threatened by an electoral boundary redistribution which would sever certain locales from their districts and place them in ridings with which affected residents felt no affiliation and which were heavily Anglophone. This redrawing of electoral boundaries to the detriment of these small official language minority communities would incite locals to reaffirm their identity and fight for its protection; this chapter will detail their struggle.

1994-1996: Precursor to Raîche

In 1996, the region of St-Louis-de-Kent, a Francophone area in eastern New Brunswick was annexed to the Miramichi electoral district. The area had been traditionally part of the largely francophone Beausejour-Petitcodiac district. Likewise the communities of Grand-Sault, Drummond and Saint-André in the northwest of the province were transferred away from the francophone-dominated riding of Madawaska-Victoria to the newly created and Anglo-dominated Tobique-Mataquac.[57] The majority (two out of three commissioners – Wallace S. Turnbull and David L.E. Peterson) of the Federal Electoral Boundaries Commission for New Brunswick had ordered this transfer, while a minority report by the third commissioner, Roger Ouellette, critiqued the move

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[57] Phillippe Richard, "Élections Canada souhaite éviter les erreurs du passé, » *L'Acadie Nouvelle,* 14 mars 2002.

on the grounds that it would relocate francophone communities into Anglo-dominated ridings.[58]

The final report of the 1994 Federal Electoral Boundaries Commission for New Brunswick (the majority report) was denounced by multiple community actors, including organizations such as la Société des Acadiens et Acadiennes du Nouveau-Brunswick (SAANB). They claimed that the Commission had "completely ignored the complaints of the Acadian community" who wanted to be transferred back to Beauséjour because they had nothing in common with the Miramichi community. Like they would ten years later in 2004, dissatisfied parties launched a court case to challenge the redistribution and did so with the moral support of the Commissioner of Official Languages, who had deemed their complaints admissible and substantive.[59]

This first court case proved unsuccessful, however, due to a number of circumstances. For one, the case was filed at the local level in a court in Edmunston, a small city in north western New Brunswick. The low-level attention paid to the case, the small resources available for promoting it, the fact that the use of local courts seemed to indicate the issue was of minor importance. The legal arguments were less persuasive also due to the fact that the proposed amalgamated riding would still be predominately francophone; thus the linguistic argument was not as strong as it would be in *Raîche v Canada*.[60] Appealing the Commission's recommendations proved unsuccessful. This case and the negative repercussions of the subsequent federal electoral boundary redistribution on the francophone voters transferred to the new districts would serve as ammunition for

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[58] Phillippe Richard, "La commission électorale entend réparer les erreurs de 1994, » *L'Acadie Nouvelle*, 13 mai 2002.
[59] Société des Acadiens et Acadiennes du Nouveau-Brunswick, *Brief presented to the Federal Electoral Boundaries Commission for the Province of New Brunwick at the Commission's public hearings at Caraquet*, September 5th 2002, p.2.
[60] Pierre Foucher, personal communication, August 25th 2009.

Raîche v Canada, ten years later. Indeed the research and legwork was done and the plaintiffs had learnt from their shortcomings in 1996. They were committed to prevent the new Commission from repeating the mistakes of the last. By the time of the next federal electoral redistribution, when some hoped the errors of 1994 would be redressed, residents of Acadie-Bathurst were appalled that even after public consultations in which francophones spoke unanimously against the fractioning of their community, the commission proposed moving yet another segment of the area's population to the Anglophone stronghold of Miramichi. As SAANB president Jean-Guy Rioux articulated "[n]on seulement le rapport de la présente Commission ne corrige pas les torts de la dernière carte mais il en rajoute."[61] By blatantly ignoring the wishes of the community as well as the very negative results of the similar displacement ten years prior, the commission failed in its duty to consider the effects of its decisions on an identifiable community of interest/identity.

The New Brunswick Electoral Boundary Redistribution Commission

Following the last decennial census in 2001, demographic changes in Canada required once again a redistribution of electoral boundaries throughout the nation. As is the practice in Canadian legislation since 1964, ten independent provincial commissions were established to undertake this task (there is no need for territorial commissions, since each territory automatically constitutes a single seat). Electoral boundary redistribution commissions are made up of a chairman who is appointed by the chief justice of the province (and is often a former judge) as well as two other members appointed by the Speaker of the House of Commons.[62]

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[61] Société des Acadiens et Acadiennes du Nouveau-Brunswick, *Communiqué de Presse*, Petit-Rocher, le 13 février 2003.
[62] Library of Parliament, "Briefing Notes prepared for the House of Commons Standing Committee on Official Language," February 4th 2003.

After examining the current electoral boundaries within their province and after considering the numerical distribution of citizens to these districts, a commission will develop a preliminary report containing proposed changes to the existing electoral boundaries. With this established, they conduct public consultations to ensure that Canadian citizens and groups can input into this process which is so central to their democracy.

A Federal Electoral Boundaries Commission for New Brunswick was established April 16th 2002 to propose adjustments to the electoral map in light of population shifts reflected in the 2001 census. It was made up of three men from southern New Brunswick, all with backgrounds in law. As is often the case, Guy Richard, the chairman of the commission was also a prominent judge; he had in fact served from 1982 to 1994 as the Chief Justice of the Court of the Queen's Bench for New Brunswick.[63] His co-commissioners were John P. Barry and Georges Leblanc, both partners at the respective law firms where they practice.[64]

This commission held public consultations with the residents of Acadie-Bathurst in Caraquet on September 5th, 2002, and a total of eighteen presentations were heard.[65] In order to be heard, written requests for an audience had to be sent in advance. Among these presenters were individual citizens, community group and organization representatives, city council representatives, academics, mayors, and the member of parliament for Acadie-Bathurst since 1997, Yvon Godin. All presentations spoke out against the proposed electoral boundaries established in the preliminary report, whereby the parishes of Saumarez, Allardville, and Val-Comeau (which had always been in the same electoral district as they were prior to 2003) and their surrounding territories would

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[63] *Report of the Federal Electoral Boundaries Commission for New Brunwick 2003.* Appendix G.
[64] Ibid.

be transferred from Acadie-Bathurst to the neighbouring district of Miramichi.[66] They

also argued against the commission's proposed name change for the riding, whereby

Acadie-Bathurst would be dubbed Chaleur-Péninsule.

In addition to the testimony of all the above-mentioned interveners, the

Commission members were presented with a petition signed by 2,656 people in favour of

the status quo as well as assured that thousands and thousands of postcards of protest had

been sent to the House Speaker's office in addition to those letters and phone calls of

complaints received by the office of Yvon Godin and the Office of the Commissioner of

Official Languages.[67] The sub-committee on Electoral Boundary Adjustment of the

House of Commons Standing Committee on Procedure and House Affairs also received

over 6,000 postcards from voters protesting the transfer to Miramichi. Additionally, a

motion against this redistribution signed by 46 members of parliament from across

Canada.[68]

A further act of protest was the threat of a non-voting pact where citizens would

mark a large x on each ballot in upcoming elections.[69] Their disenchantment with the

functioning of the system and the values of voting was clearly expressed not as

condemnation of the Canadian electoral process, however. Indeed, "[l]es gens croient au

système, ils croient aux procédures, mais il faut quand même que les décisions des

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[65] *Raîche v Canada* 2004 CF 679, [2005] 1 R.C.F., at paragraph 17.
[66] Office of the Commissioner of Official Languages, *Final Investigation Report on Complaints Concerning the Readjustment of the Federal Electoral District of Acadie-Bathurst Proposed by the Federal Electoral Boundaries Commission for New Brunswick,* June 2003, p. 3.
[67] Office of the Commissioner of Official Languages, p. 3.
[68] Le Comité permanent de la procédure et des affaires de la Chambre, section 28.
[69] Comité de Citoyen d'Acadie-Bathurst, Val Comeau, Point-Des-Robichauds, Pont-LaFrance, *Presentation to the Federal Electoral Boundaries Commission for New Brunswick,* August 8th 2002.

commissaires reflètent ce que les gens disent."[70] The commission seemed unresponsive to the public will.

The proposed changes were decried as a forced exile for those affected, "another deportation, another slap in the face of francophones of New Brunswick,"[71] referencing the history of persecution of this minority at the hands of the Anglophone majority. As 2004 was the year that Acadians would commemorate the 400th anniversary of the foundation to Acadia, the redistribution did indeed seem a blatant reminder that their people will still threatened by assimilation. The seemingly procedural act of redrawing electoral boundaries based on seemingly neutral (numerical) criteria could still have in assimilationist effects. While Acadians were preparing to celebrate the survival and persistence of their culture in eastern Canada, they instead saw it menaced once again. The redistribution was to the Acadians of Acadie-Bathurst, an unwanted and unwarranted change.

There were multiple reasons that the status quo was favoured unanimously over the proposed redistribution, many of which revolved around the importance of linguistic, economic, social and political interests. None of these were adequately addressed by the commission.

Many residents were dissatisfied with the consultation process and their faith in the importance of citizen voices in this democratic exercise was obliterated. As several members of parliament argued, "pourquoi participer à un processus de révision de la carte

[70] Emmanuel Moyen as quoted in Marjorie Pedneault, "Nouvelle délimitation de la circonscription d'Acadie-Bathurst; Des centaines d'électeurs font part de leur mécontement,» *L'Acadie Nouvelle,* le 3 mai 2003.
[71] Yvon Godin as quoted in Campbell Morrisons' « Riding : MP says changes to Acadie-Bathurst riding are 'slap in the face of the francophones of N.B. » in the *Times and Transcript,* February 14th 2003.

électorale si en réalité aucune des interventions n'est prise en compte ? »[72] In a

representative democracy "[l]es citoyens y ont non seulement le droit de vote mais ils ont

aussi le droit de participer aux décisions qui touchent à leur vie personnelle et

collective. »[73] Meaningful participation requires that the will of the people and their

concerns are at least *considered* and weighed into the decision-making process. As Yvon

Godin asserted to the Standing Committee on Procedure and House Affairs "[b]ased on

my knowledge of the facts, there is clearly a contradiction between the objections raised

by the presenters and the claim of having considered the public's comments."[74] Proof that

the consultations had little impact on the commissions decisions could be found in the

Commission's final report of January 10th 2003, which stubbornly maintained the

proposed transfer of portions of Acadie-Bathurst's territory and residents to Miramichi,

though it repealed its intention to change the name. The population was determined not to

stand idly by.

Specifics of the case

In 2004, Carmel Raîche, Ian Oliver, l'Association des municipalités du Nouveau-

Brunswick Inc., the Bathurst Regional Airport Commission Inc., the Greater Bathurst

Chamber of Commerce and the City of Bathurst filed a federal court case for judicial

review of the Crown proclamation whereby the New Brunswick parish of Allardville and

part of the parishes of Saumarez and Bathurst were to be transferred from the federal

electoral district of Acadie-Bathurst to the Miramichi electoral district.

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[72] Marlene Jennings (MP Notre-Dame-de-Grâce-Lachine), lettre à Monsieur Thomas Hall, greffier, comité permanent de la procédure et des affaires de la Chambre, le 8 octobre 2003, p. 2. Similar letters have also been noted.
[73] Elections Canada, p. 4.
[74] Yvon Godin, Speaking notes.

Federal Justice Michel Shore presided over the case in May of 2004 in Ottawa. The Attorney General represented Canada as the respondent and the Commissioner of Official Languages obtained status as an intervener. The official question examined in *Raîche v Canada* was one of central importance to the entire process of electoral boundary redistribution: "was the community of interest, as well as its identity, the historical pattern of the electoral district in the province and its geographic aspect considered in addition to (population count) numbers, in accordance with the requirements of the *Electoral Boundaries Readjustment Act*?"[75]

With the mutual agreement of the Attorney General and the plaintiffs, the court case was expediated in order to have the decision impact or justify the upcoming redistribution before it was too late.[76] They had seen how slow the process could be in 1996 when they had gone to local courts in Edmunston, and they could not risk the residents of Acadie-Bathurst suffering the repercussions of an unfavorable redistribution for ten years as had the francophone communities redistributed in 1994.[77] Since both sides had extensively prepared their argumentation in disputing the 1994 redistribution, both were ready to resolve these important questions on appropriate electoral boundary redistribution as soon as possible. For the applicants, the importance of wining the case before the proposed transfer began to complicate the lives of residents also motivated immediate action.

In the case of *Raîche v Canada* in 2004, the applicants, in consultation with academics and lawyers, decided to drastically narrow the focus of their arguments; instead of enumerating the plethora of reasons why the proposed redistribution was

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[75] *Raîche,* at paragraph 1.
[76] Denis Duval, personal interview, November 14th 2008.
[77] Ibid.

detrimental to their community and should be overruled, they concentrated on the community of interest and identity clause in the *Electoral Boundary Readjustment Act*.[78]

Université de Moncton Professor Denis Duval served as an expert witness and identified over twenty indicators of community of interest in his presentation to the federal court, many of which built on indicators groups into the three categories of variables noted by Alan Stewart, involving: the participation of individuals in the political life of their electoral districts, the methods of interaction among individuals in the different communities, and the shared social characteristics in the community.[79]

Duval defended the use of multiple markers of communities of interest, by stating that "the main advantage of using such a large set of indicators is that it identifies communities of interest that have a number of characteristics in common. This eliminates the possibility that an electoral map can be manipulated as a result of arbitrary choices of one or more indicators."[80] This would require groups to prove their cohesiveness and community relationship on several levels, making it much less likely that weak cases would be able to take advantage of special legislative consideration in electoral boundary redistribution. He did explain the centrality of language as a primary factor, however, and concluded that "language is an extremely valid variable for use in defining communities of interest. The reason [...] is simply that it is the vehicle for a culture, and identity, a history and a collective will to live." [81]

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[78] Ibid.
[79] Alan Stewart (1998) in Denis Duval's *The location of Francophone communities of interest and defining the boundaries of the federal electoral districts in New Brunswick: A brief submitted to the Standing Committee on Official Languages*, February 5th 2003. Also mentioned in the *final investigation report* of the Office of the Commissioner of Official Languages, p. 4.
[80] Denis Duval, *The location of Francophone communities of interest and defining the boundaries of the federal electoral districts in New Brunswick: A brief submitted to the Standing Committee on Official Languages*, February 5th 2003.
[81] Duval, *The location of Francophone communities of interest and defining the boundaries of the federal electoral districts in New Brunswick.*

Duval's *Rapport d'étude des limites des circonscriptions proposées par la Commission de délimitation des circonscriptions électorales fédérales pour le Nouveau-Brunswick's* alternative map demarcating what New Brunswick's electoral boundaries would look like if a variety of factors were duly considered in addition to numerical quotas differed substantially from those of the Commission's report. Duval's computer-generated electoral map processed his indicators and other provincial statistics to divide the province's federal districts in the most logical fashion. He used this alternative map to argue that the Commission had not adequately considered possible methods of accounting for and accommodating communities of interest. Indeed, while even if the Commission had adequately considered communities of interest they would likely not have come up with the exact same map as Duval, the fact that the differences were so substantial seemed to prove that communities of interest were not factored into the process at all. The alternative model was a testament to the arbitrariness of the electoral boundary redistribution process.

Duval's study further found that Acadie-Bathurst unequivocally qualified as a single and legitimate community of interest.[82] Thus, they were clearly entitled to be considered for the protections afforded in the *Electoral Boundaries Readjustment Act 1985* to communities of interest. The Commission was determined to have not drawn up the most appropriate map because while " the Commission tried to apply Part VII of the [Official Languages Act] in a manner in keeping with the intention of Parliament, [...] it failed to do so because its findings of fact were erroneous."[83]

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[82] *Raîche,* at paragraph 34
[83] Ibid, at paragraph 104.

The views of those who spoke at the public hearings had advocated the preservation of the status quo, citing the concepts of community of interests and of identity, and these views were not reflected in the Commission's report.

The defense did not argue against Acadie-Bathurst's validity as a community of interest nor effectively refute Duval's arguments or the legitimacy of his map, but responded by appealing to principles of equality and equitable democratic representation for Canadians and New Brunswickers in this case. They emphasized that without implementing changes to the current boundaries in northern New Brunswick, the Acadie-Bathurst electoral district would be 14 percent above the electoral quota and have the smallest riding territorially, while the neighbouring Miramichi district would be 21 percent below this quota and comprise the largest area of any riding. When compared, the two districts would have approximately 35 percent variance, something deemed unacceptable to the Commissioners. Such a difference in the number of electors in a district would result in inequitable representation, threatening to make the votes of individuals in Acadie-Bathurst less valuable politically compared to those of Miramichi. While legally allowable, this deviation from the provincial quota skewed the voting power of individuals too much for them to endorse.

Yet their argument failed to acknowledge and address that other constituencies in the province had similar populations to that of Acadie-Bathurst in terms of numbers, and it is relative to the provincial quota and not just that of one single neighbouring constituency that the numerical deviance should be measured.[84]

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[84] Yvon Godin, *Presentation at the Federal Electoral Boundaries Commission for New Brunswick's public hearing in Caraquet*, September 5th 2002, p 2.

Nonetheless the defense continued to defend the Commission's report by asserting that communities of interest are dynamic and should be treated as such. David Johnson, a professor of political science, argued that Duval's report portrayed communities of interest as static and failed to recognize that these develop to reflect existing political realities as well as historical community identity. He argued that a new community of interest would evolve in Miramichi and that, in time, the transferred residents would feel the same affinity with that electoral district as their current one.[85] Thus he prioritized numerical equality since community of interest was a more malleable and accommodating concept. He also dismissed the fears of residents over access to French services as unfounded, since both Canada and New Brunswick are officially bilingual.[86] He maintained that the language of a member of parliament was also inconsequential to his or her capacity to adequately represent constituents, stating that "[a]ll elected representatives are called upon to represent the interests of all of their constituents regardless of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability, and many other social characteristics inclusive of language." [87] This idea was dismissed earlier in this paper as an admirable ideal, but one rarely actualized.

Professor Pierre-Marcel Desjardins also testified that the Acadian community's fears were unfounded and that the allocation of the proposed communities to the Miramichi riding was a logical move since he believed these shared common economic interests.

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[85] *Raîche*, at paragraph 37.
[86] Ibid.
[87] Ibid.

The Court preferred the reasoning behind Professor Duval's findings and argued against Johnson's assertion about the minor importance of language to the effectiveness of representation. "The Court acknowledged that a minority group's fear that it will not be adequately represented by its member of Parliament was not without basis; the opposite is in fact true, because the reality in a democracy is that an elected representative who is faced with the conflicting interests of the majority and a minority will often have to choose to represent the interests of the majority."[88] The Court also stated that Johnson's argument about the evolution of a new community of interest after redistricting was based on too many hypotheticals and that he had failed to demonstrate when and how this would happen and become consolidated.[89]

An additional defense presented by the Commission was that their proposed redistribution would not harm francophone residents, but instead empower them. By transferring the parishes of Allardville and Bathurst to Miramichi, the francophone population would increase in that riding, allowing them to become a more established and substantial minority; this could perhaps even result in more political consideration and more political clout for the Acadian minority due to their more substantial numerical presence in the district. What the Commission failed to acknowledge, however, was that "[i]n 2001, before the parishes were transferred, anglophones made up 63 percent and francophones 34 percent. After the transfer, it was predicted, the anglophone proportion would rise to 64 percent while the francophone proportion would be about 33 percent. The Acadian percentage relative to Anglophones remained essentially unchanged with

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[88] *Raîche*, at paragraph 42.
[89] *Raîche*, at paragraph 43.

the addition of the parishes, as did their capacity to wield additional political power."[90] The facts failed to support the Commission's assertion.

The proposed redistribution was clearly detrimental to the interests of Acadians no matter how it was viewed. Their electoral weight remained unchanged and their sense of identity and community would suffer a significant blow if the proposed electoral boundaries were adopted. To those affected by the redistribution it was the *feeling* of being represented more than their statistical electoral weight that was most important.

The Court recognized that the *Electoral Boundaries Readjustment Act* did not allow special protections for communities of interest solely for these to be disregarded in cases where they were applicable, and this was clearly such a case. In order for federal institutions to live up to their commitment in section 41 in Part VII of the *Official Languages Act* to "enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development and fostering the full recognition and use of both English and French in Canadian society,"[91] the Commission's proposed electoral boundary redistribution would not become the federal electoral map in New Brunswick.

The Court acknowledgèd that while it could set aside the proposal of the Commission it had neither the power not the authority to replace this with its own, since the redistribution of electoral boundaries must be established by an independent commission in order to serve the interests of Canadian democracy. Instead the Court

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[90] *Raîche*, at paragraph 80.
[91] Canada. *Official Languages Act* (1985, c. 31 (4th Supp.)). See Appendix C for further details of Part VII.

ordered that the appropriate authority reexamine the question of electoral boundary redistribution in New Brunswick and gave it one year to do so.

This decision was monumental in that it was the first time in Canadian history where a federal court stepped in to overturn the decision of a Federal Electoral Boundary Commission in order to protect the rights of an official language minority group. It would result in the establishment of a new Federal Electoral Boundaries Commission for New Brunswick on October 19th 2004 to reexamine the question of electoral boundary redistribution in light of the court's decision and the importance it accorded to considering redistribution impacts on communities of interest.[92]

The Miramichi and Acadie-Bathurst Electoral Boundaries Commission was chaired by Joseph Z. Daigle, who was the former Chief Justice of New Brunwick, but also by Lorio Roy who was the editor-director general of the local daily L'Acadie Nouvelle. Pierre Foucher, a law professor at the Université de Moncton was the third commissioner.[93] Already the Commission showed a more varied composition than most, which are often made up of former judges only. It held public hearings November 17th and 18th of 2004 in Miramichi and Bathurst respectively, before developing its final report. The public hearings, which supported the return of previously transferred communities to the riding of Acadie-Bathurst were reflected in the Commission's final recommendations on December 8th 2004.[94] This return to former electoral boundaries was achieved through Bill C-36, which was assented to on the 24th of February 2005.

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[92] *Preliminary Report of the Miramichi and Acadie-Bathurst Electoral Boundaries Commission.* Moncton New Brunswick, December 2 2004, p. 3.
[93] Ibid.
[94] Ibid, p. 8.

Chapter 5 Analyzing *Raîche v. Canada*

Community of Interest

The 1985 *Saskatchewan Reference case,* which dealt with questions of significant numerical inequality between urban and rural districts, was an important milestone in the development of the electoral boundary redistribution process in Canada. In *the Saskatchewan Reference case*, it was ruled that when breaking away from traditional considerations intended to reflect the equality principle as closely as possible four reasons were justifiable in a court of law according to relevant legislation. Electoral boundaries were permitted to vary in their number of constituents not only up to twenty-five percent in each direction, but beyond this in cases deemed "extraordinary"- the *Electoral Boundaries Readjustment Act* identified these cases to be ones where it was necessary to protect 1) community of interest/community of identity 2) historical pattern 3) geographic size 4) minority representation.[95]

Thus, in addition to addressing issues between urban and rural districts, the *Saskatchewan Reference case* seemed to open the door to additional challenges to traditional electoral boundary determination which focused primarily on numerical factors. It seemed to establish the way in which "those who wish to challenge constituency boundaries" would have to engage with the courts; that from then on they would have to "devote their efforts to establishing that "the appropriate principles" were either not considered or were unreasonably applied."[96]

While considerations of historical patterns of districting and manageable geographic size seem straightforward, federal electoral boundaries commissions have

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[95] Canada. *Electoral Boundaries Readjustment Act, R.S.C. 1985, c.E-3.*

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grappled with the definition of community of interest/identity (which can also involve minority representation) since the *Saskatchewan Reference case* decision. Since neither the courts nor the legislatures have prescribed any additional clarifications of what the terms specifically represent, defining community of interest/identity has been left in the hands of academics working on these questions, and the application of these terms to the discretion of the independent province-specific electoral boundaries commissions.

Without specific guidelines, it is challenging for commissions to interpret and apply the law in a uniform manner; they lack a concrete understanding of what protecting communities of interest and identity entails. They tend, therefore, to defer to a traditional criterion for electoral boundary redistribution, representation by population. As Jennifer Smith warns when discussing the balancing of numerical and sociological factors in drawing electoral boundaries, "[e]veryone understands voter equality. It is the idea that one person's vote has the same value as the next person's. Community of interest, on the other hand, is an elastic concept."[97] It can be shaped and molded to serve the needs or wishes of different communities and different provinces (and arguably different political interests) at different points in time; nothing is permanent, nothing is set in stone, nothing is standardized. The result of this ambiguity is three-fold.

Firstly, as just mentioned, it has led to a general trend for commissions to stick to a stringent numerical equality focus when redistricting, since they are unsure how to interpret who falls under the community of interest/identity category and prefer not to tread the murky waters surrounding this sensitive issue.

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[96] Ronald E. Fritz "The Saskatchewan Electoral Boundaries Case and Its Implications," in John C. Courtney, Peter McKinnon, and David E. Smith, eds. *Drawing boundaries: legislatures, courts, and electoral values.* Saskatoon: Fifth House, 1993, p. 85.
[97] Jennifer Smith, "Community of Interest and Minority Representation: The Dilemma Facing Electoral Boundaries Commissions," *Electoral Insight* 4(2) October 2002, p. 14.

Secondly, where community of interest/identity is given more rigorous consideration, the fact that there are no standardized criteria to determine which communities deserve additional protections leads the commission to pick and choose who merits recognition, potentially leaving out worthy parties; there is the ever-present danger of discriminating against some parties since there is currently no need to prove or account for selection processes (the potential for racism, prejudice, and bias to play a role is high, though ideally those chosen for commissions are above such unbecoming moral pitfalls). Inconsistency is a grave reality of the electoral boundary redistribution process and "affirmative gerrymandering" is in dire need of orienting principles.[98]

Lastly, and perhaps a point that has garnered more attention in the literature than the former two, is the fact that while the protections are federally legislated and involve federal boundaries, the implementation of community of interest/identity as a criteria during electoral redistricting lies in the hands of provincially-based committees. The potential for the standards of selection to vary significantly between different provinces increases the danger of irregular application of these principles of selection in the country as a whole. That means that the threat that some parties will be left out while others are rewarded with differential boundary drawing practices grows exponentially. Of two very similar communities, one group could be designated as a community of interest/identity by the electoral boundary commission in their province (composed of three appointed individuals), while another would be left unprotected in a neighboring province (where the commission is composed of three other individuals). This illustrates a very real situation that is of great concern to the equal validation and protection of Canada's official language minority groups.

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[98] Courtney, *Elections,* p. 64.

All three of these concerns are extremely valid, and while the ambiguity remains,

it is possible to distinguish and attempt to delineate a concrete idea of where the

definition of community of interest/identity has been thus far and may be headed in the

future. In order to do so, we will look at the scholarly literature that toys with these

concepts in the hope of predicting the future of electoral boundary redistricting.

Deducting Community of Interest

John Courtney uncovers the ideal behind the community of interest:

> Community of interest is based on the recognition and acceptance
> of the idea that a geographically concentrated group shares a
> certain attribute in common. That attribute might be defined
> according to location, as with a neighborhood or a set of municipal
> boundaries; as the product of a common pursuit, such as an economic
> interest; or as the presence of a common trait, such as a social,
> racial, religious, or linguistic characteristic. Drawing constituency
> boundaries according to a district's communit(ies) of interest is seen
> as a way of ensuring communication between citizens
> and their representative and of enhancing the representational
> process generally[99]

According to this definition, a community will be better represented if it has the ability to

choose its own member of parliament, which frees them from the overriding concern that

it will be out-voted by non-community members. An ever-present fear of becoming

victims of the tyranny of the majority exists among minority communities, unless special

protections are put in place to ensure its capacity to elect someone who takes to heart the

concerns of the community and brings these to parliament. This assertion is based on the

idea that mirror representation is the ideal. Thus, one question that immediately comes

into play is whether Canada's *ideal* of representation reflects a delegate theory of

representation (whereby representatives are just vessels for the views of their

constituents) or a trusteeship vision of representation (whereby representatives consider

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[99] John C. Courtney, "The Concept of 'Community of Interest' in Determining Electoral District Boundaries," *Electoral Insight* 4(2) October 2002, p. 9-10.

the views of constituents and factor these in decisions made for the greater good).[100]

While it has been argued here that Canada is based on a more of a trusteeship vision of representation than a delegate one, is this truly what Canadians support and desire? This is a cardinal issue. If delegate theory is chosen instead, then the case for community of interest/identity protection and designation of particular electoral boundaries is justified, since only by being the majority group within a district can they voice their concerns through their elected representative. If a trusteeship theory is accepted it has been argued that representatives can theoretically take the moral high-road of protecting the needs and interests of minority groups located within his or her riding without any special protections required; remember, this was the stance taken by professor David Johnson in defending the Federal Electoral Boundary Commission for New Brunswick's proposal in the case of *Raîche v. Canada*.[101] It must be noted however that even if this conceptualization of representation is the option chosen, the representative would still be in danger of ignoring minority interests in the interest of reelection by the majority (assuming such interests conflicted), as the Court responded in *Raîche*.[102] This danger and fear underlies the argument in favour of mirror representation, which asserts that minority communities need to elect one of their own to be protected. This reflects a reality for groups that have existential concerns and is part of the base argument for community of interest/identity protections.

Courtney continues his discussion of community of interest/identity by arguing that the connection of individuals to 'place,' and thus to the common interests they share

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[100] Courtney, *Elections*, p. 130-135.
[101] *Raîche*, at paragraph 37.
[102] *Raîche*, at paragraph 42.

with others occupying the same space, are valuable in maintaining a civic society.[103] The

idea that the needs and concerns of this community are effectively represented by their

elected member of parliament, gives people faith in the importance of their vote and in

our democratic system.[104] In the case of minorities, people feel more inclined to vote and

participate in the system if they feel they have a legitimate voice; "[i]t has been

demonstrated that voter turnout increases when boundary readjustments leave voters in

ridings with which they share a strong community of interest."[105]

Moreover, it becomes self-protection and every community member's duty to

vote as part of a bloc to ensure their group's interests are represented. Unfortunately, for

democratic and ideological considerations, the importance of bloc voting (as a method for

protecting the group's interest) can risk detracting from the ability of members to remain

true to their partisan ideals should these differ from those of their community of

interest/identity as a whole.

William Cross and Ian Stewart insist that bloc voting is not an existential

necessity for minority groups if brokerage parties exist, though, because all important

cleavages will be considered and breached by all major political parties.[106] This means

that parties will generally take a middle of the road approach to issues which could divide

people along ethno-linguistic or socio-economic lines, trying instead to appeal to the

electorate as a whole; this allows all Canadians to base their vote choice on the

ideological stances and issues at hand, instead of voting existentially in the case of

minority groups. Indeed this seems the approach that political parties in New Brunswick

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[103] Courtney, "The Concept of 'Community of Interest,' in Determining Electoral District Boundaries" p. 10.
[104] Ibid
[105] Ibid
[106] Cross, William and Ian Stewart, « Ethnicity and Accommodation in the New Brunswick Party System ,» Revue d'études canadiennes 36 (4), 2001-2002, p. 32-59.

took during the Robichaud and Hatfield eras, which served to undermine the attractiveness of the Parti Acadien to Acadian Nationalists.

Cross and Stewart argue that overall Canada may be moving away from a brokerage system, allowing linguistic, ethnic, and regional cleavages to reemerge, but that New Brunswick political parties (provincially, and I would argue federal political parties in this province) have moved towards it as a method for elite accommodation of ethno-linguistic tensions.[107] As long as this trend holds, New Brunswick brokerage parties can be seen as an exemplary way to protect Francophone residents from having to vote as a bloc to have their interests represented.

What trends such as this do not achieve is an ontological guarantee for minorities, and without this, minority communities– including New Brunswick's francophone population– must remain constantly on guard to ensure its rights and its voice are not gradually eroded. The threat of rights and needs being ignored or chipped away at after the battle for them is considered over, helps to explain the need for permanent structural protections, a consideration to be examined in the final chapter of this thesis.

The Threat of Community of Interest to Democracy

The majority remains, however, unsympathetic to or unaware of these voting concerns expressed by minority groups. To the majority, the terminology of community of interest/identity can seem to threaten favoritism towards 'special interests' in the sense that, since majority rule is the cornerstone of modern democracies, minority rights and exceptions could be viewed as coming at the expense of national unity and identity. These minorities may not have the good of the nation at heart and their empowerment

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[107] Ibid, p. 34. Cross and Stewart discuss the rise of the Bloc Québécois and the Reform/Canadian Alliance to demonstrate the possible end of brokerage parties at the national level, while they assert that New Brunswick provincial politics have moved towards a brokerage system as part of elite accommodation of the Francophone/Anglophone cleavage.

could thus prove detrimental to the country's best interest, well-being and proper functioning. There is the apprehension that groups may be concerned solely with their own rights and self-advancement without regard for the expense these interests could generate for the society as a whole, as mentioned earlier in a critique of mirror representation. Courtney flags this concern, noting the "fear that community of interest could be used to disguise self interest," though he highlights more attentively the threat that individual people could use the rhetoric of community interest not for the advancement of that community, but for personal gain.[108] This is a very real danger considering that community leaders and their autonomous organizations may not be held to the same democratic and transparent processes and accountability standards as is considered standard in Canadian democracy.

Since many communities are focused on maintaining their traditional values and ways of life, some elites may exploit these traditions for political gain. Demanding the same democratic systems of their community that exist in the wider society could be decried as an act of cultural and political imperialism, which fails to respect the inherent value of their particular society's political system. While the desire to practice their own form of political society can be a valid demand to be made by minorities, there is great danger that some elites may solely use this argument to shield themselves from being held accountable; again, some people may exploit community-based language and rights for personal gain. Yet, 'tradition' does not consist of static practices and institutions that existed in the distant past. It is an evolving body of ways of life that adapts to changing

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[108] Courtney, "The Concept of 'Community of Interest' in Determining Electoral District Boundaries," p. 11.

situations and readily integrates new attitudes and practices."[109] For this reason the Lund Recommendations on the Effective Participation of National Minorities in Public Life assert that "[i]nstitutions of self-governance, whether non-territorial or territorial, must be based on democratic principles to ensure that they genuinely reflect the views of the affected population."[110]

The problem of who qualifies as a legitimate community representative and the accountability mechanisms associated with this problem is something flagged by Cardinal when she discusses, not elected representatives to parliament who are held accountable in elections, but other mechanisms of minority protection (guaranteed seats, consultation, devolution etc.).[111]

There is a fear that differential rules for the operation and governing of different communities within the same society could potentially reinforce ghettoization and work against national unity and understanding. There is also a fear that it could lead to gross inequalities in the political realities lived by Canadian citizens based on their community identification.

Due to concern surrounding these effects of potentially dividing the country, when the House of Commons attempted to pass legislation clarifying what community of interest/identity entailed, they purposely excluded a recommendation of the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) to use electoral redistricting to enhance the representation of minority groups.[112] The House

[109] Canada. Governance in the Royal Commission on Aboriginal Peoples, Volume 2 – Restructuring the Relationship. 1996. <http://www.collectionscanada.gc.ca/webarchives/20071115053257/http://www.ainc-inac.gc.ca/ch/rcap/sg/sgmm_e.html>.
[110] Foundation on Inter-Ethnic Relations, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note*, September 1999, Recommendation 16.
[111] Cardinal, Linda, « Les minorités Francophones hors Québec et la vie politique au Canada : comment combler le déficit démocratique ? »
[112] Courtney, "The Concept of 'Community of Interest' in Determining Electoral District Boundaries," p. 12.

"feared that "ghettos" or "ethnic enclaves" would be created and that the implementation

of a provision adding a reference to Canada's plural society would lead to a form of

"segregation."[113] Thus they focused more on historical boundaries, common economies,

natural boundaries etc. in defining communities of interest. This legislation died on the

order paper, however, after failing to secure endorsement by the Senate.[114] Thus there

remains to this day no concrete, well-accepted definition of community of

interest/identity.

Community of interest/identity continues to be a bone of contention due to the

ambiguity of the term and the implications of its arbitrary use. It is especially important

to defend and define these terms clearly and substantively lest they become completely

abandoned due to ineffective justification against proponents of the equality principle and

their *Charter* claims.

As was mentioned earlier, the *Charter* proves a likely candidate to challenge

deviance from the equality principle since section 3 emphasizes an equal right to vote.

Whether this is an absolute equality or instead a relative one, as Justice McLachlin

seemed to claim when arguing the right to "effective representation," is another question

with no right or wrong answer but a matter for Canadian ideals and values to decide.

As Kim Poffenroth mentions, though, "[e]ffective representation that takes into

consideration factors beyond voter parity is the norm in other Commonwealth countries

such as Australia and Great Britain, which also reject the American emphasis on 'one

person- one vote.'"[115] The ideal concept of representation varies in different societies; all

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[113] Ibid, p.13.
[114] Ibid, p. 12-13.

[115] Kim Poffenroth, "Raîche v Canada: a New Direction in Drawing Electoral Boundaries?" *Commonwealth Law Bulletin, 31*(2) 2005, p. 54.

are equally valid, but uncovering what is right for Canada means that the importance and role accorded to "effective representation" and "community of interest/identity" will have to reflect Canada's historical and contemporary ideals.

What we have to work from

A strict definition of "effective representation" and "community of interest/identity" would likely prove detrimental to the protection of linguistic minorities, as it would be unlikely to prove flexible enough to take into account the particular circumstances and situations of communities across Canada. Instead it is important to examine claims appealing to these protective clauses on a case-by-case basis, something that sounds suspiciously like the current method which has proved so problematic, n'est-ce pas? While electoral boundary redistribution is presently committed to a case-by-case mentality (by virtue of the provincial commission arrangement etc), as with most things a happy medium must be sought whereby the particular circumstances of groups can be considered while appealing to certain identifiable norms associated with "effective representation" and "community of interest/identity." While a rigid definition of these concepts is undesirable, a common understanding of their purpose and general meaning must be established in order for them to prove useful as tools and less subject to arbitrary application. Without operationalizing legal concepts including such as these, a just and consistent application of the terms and an effective protection for official language minority groups' representation will remain out of reach. Without some precedent and without some normative guidelines or goals, all minority groups are in danger of discrimination through insensitive electoral boundary redistribution.

Considering the need to develop some kind of consensus from which to delineate guidelines for electoral boundary commissions, let us turn to the application of these

terms thus far in Canada. Two provincial legislatures offer some insight further to that offered earlier by *the Saskatchewan Reference Case*.

The Nova Scotia legislature, when faced with defining community of interest/identity, came to the conclusion that minority representation is important in their province. It "issued clear instructions on minority representation that the boundaries commission once again can be expected to implement,"[116] underlining the desire to promote representation for the province's Acadian and Black communities. Prince Edward Island has also confirmed minority representation as a "clear example of a valid claim of community of interest," when it used this principle to justify maintaining the Acadian riding of Evangeline, despite clear numerical deviation from the provincial norm in excess of the 25% rule.[117] Jennifer Smith uses these two examples to argue that a precedent is being set for defining community of interest/identity, one which clearly encompasses and champions linguistic and ethnic minority representation as valid claims to the status.

The real decision-makers

Yet for all the different reasons groups have claimed to be communities of interest or identity, it remains the province-specific commission that ultimately decides whether or not they qualify. In fact, these appointed and independent commissions have the final say in the drawing of electoral boundaries, and as the Chief Electoral Officer mentioned in an address to members of the various electoral boundary commissions established in 2002: "[l]a Chambre des communes n'a aucunement à approuver vos décisions. Vous avez le dernier mot."[118] This arrangement, however, of having a panel of three appointed

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[116] Jennifer Smith, p. 18.
[117] Ibid.
[118] Elections Canada, p. 6.

individuals entrusted with such a significant power yet not being answerable to the people in any way, seems a blatant affront to the democratic principle of accountability.

While commissions do legally have the final word, those disagreeing with the final reports of electoral boundary redistribution commissions have expressed and professed their discontent through a variety of mediums, including appealing to the judiciary. As was mentioned earlier, when groups are confronted with an inability to reach political goals through traditional methods such as elections and parliament, they turn to other forms of political engagement.

Thus far, only one appeal to the recommendations of an electoral boundaries redistribution commission has reached the federal court and proved successful in defending the importance of preserving a particular community of interest/identity. *Raîche v Canada* is a success story for official language minority groups in preserving a community of interest/identity. It "goes beyond what was established as constitutionally required by the *Saskatchewan Reference* case and, unless contradicted by a higher court in the future, will necessarily have an impact upon the manner in which the readjustment of electoral district boundaries is approached."[119] Poffenroth argues that it sets an important precedent and that "in applying the concept of community of interest, Electoral Boundaries Commissions will henceforth need to pay greater attention to linguistic interests, having reference to the Official Languages Act."[120] *Raîche* has served to contradict the Chief Electoral Officer's assertion – Federal Electoral Boundaries Commissions *do not* necessarily have the final word on redistricting.

As the only successful case in reversing the decisions of a federal electoral boundaries redistribution commission, the case of *Raîche v Canada* sets an important

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[119] Poffenroth, p. 55.
[120] Poffenroth, p. 59.

precedent in terms of electoral boundary redrawing and, specifically, in underlining the significance of community of interest/identity to this process. What really did the case unveil? For one it revealed the ineffectiveness of non-community members, such as those making up the commission, in understanding and weighing the concerns of communities of interest and identity. It was mentioned earlier that the Commission had proposed not only the changing of electoral boundaries against the will of the people of Acadie-Bathurst but also to change the name of their electoral district, something equally appalling to the community in question. Why both these issues were so sensitive and are so important to effective representation in Canada merits greater examination.

What's in a name? A place, a people, an identity

In the House of Commons, members of parliament are always referred to as the representative from their particular constituency. Thus, when they speak they are doing so on behalf of a territorially defined group of people which elected them. The idea behind territorial representation as discussed in previous sections is based on the premise that people located in certain areas and living in certain places will naturally share similar concerns and interests. This is due to a variety of factors. For one, economic interests and the industries on which an area depends can influence its interests; there is no doubt also that the conditions of life, which can often be determined by the territory and climate itself, can have an impact on determining the needs and interests of residents. Territorial definition also makes sense in that people tend to congregate together with others who share similar interests, indeed they establish and maintain social networks and communities, thus residential patterns are not rarely purely randomized or chance occurrences, but can be the result of a conscious decision to live among people with shared characteristics, views, or interests.

Indeed the affinity people feel with fellow citizens in their area is reinforced by our federal system, which recognizes the importance of local concerns and needs, not only by creating regional (provincial and municipal) governments with constitutionally protected powers, but by designating representation at the national level to locally elected representatives. The Westminster system of representation we have in Canada has a communal idea of representation at its base, it intends to represent constituencies, not individuals, and allows for members of parliament to represent different collectivities which are territorially defined. The identification of political representatives with a particular area, by constituents as well as by outsiders, serves to symbolically recognize and reinforce existing connections in the riding. Indeed, "while constituencies are electoral constructs, they are also human institutions. Like all human institutions they take on value and identity for those who belong to them."[121]

They define the group also to the outside world and the rest of the country can easily identify the voice of these communities in the House of Commons and in the media. As a presentation by the Comité de Citoyen d'Acadie Bathurst, Val Comeau, Pointe-des-Robichauds, et Pont-LaFrance argued: "[q]ue ce soit en chambre à Ottawa, que ce soit à la radio, la télévision ou dans les journaux, le nom Acadie-Bathurst se répand partout dans le monde."[122] The link between a population and their voice in Parliament or other public arenas is clearly established through the name of their riding, this function proves central to ideas of responsible government and holding representatives to account for the level of service provided.

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[121] Library of Parliament. *Draft Report of the Subcommittee on electoral boundary adjustment of the House of Commons Standing Committee on Procedure and House Affairs on the matter of the 2003 electoral boundaries redistribution.* 10 October 2003. p. 8.
[122] Comité de Citoyen d'Acadie-Bathurst, Val Comeau, Point-Des-Robichauds, Pont-LaFrance, *Presentation to the Federal Electoral Boundaries Commission for New Brunswick*, August 8th 2002.

For all these reasons and more, territorial representation can seem a very logical method of representation. Another type of representation, in which the principle of 'one person one vote' holds as true as it can, is not in practice in Canada. It involves not aggregating interests within constituencies that elect a particular individual to represent them and be in touch with their local needs, but instead aggregating votes nationally; that is, every vote is used to select from a single country-wide (or area-wide if the elections are provincial or municipal) pool of candidates – this is Proportional Representation in its truest form. The merits of Proportional Representation in its various forms versus other electoral systems such as First-Past-The-Post will be discussed in the final chapter of this thesis; what is most important to note here is that Canada was founded on and lives by principles of territorial representation, something that is quite logical in a country as vast and regionally variant as ours.

Since territorial representation is the rule governing our electoral system, and since the non-random distribution of people across the country into communities and locales allows their interests to aggregate and be represented in such a system, determining where the logical divisions between different areas are in terms of interests and representation becomes a very important exercise. Where do communities or groups of people that have some kind of link or affinity with one another end and new ones begin? While it is clear that not all members of territorial groups act or think cohesively, "community is [...] relevant because choosing electoral representation is a collective activity."[123] Indeed the very act of voting is intricately tied to community: it determines one's representation and engagement in the national whole by *collectively* choosing someone to represent their segment of the population in the decision-making process.

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[123] Alan Stewart, "Community of Interest in Redistricting," in David Small, (ed.) *Drawing the Map and Efficacy of the Vote in Canadian Electoral Boundary Reform,* Toronto:Dundurn Press, 1991, p. 119.

Clearly the drawing of electoral boundaries is therefore a key exercise in

recognizing and reinforcing groups. The fact of belonging to a certain constituency is a

mix of one's natural identification with neighbours, friends, colleagues, and other persons

living in one's vicinity and identification with the land and a way of life, but it is also

something that can be developed over time. When individuals are consistently referred to

and defined as belonging to a certain groups and are in this way distinguished from other

sectors of the population, the internalization of this ascribed identity is only natural;

indeed these people begin to truly identify themselves as belonging to this segment of

society, at least in part. This was the argument reinforced by the testimony of David

Johnson in *Raîche* when he argued that residents of Acadie-Bathurst could in time

develop a new community of interest as part of the Miramichi electoral district.[124]

Indeed, constituencies not only reflect and reinforce natural interest aggregation,

historical patterns of settlement and association, and other established networks and links

between constituents, but also serve to identify, delineate, and indeed create a sense of

cohesion and identification among residents of a certain territory. As so eloquently put by

Alan Stewart:

> To the extent that boundaries reflect the existing boundaries of
> organized political and voluntary associations, political participants
> will, by their participation, reinforce and strengthen their pre-existing
> networks of social and political contact, thus increasing the private
> benefits enjoyed from political activity aside from those gained by
> contributing to the election of a member of their choice.[125]

One of the great challenges of electoral boundary redistribution is to what extent

commissions must recognize and strive to reflect already existing communities of interest

and identity when defining constituencies and to what extent they can argue this

identification will eventually adapt to new boundaries based on other factors such as

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[124] *Raîche,* at paragraph 37.
[125] Alan Stewart, p. 143.

numerical equality. As Stewart emphasizes, "the base of representation is neither communities nor random groupings of individuals, but a mix of the two."[126]

The Canadian courts have indeed determined that the task for commissions is to balance these two considerations when redrawing electoral boundaries, something that has been a truly trying and difficult task. Judging the Commission's effort to do so in the case of Acadie-Bathurst is something best examined once the particular circumstances existing in the community are explained. It becomes clear that community members felt a strong affinity with each other and that the symbolic importance of recognizing this cohesion was a central part of validating their identity. A community like Acadie-Bathurst experienced this validation through the name of their constituency, the effective representation their member of Parliament delivered as a service to the people, and through the protections and commitments the federal government offered under the *Official Languages Act*.

Name Change

In 1990 the constituency of Acadie-Bathurst was born. While the constituency had existed in its own right since confederation, it had formerly been known as Gloucester. Residents of the area rallied for a name that would recognize the bilingual nature of their riding, appreciate its significance as stronghold for the Acadian nation, and be easily identifiable by referring to the largest city and commercial centre in the area.[127] With the passing of Bill C-305 by Parliament in 1990, this proposed name change finally became a reality.

Being dubbed Acadie-Bathurst was considered a huge victory for constituents, who were proud of their new name and identified more profoundly with it than the

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[126] Alan Stewart, p. 117.

former label given to their riding. The symbolic recognition it gave to the special

linguistic composition of their constituency was very important to residents, an assertion

of their identities to the rest of the nation.

The clearly expressed and celebrated importance attached to this name and its use

throughout the region as part of organizations, groups, sports leagues etc.[128], is at the root

of the violently negative reaction of constituents to the name change proposed by the

New Brunswick Federal Electoral Boundary Commission in 2002; the latter suggested

changing the riding's name to Chaleur-Péninsule. The three members of the commission

were evidently out of touch with the constituents' relatively recent battle for recognition.

The proposed name change buttressed a belief among residents of the riding that the three

commissioners (all of whom hailed from southern New Brunswick, as previously noted)

were absolutely oblivious to the local needs, concerns, and identities of northern

communities such as theirs. It was an affront to the identity of the constituents, with no

logical explanation or reasonable defense. The name change was purely arbitrary, serving

no practical purpose but instead seeming to reflect the geographical focus of the

commissioners, who seem to have been oblivious to the great harm it threatened to local

identity.

Acadie-Bathurst is the only federal constituency in the country to bear the name

of the Acadian people; a people historically discriminated against and marginalized by

the Canadian state.[129] The recognition of their perseverant identity and continual presence

in Atlantic Canada despite the Acadian nation's many trials, including physical

deportation from their lands and extremely discriminatory linguistic policies, was an

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[127] « Présentation de la Ville de Bathurst à la Commission de délimitation des circonscriptions électorales au Nouveau Brunswick » 5 septembre 2002, p. 1-2.
[128] Ibid, p. 3.

important one for the country to make. Indeed, since the name of a constituency is used in political debate and activity in the national forum, this name served as a constant reminder to the Canadian population at large that Acadians were an important part of Canadian history and remain today a vibrant group with strong and proud communities. The *Official Languages Act*, which puts obligations on federal institutions to promote the development of official language minority communities in Part VII, supports symbolic recognition in forms such as this name recognition which demonstrates the good faith intentions of the government towards such these linguistic groups.

The proposed name change seemed a clear step backwards in acknowledging the presence and contribution of the Acadian population in the federal riding with the largest concentration of this minority group in Canada,[130] and a clear signal of the disregard for community of interest in the process of electoral boundary redistribution. Disregarding the importance of the name and the existing electoral district to their maintenance of their identity, led Roger d'Entremont to warn at the commission's public hearings that "[c]eci est seulement un commencement, n'oubliez pas qu'une fois fait, d'autres régions du peuple acadien vont tomber dans la même fosse que nous et seront assimilés, petit à petit et après on existe[ra] plus."[131] The City of Bathurst also presented itself as "categorically opposed" to obliterating the riding's title of Acadie-Bathurst, for which they "spent a great deal of time and money to ensure name recognition which [they] felt [they] had

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[129] Acadian communities have also been historically discriminated against by the respective provinces in which they are found.

[130] Fernand Losier, *Presentation to the Federal Electoral Boundaries Commission for New Brunswick* on behalf of the DSL of St-Pons, at the public hearing in Caraquet, September 5th 2002.

[131] Roger Entremont's Presentation at the Federal Electoral Boundaries Commission for New Brunswick's public hearing in Caraquet, September 5th 2002.

accomplished"[132] to recognize the bilingual nature of the constituency and the presence of a strong Acadian community.

The importance of a district's name is not solely a surface issue and after reviewing the case of *Raîche v Canada*, it seems clear that community of interest is not something to be taken lightly either.

That the Commission did not recognize the implications of a name change was a step backwards in terms of supporting Acadian community development, and served as a testament to their blatant ignorance of the crucial impact the exercise of electoral boundary delineation has on community life. The Commission failed to effectively consider and reflect on the importance of communities of interest and identity which Official Language Commissioner Dyane Adams had stressed at a preparation conference in 2002 before they undertook their work.[133]

The name change was not proposed in the final report, due to the overwhelming opposition expressed at public hearings. The mere fact that it was suggested, though, seemed to have contributed to the feeling by constituents that the Commission was not seriously reflecting on the impact their changes would have on local lives.

Local political life was a bilingual one. The name of Acadie-Bathurst was seen to reflect, respect, and celebrate this diversity. In this constituency francophones and anglophones were equally able to access services and their member of parliament in the official language of their choice – this was a distinguishing factor between them and the neighbouring district of Miramichi. This linguistic factor, which was accorded minimal

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[132] Letter from the Office of Jay Mersereau, Mayor of Bathurst, to Rolande Godin, Secretary to the Federal Electoral Boundaries Commission of New Brunswick, July 2nd 2004.
[133] Dyane Adams, as cited in Élections Canada, Notes pour une allocution de Jean-Pierre Kingley "Conférence pour les présidents, les membres et les secrétaires des commissions de délimitation des circonscriptions électorales fédérales. » Ottawa, le 13 mars 2002.

importance in the representation equation by Professor Johnson in court, was vital to making political life and the government apparatus seem less daunting and more accessible to constituents in Acadie-Bathurst. Clearly, Johnson had failed to realize the multi-faceted nature of representation.

An ombudsman view of representation

When discussing representation the first thing that comes to mind is the idea that a representative's main duty is to convey and defend certain views on behalf of constituents when discussing, debating, and voting on issues in a legislative assembly. This means that, while the representative must indeed listen to constituents and be in touch with their views, this person's primary service to the people is in negotiating with other representatives to develop laws, policies and practices in the country that will serve the populations as well as possible.

The fact is, however, that there are two important sides to representation, especially in a federation like Canada. One, as mentioned, is to give constituents a voice in national discussions and debates, serving as a link for national government to the people. Another, equally important side to representation is to serve as a link for the people to the national government,[134] an idea that receives far less attention in the literature, yet merits elaboration.

Citizens of a country often look to their representatives to defend their interests and convey their concerns over the national laws and systems which influence them, but they do not only wish to complain against and change ones they find offensive. Many constituents look to their representative as the most approachable link to and way of understanding what can often seem a dauntingly large and complicated political system.

The rapport which develops between a member of parliament and his/her constituents serves to connect individual citizens to the world of politics, whether just in terms of participating in elections or voicing concerns, or whether in terms of looking to this person as a representative also of the political world in local communities. Indeed a good representative not only serves to represent the locale and constituency to the political world and but also acts as an ambassador of the political world to the people.

Often constituents look to their representative to explain the political system and the laws which govern them as well as to help them navigate the policies which affect their everyday lives. Of course, this role does not fall solely to representatives themselves, but also to the constituency's various government offices which provide federal services to citizens.

Since serving the public is theoretically the raison d'être of these representatives and of federal public service workers, their accessibility to said public is of crucial importance. Members of parliament have constituency offices in addition to their offices in Ottawa and strive to actively contribute to and be present in community life. Still, their simple presence and that of service points is not enough to ensure access for citizens to the political and governmental services they need. An ability to communicate with the community they serve seems an obvious criterion for effective service to the public.

Let us move away from pure theory and discuss how the particular case of Acadie-Bathurst serves to illustrate the importance of accessibility to government services. Clearly in obtaining services such as employment insurance, health care, assistance with applications etc, communication is a key factor in determining accessibility. While it is taken for granted that federal services are to be available in both

[134] Katherine Swinton "Federalism, Representation, and Rights" in John C. Courtney, Peter McKinnon, and David E. Smith, eds. *Drawing boundaries: legislatures, courts, and electoral values.* Saskatoon: Fifth

official languages in Canada (especially in New Brunswick, the only officially bilingual province), unfortunately it is not always the case, often due to the resources needed to provide such services. As Kristin Henrard notes when discussing language policy in South Africa, it can "often be practically and financially impossible to provide every type of government service in each of the official languages everywhere. The sliding scale approach would imply that the higher the degree of concentration of speakers of a language in a particular area and the more important a government service for the population, the more pronounced the state/provincial obligation to provide service in that language would be."[135] While it might not be logical to deploy bilingual services equally throughout the country, in areas where a significantly large enough official language population exists to create a demand for service in their language, it should be provided and indeed guaranteed.[136] Clearly, many areas of New Brunswick are prime candidates for receiving the highest degree of services in their official language of choice.

Yet, francophone constituents in north-eastern New Brunswick frequently found it difficult to receive services in their language in Anglophone strongholds such as Miramichi, despite their significant numbers and presence in the general area. Indeed the transfer of some francophone citizens to this primarily Anglophone area in the redistribution of 1994 served as a testament to the importance of language and existing community identification as a basis for determining constituencies. While the Federal Electoral Boundary Commission for New Brunswick of 2003 argued that the residents shifted from Acadie-Bathurst to Miramichi would come to identify with their new

House, 1993, p. 18.
[135] Kristin Henrard, « Language Rights and Minorities in South Africa » in *International Journal on Multicultural Societies* 3 (2), 2001: The Human Rights of Linguistic Minorities and Language Policies, p. 88.

constituency in time, the example of 1994 contradicted this presumption. The city of Tracadie-Sheila proclaimed that "[i]l ne faut pas répéter les problèmes causés dans Madawaska-Restigouche et dans Kent-Nord lors du dernier découpage;"[137] a clear plea for the Commission to reflect on and consider the difficulties linguistic minorities can face when redistricted.

Due to a significant language barrier in Miramichi, whereby Francophones had difficultly obtaining basic services in their mother tongue and felt unable to communicate needs and concerns to a unilingual, Anglophone Member of Parliament that served as the representative for this riding, the period following the 1994 redistribution saw frustrated Francophone constituents looking to their former constituency of Acadie-Bathurst and its representative to express their needs and to serve as a link to the federal government and its services. Based on the linguistic factor, Miramichi's services and representative to Parliament could be labeled ineffective in serving Francophone constituents, whether or not the good intentions of doing so were there. Moreover, the federal representative for Miramichi, Charles Hubbard, clearly and publicly admitted that Francophone residents would likely be better served and indeed feel more connected to their representative should they remain connected to the constituency of Acadie-Bathurst; he, among others noted that Miramichi had never in its history elected a Francophone member of Parliament, something unlikely to change with the addition of a few new francophone constituents.[138]

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[136] With the technology existing in our day and age, which often means most services can be delivered electronically, providing services in both official languages should be a reasonable expectation across the country regardless of linguistic minority population size and distribution.

[137] Ville de Tracadie-Sheila, "Mémoire présenté à la Commission de délimitation des circonscriptions électorales fédérales pour le Nouveau-Brunswick," presented in Tracadie-Sheila, New Brunswick, September 5th 2002, p. 4.

[138] Losier, Fernand. Letter to the Office of the Commissioner of Official Languages, March 10, 2000.

In fact, the municipality of Miramichi is on record as the only place in New Brunswick (again, Canada's only officially bilingual province) to have requested an exemption from the obligation to function and provide its services and documents in both official languages, citing cost as a factor.[139] The symbolic importance and good faith of abiding by official language regulations and adequately serving the Francophone community are, in this author's opinion, clearly well worth the cost. A pessimistic examination of the issue would note, however, that this requested exemption was not solely based on finances but a general attitude that seems present in the constituency. The anti-Francophone tradition of Miramichi is long established and this area was a stronghold of the Confederation of Regions party which gained popular support in the early 1990s; this party was widely known for its blatantly anti-Francophone sympathies and sentiments.[140]

The linguistic factor and history of Miramichi's consideration for its Francophone residents, while being a key argument, was not the only reason services and the federal representative in Miramichi seemed inaccessible in practice to francophone residents. Distance also played a key role.

Since northern New Brunswick can be defined as primarily rural, the constituencies of Acadie-Bathurst and Miramichi both have one small city each that serves as an access point for services as well as an economic and social center for the area. Since these districts are rural, and considering Miramichi is the largest territorial district in the province, the travel involved in obtaining government services or in accessing one's representative can be a significant burden to constituents that consider

[139]Sylvie Paulin, "Miramichi veut être exemptée de la Loi sur les langues officielles : Trop cher, affirme la Ville ," *L'Acadie Nouvelle*, October 9th 2002.
[140] Linda Cardinal, « Les minorités francophones hors Québec et la vie politique au Canada : comment combler le déficit démocratique? » p. 31.

themselves far from these major centers. The Francophone communities that were redrawn into Miramichi in 2003 were considerably closer to the city of Bathurst which is the urban center of Acadie-Bathurst, than they were to Miramichi – the urban center of the Miramichi electoral district. This extra travel requirement would equally be a burden for the member of Parliament, who would need to travel through another constituency (Acadie-Bathurst) or trek through the woods in order to reach these newly added constituents.[141] How could this be considered logical or practical? Why should constituents travel so much further to attempt to obtain services that would likely be difficult to access in their own language, when for so many years these services were provided in a closer and more familiar setting?

Government services and access to the political are already challenging to Canadian citizens due to the many factors said to be contributing to the growing phenomenon of the 'democratic deficit;' it seems illogical to sever properly functioning connections to the political realm. Effectively, the link between citizens and the political is something at great risk today due to a variety of factors aside from the drawing of electoral boundaries. Why add to this overwhelming challenge to the country's democratic legitimacy?

Electoral Boundaries as a tool for protecting minority representation: Acadie-Bathurst

After the renaming of Acadie-Bathurst in 1990, residents seemed to have won a small victory for their identity and community spirit. Their celebrations were short-lived, however, as the next federal electoral boundary redistribution saw several of their Francophone constituents transferred to neighboring Miramichi, a riding with which few

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[141] Richard Roik, "MPs will take complaints about riding changes to panel today: Politics: N.B. politicians object to proposals made by boundaries commission" *New Brunswick Telegraph-Journal*, March 31st 2003.

felt any connections. Unfortunately, as discussed, the case protesting the 1994 redistribution fell into oblivion.

The new electoral boundaries were maintained and the years following saw, not an adaptation by newly absorbed constituents to the new boundaries as the commissioners had predicted, but instead a feeling of hopelessness when it came to acquiring services or communicating with their representatives. The newly transferred residents felt no affinity with their new riding.

Numerical equality was the end to which the commission had maintained a fixed eye, but at what price to the people affected? "[C]oncentration on population equality without consideration of other factors produce[s] neither political neutrality nor true equality of representation."[142]

The Commission was criticized for aiming at only ten per cent deviance from the provincial electoral quota, seemingly at all costs. Aspiring to numerical equality, which is of course impossible in absolute terms, appeared to have become an end in itself. The Commission seemed to have forgotten that representation involves real people and serves a real function to them; its role was to balance the theoretical desirability of equal population distribution among constituencies with the practical need for 'effective representation' of citizens in their legislative assembly. As Yvon Godin attested vigorousy "ce n'est pas des chiffres qu'on regarde pour nos Canadiens et nos Canadiennes, on regarde à nos Canadiennes et Canadiens. Et dans ça, on a établi une règle de 25 p. 100, puis vous autres, allez jouer. »[143] As this claim seems to imply, if exceptions exist in the legislation it is for good reason and should be considered when applicable; clearly if such specifications are enshrined in the *Electoral Boundaries*

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[142] Alan Stewart, p. 123.

Readjustment Act, it is because the elected political representatives of the Canadian people have judged them necessary for consideration and use by Commissions – they are not solely a last resort.

Of any case where the community of interest principle should be vigorously considered and applied, that of Acadians in New Brunswick was a clear contender. "The unique character of New Brunswick, the only officially bilingual province in the country, whose Anglophone and francophone communities are recognized as equals under Canada's Constitution, [should justify] the rigorous application of the concept of community of interest."[144] How is it that the Commission failed to recognize this?

Institutionalized problems with electoral boundary redistribution

> In all aspects of their public institutions, Canadians demand, and should receive, reasonable transparency of process and proper accountability. The federal electoral boundaries commissions should not be exempt from these standards.[145]

The case of *Raîche v Canada* is also important in that it generated much reflection on the merits and pitfalls of the processes currently governing electoral boundary redistribution in Canada. It should be noted that the appeal to the redistricting of Acadie-Bathurst was not the only complaint to be lodged against electoral boundary redistribution commissions in Canada in 2003; in fact eighty-five other grievances were presented nation-wide in seven provinces.[146] While there will likely always be citizens who protest electoral boundary redistribution based on their political needs or views, the

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[143] Godin, Speaking notes to the House of Commons Standing Committee on Procedure and House Affairs on the matter of the 2003 electoral boundaries redistribution.

[144] Société des Acadiens et Acadiennes du Nouveau-Brunswick. *Brief presented to the Federal Electoral Boundaries Commission for the Province of New Brunswick*, p. 8.

[145] Library of Parliament, *Draft Report of the Subcommittee on electoral boundary adjustment of the House of Commons Standing Committee on Procedure and House Affairs on the matter of the 2003 electoral boundaries redistribution*, p. 2.

[146] Library of Parliament, *Points for consideration in advance of the electoral boundaries review of the 2003 Electoral Redistribution* which was prepared for the subcommittee on electoral boundaries readjustment of the House of Commons Standing Committee Procedure and House Affairs, September 25th 2003, p. 1.

large volume of objections in recent years perhaps reflects the fact that the legislation is imperfect and should undergo revision in order to better serve the Canadian people.

Several central problems were noted relating to the composition and establishment of the commissions, the public consultation process, and the reports issued by the commissions.

While in the case of *Raîche v Canada*, the integrity of the Commission was never put into question, it was not because its legitimacy was accepted. Likely as part of their intention to focus the case on the pivotal argument of language and community of identity, the plaintiffs neglected to touch the concerns expressed as to the composition of the Commission as well as the fact that some people questioned the legitimacy of these unaccountable, appointed bodies. In fact, Yvon Godin was among several people to point to the fact that the process for selecting commissioners lacked democratic accountability in an attempt to ensure independence. While this may be a necessary sacrifice in order to preserve the apolitical nature of commissions, "independence and inflexibility do not go well when hand-in-hand."[147]

While the prime importance accorded to independence could be argued necessary, other critiques were less easily silenced. Most notably, in the case of Acadie-Bathurst was that all three commissioners came from the south of New-Brunswick.[148] Regional diversity would clearly be beneficial to electoral boundary commissions, as they have to consider and understand the issues at play throughout the province; this task is much more easily accomplished when commissioners already have a background knowledge and experience of such diversity. Another valuable recommendation regarding the

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[147] Library of Parliament, *Draft Report of the Subcommittee on electoral boundary adjustment of the House of Commons Standing Committee on Procedure and House Affairs on the matter of the 2003 electoral boundaries redistribution*, p. 6.

composition of the commission is that the pool of eligible candidates be broadened. While commissioners are often chosen among judges due to their presumed neutrality and expertise in understanding and applying legislation, individuals with alternative experiences and viewpoints could prove very valuable to the process. These could include people with public service experience, non-governmental organization leaders, community workers, and specialized academics (these do sometimes make their way on to commissions), for example.[149] It may even be worth considering increasing the size of commissions in order to accommodate regional and professional diversity which would likely contribute so substantively to the deliberations.

Commissions often have a legal-judicial approach to representation and electoral boundary redistribution, and while this is certainly an asset in their work, it often results in a lack of balance between "an abstract, rights-based approach that gives primacy to individual voter equality," and the practical realities of representation which involve communities, culture, geography and other factors which focus on constituencies.[150] Having concrete experience in the many challenges of representation, members of parliament could greatly contribute to the process of electoral boundary redistribution, through dialogue, consultation and perhaps some form of working group. As several members of parliament noted in their letters to the Standing Committee on Procedure and House Affairs, "it would be wise to consult current Members of Parliament, who know their respective communities well, before initiating the process of public consultation to study the recommendations of the Electoral Boundaries Commission. Changes should not be made for their own sake or because they meet the mathematical requirement of the

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[148] Office of the Mayor of Bathurst, Jay Mersereau, in a letter to Peter Miliken, Speaker of the House of Commons, September 20th 2002. p. 2.
[149] Ibid, p. 7.
[150] Ibid p. 5.

Act, but because they are necessary and useful."[151] The independence of the commission would still be maintained to avoid gerrymandering, and instead of addressing specific changes parliamentarians could simply highlight important considerations and possible points of contention for the commissions to reflect on.

Indeed, parliamentarians should be engaged in and familiar with the work of electoral boundary commissions since ultimately any changes to improve the process of electoral boundary redistribution must be enacted by Parliament.[152] Their knowledge of the different issues at play and the challenges of electoral boundary distribution is essential in improving this process so central to the workings of our democracy.

Critiques surrounding the public consultation process and the reports which the commissions produce are also rampant. One of the major concerns with citizen involvement was the stage at which it was encouraged. After a commission establishes a preliminary report with tentative boundaries, it then holds public consultation sessions which help commissioners to observe and evaluate reactions to their work which could help identify concerns they may not have considered or appropriately addressed. This is the only moment during which the public has any say in electoral boundary redistribution. It is only after they have had the opportunity to comment and question the commission's initial proposition that the final recommendations are developed and established. The problem with this (which initially sounds fair) is that the final report could vary significantly with the original propositions made, yet no additional public consultation is allowed. This means that people who may not have presented any testimony to the commission in the public hearings, perhaps because they found nothing

[151] Marlene Jennings, p. 3.
[152] Library of Parliament, *Draft Report of the Subcommittee on electoral boundary adjustment of the House of Commons Standing Committee on Procedure and House Affairs on the matter of the 2003 electoral boundaries redistribution*, p. 3.

objectionable with the preliminary report, could be wholeheartedly against the recommendations of the new report, which could differ significantly from the former. Despite their objections to the final report, their voices never have the formal opportunity to be heard and considered. [153] Instead, concerned citizens must hope that at least ten members of parliament band together, since as a group they would be the only people with the legal right to comment on a final report, to protest the new proposal during the thirty calendar days in which they have to do so.[154] Then these concerns will be brought by the Chief Electoral Officer to the attention of the Commission, who then has thirty days to consider and address the objections in the development of their final report.[155]

Clearly this could serve to create a great deal of upset among citizens, and while it would take more time to hold additional hearings after the final report was issued it would contribute to the democratic legitimacy of the whole process; democracy is always critiqued for being more time-consuming, but in the interest of good government, time is the price to be paid. Considering that the implications of these decisions will affect the populations for at least ten years, a few more months seems a small price to pay in order to ensure greater legitimacy and to reassure the public that their contributions are important in their democratic system. There is no reason such a second hearing could not be implemented with but a slight change in the legislation.

The last major problem regarding our current system for electoral boundary redistribution is the content of the final report submitted by commissions. Since the report is essentially an explanation for and an argument in favour of the boundary changes judged best by commissioners, it should prove its legitimacy by addressing central issues

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[153] Ibid, p. 5.
[154] *Outline of the Process under the existing Electoral Boundaries Readjustment Act*, attached to Peter Adams' *Draft Letter to MPs re: redistribution Process*. Undated.
[155] Canada. *Electoral Boundaries Readjustment Act*, R.S.C 1985, section 22.

of contention such as that of community of identity. A special section should be devoted

explaining (if such a community exists or claims to exist in a particular riding) what the

concerns of community members were, how these were considered by the commission,

and why the commission did or did not chose to alter their boundary proposal to reflect

these views. This would allow a more transparent process and would ensure that

communities at least felt that their voices had been heard and duly considered. Dyane

Adams, the Commissioner of Official Languages at the time of the last electoral

boundary redistribution in 2004, underscored the need for this information to be made

public in her investigation report on the complaints in Acadie-Bathurst. She identified

that "the Commission should, in exercising their responsibilities under section 41, include

in their reports clear and detailed information on the impact that their recommendations

will have on official language minority communities."[156]

Part VII of the *Official Languages Act*

Section 41, and more generally Part VII of the *Official Languages Act* within

which it falls, seems to be a pivotal clause in discussing the case of Acadie-Bathurst and

official language minority rights; it has already been referred to several times in this

thesis, yet merits more detailed discussion here.

We remember that Part VII, added in 1988 as part of the federal government's

new *Official Languages Act*, consists of the following:

> 41. (1) The Government of Canada is committed to
>
> (a) enhancing the vitality of the English and French linguistic minority
> communities in Canada and supporting and assisting their
> development; and
>
> (b) fostering the full recognition and use of both English and French in
> Canadian society.

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[156] Office of the Commissioner of Official Languages, p. 5.

> (2) Every federal institution has the duty to ensure that positive
> measures are taken for the implementation of the commitments under
> subsection (1). For greater certainty, this implementation shall be
> carried out while respecting the jurisdiction and powers of the
> provinces. [157]

Part VII continues on to include specific duties for the department of Canadian Heritage

in the promotion of these communities. In 2006, Part VII was finally amended to make it

executory, thus obligating the federal government to undertake *positive* action with

regards to section 41.[158]

In essence, section 41 in Part VII, establishes the federal government's

responsibility to support official language minority community development; clearly the

most obvious conclusion would be that such a section should be applied by the

institutions of the federal government itself. While federal electoral boundaries

readjustment commissions are independent, they are most certainly federal institutions.

Thus, they must abide by and aspire to fulfilling the stipulations set out in section 41 to

the best of their ability; something the Commissioner of Official Languages agreed was

not done when redrawing the boundaries of Acadie-Bathurst:

> For the minority Francophone and Anglophone communities, the
> establishment of a network of relationships meets a very real need. It
> allows people to preserve their identity and maintain a community of
> interest. It allows them as well to avoid economic and social
> marginalization. It is therefore extremely harmful to a linguistic
> minority to see its network of relationships weakened in any way at all.
>
> The official language minority community is generally best placed to
> identify its needs in terms of development and vitality. The mere fact
> that it expressed itself about what it sees as the inconveniences and
> harmful consequences of the modifications to the electoral district of
> Acadie-Bathurst, created for the Commission, as a federal institution,
> the obligation to assess what it was being told about how the changes to
> the electoral district would affect the development and vitality of the
> official language minority community.[159]

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[157] Canada. *Official Languages Act* (1985, c. 31 (4th Supp.)). Modified S.C. 2005, c. 41, s. 1; 2006, c. 9, s.23.

[158] Cardinal, "Les minorités francophones hors Québec et la vie politique au Canada: comment combler le déficit démocratique, » p. 16.

[159] Office of the Commissioner of Official Languages, p 5.

Clearly, the proposed electoral boundary redistricting would harm the existing

community in terms of severing social networks, business ties, removing significant

economic developments and opportunities (such as the old military base that is being

turned into a tourist site in Acadie-Bathurst)[160], decreasing federal funding which is in

ratio to the number of citizens in a riding, and in countless other ways. Official language

minorities deserve protections when redistributing electoral boundaries.

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[160] Marjorie Pedneault, "Des centaines d'électeurs font part de leur mécontement » *L'Acadie Nouvelle*, le 3 mars 2003.

Chapter 6 Towards more effective representation of Canada's Official Language Minority Groups

Whether or not electoral boundary modification (or more often non-modification) is an appropriate and effective manner for protecting the interests of minorities is disputable. Whether or not committees are forced to consider the circumstances of communities of interest and identity more rigorously and subsequently are held more accountable for their decisions in these matters, additional action will be required to support the development of official language minority communities. While the electoral route is one way to promote the self-actualization of official language minority communities and have a say in the decisions that affect them, it is a far cry from being enough. Indeed other tools for achieving this goal must be envisioned and put into practice. Clearly electoral boundary redistribution as currently practiced will continue to work against the interests of official language minority groups due to existing power relations and the majoritarian nature of our democracy, even if this is not the intention of commissioners. [161]

With their demographic decline (through decreased birth rates and increased migration to economic centres, often removed from the traditionally rural communities where many francophone minorities are based), the status of official language minorities in Canada will increasingly be as a smaller proportion of the national whole. When one factors in immigration as an important source of Canadian population growth, this reality of diminished presence becomes even more firmly entrenched. Demographics are key to the survival of cultural linguistic groups and in Canada the proportion of people who

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[161] Despite the fact that the *Electoral Boundaries Readjustment Act* is subject to the *Official Languages Act*, the systematic discrimination in favour of individual voter equality will nevertheless work against the will

speak French most often at home has already been falling steadily, from 26% in 1971 to 21% in 2006.[162]

Language, identity and the French Canadian Question

It seems indisputable that language is a key marker of identity and associative identity. Indeed the ability to communicate orally with some human beings and not others is one of the essential ways of distinguishing 'us' and 'them'. One feels an affinity with other people when they can relate to and understand them; the building block for this comraderie is a common linguistic profile. But language is, of course, so much more than this. The many nuances, expressions, and ways of presenting one's views that exist in different languages are often incomparable to others. Languages have developed to reflect the worldviews of their speakers and have come to associate with, represent, and influence a certain way of being. The mentality of speakers is, in turn, shaped by languages – since speakers use language to organize their thoughts and convey their views to others. For all these reasons and more, maintaining their language seems a primary concern for minority groups.

Having underscored the importance of language, it should be clear that it cannot be separated from culture. As Stephen May discusses at length, "[i]n theory, language may well be just one of many markers of identity. In practice, it is often much more than that."[163] Preserving language and identity often goes hand in hand due to the very basic nature of the link between the two.

While it could be argued that the French language is not in need of protection, due to its numerous active speakers worldwide, French in Canada and more so in Acadia is

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of linguistic communities unless the concepts of community of interest and identity are more rigorously applied.
[162]Statistics Canada. *The Evolving Linguistic Portrait, 2006 Census.*

not the French of France or Belgium, or indeed Morocco or Martinique. The many dialects of the French language are markers of specific group identity. Expressions, words, and ways of verbalizing thoughts are unique to each dialect and reflect and reinforce the culture and identity of those using them. While they are all derivative of 'French', the diversity that exists within this 'language' attests to the particular links between the lived experience of communities and their ways of communication; language is expressive of one's culture.

Indeed, even within French Canada dialects are distinguishable. Not only are francophone accents different across the country, but so too are speech patterns and vocabularies. Acadian French, even though it has regional differentiation itself, is something worthy of protection in its own right. Its use is a clear marker of Acadian identity and its common expressions and accents tie its speakers together. While cynics have pointed to Chiac as the degradation of Acadian French, this dialect is but another way of acting as a speaker of Acadian culture. This mix of English, French, old French, and Micmac is governed by its own rules for use, including a particular way of composing sentences. There is structure to this evolving dialect of South Eastern New Brunswick, one that only native speakers seem to comprehend. While it is often critiqued as being a mish-mash of languages, its patterns so incomprehensible to outsiders and yet perfectly logical to native speakers attest to language as a way of living and expressing a particular culture. Preserving the language and preserving the culture seems more and more difficult in a modern world, though.

In earlier Canadian history, the more profound influence of the Catholic Church in tandem with the significantly higher birth rates which this institution encouraged,

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[163] Stephen May, "Introduction," *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language*, Essex: Longman 2001. p. 10.

served to guarantee the survival of French Canadian society. But as the influence of uniting and influential institutions such as the church declined, and as birth rates followed suit, the ontological security of the French Canadian people became much more threatened. With ever-expanding globalization and the coinciding institutionalization of English as the 'global language,' never mind as the primary language in Canada, French Canadian identity is constantly under attack. Not that this identity is inflexible and unable to adapt to modernity and changing cultural circumstances, but the onslaught of English as the primary language of communication and as the language of international business has been overwhelming. Allowing identities to coexist and be balanced has been a very challenging exercise as traditional assimilationist ideas of being forced to choose between one's cultural identity (which is inevitably tied to tradition, backwardsness, and sentimental value) and social mobility (which is associated with the majoritiarian culture considered to embody modernity, progress, and to be of instrumental value) have resurfaced. This Darwinian view of culture and identities fails to account for the reality which is that no language or identity has an inherent value or can be inherently better than another – thus neither should automatically be associated with progress as such. Instead, the dominance or success of one language over another can be argued to reflect power relations and be the product of historical, social and political forces.[164]

Thus, the task of ensuring the flourishing of this important French Canadian identity within the Canadian population falls to the state, who can address power relations in its role of establishing the rules of the game by which society operates. It must frame the issue and challenge of maintaining French Canadian identity as a goal compatible with the evolution of modern Canadian society. The state must implement positive

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[164] May, p. 16.

measures to ensure the effective political participation of French Canadian minorities, but also to help develop their communities and help them take control of their destiny; the state should ensure that federal principles of shared rule and self rule are characteristic of its relationship with official language minority groups.

Putting the onus on the state to ensure the effective political participation and community development of minority groups is not a responsibility delegation mandated solely in Canadian circumstances. Democratic states throughout the world have come to recognize that minorities have a "right to participate effectively in cultural, religious, social, economic and public life," and to "participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation."[165] The United Nations thus asserts the importance of "effective" representation and participation for minority groups, something that requires much more effort and engagement by the state than simply ensuring some kind of participation or representation for minorities in the public sphere.

Indeed, as noted in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Committee on Security an Cooperation in Europe, "states have an obligation to encourage conditions for the promotion of identity that goes beyond mere protection and requires special or "positive" measures to ensure equal enjoyment and development of the rights of minorities in fact as well as under law."[166] Further to encouraging participation or identity promotion, the state must allow a certain

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[165] *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities.* Art 2.2 and 2.3. http://www.unhchr.ch/html/menu3/b/d_minori.htm. accessed May 30th 2009.

degree of autonomy and governance to exist for its national minority groups as part of their right to self-determination.[167] Thus, the obligations to support the development of minority communities both in their own right and as part of the state, are an important discussion in international law.

The implementation and enforceability of a state's commitment to its national minorities is just as important, if not more important, than the entrenchment of these laws themselves, however. Policies toward official language minorities should not be judged on their nominal content, but their concrete results.

Institutional mechanisms

Johanne Poirier suggests that institutional mechanisms are most certainly required to protect Canada's francophone minority communities and draws upon international examples of institutional accommodation of sub-state nations to illustrate her point.[168] Overall she emphasizes the fact that institutional, structural means are necessary for the ontological security of sub-state nations; not only must they have a voice, but they must be *guaranteed* a voice in the future which cannot be extinguished by any ordinary legislation.

Poirier's arguments closely mirror those of Linda Cardinal who claims that official language minority communities need control over their destiny which will be achieved, not only through electoral protections, but also through guarantees that regardless of demographic fluctuations and the changing attitude of the majority, their

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[166] Sally Holt and John Packer, « OSCE Developments and Linguistic Minorities,» in *International Journal on Multicultural Societies* 3 (2), 2001: The Human Rights of Linguistic Minorities and Language Policies, p. 102.

[167] This is asserted by s. 1 of the International Covenant on Civil and Political Rights, which indicates that all peoples have a right to self-determination. "International Covenant on Civil and Political Rights." *Office of the United Nations High Commissioner for Human Rights*. http://www.unhchr.ch/menu3/b/a_ccpr.htm.

[168] Poirier, p. 20.

interests will be protected.[169] Cardinal underscores that it is the government's duty to not just protect Francophone minority groups from assimilation but to help them flourish according to Part VII of the *Official Languages Act*.[170] Some form of autonomy is important to their self-actualization, she argues, and minorities must therefore be provided with structural protections as well as administrative powers and legal recourse. Perhaps most important is Cardinal's emphasis on state intervention: that the country must ensure its francophone minorities are healthy and robust, whether through devolution and municipal level governance, service partnerships, guaranteed representation in political structures, consultations, or by protecting their communities of interest through electoral means. Indeed in another article, Cardinal argues for formalized consultation practices, some level of autonomy and greater participation in the general political process (to be linked with community development) to protect the well-being of Canada's Official Language minorities.[171]

The government must intervene to protect such minorities since the neutral state does not exist and is detrimental as a concept to the self-actualization of official language minorities in Canada. As Cardinal explains, "le principe de neutralité est trop souvent compris comme un synonyme d'absence d'intervention," but a state which does not intervene in the protection of minorities allows the majority culture and will to dominate in a First-Past-the-Post style democracy. Again, the rules of the game set out by the state always create winners and losers, even if unintentionally. Since allowing an uninhibited tyranny of the majority does not sit well with Canadian values, touting state neutrality will not make the grade according to concerned scholars such as Cardinal. Minorities

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[169] Cardinal, Linda, « Les minorités francophones hors Québec et la vie politique au Canada : comment combler le déficit démocratique?»
[170] The violation of this act can legitimately be pursued in court by affected parties.

need a guarantee that the representation of their interests is in their hands, now and in the future.

This is the kind of ontological security that was intended at confederation for Canada's Francophone population. It is a founding principle of our country and thus should remain untouchable. The question that remains is whether or not this guarantee extends first beyond Quebec's borders to other Francophones, secondly to other sub-state nations (Aboriginal groups), and lastly to other Canadian minority groups.

Distinguishing between minorities

It is therefore important to distinguish, as does Will Kymlicka, between national minorities and other minority groups when discussing entitlement to group rights.[172] In this thesis only the case of Acadians has been explored in the hopes that examining rights and representation for this segment of Canada's minority population will help serve as a first stepping stone for other scholars to discuss the positions of other minorities. While Kymlicka only seems to accord national minority status to the Québécois and Aboriginal nations, this author believes that the rights he considers them entitled to should naturally be extended to Acadians. The reasoning for this is that, while they may not have autonomy within a certain territory (something many Aboriginal nations have also been denied), they do have a historical presence as a distinct community located in a particular area which dates back to a time prior to the establishment of the current state and regime. Having thus been fairly autonomous communities with a distinct culture and history who were co-opted into the state, it would not be unreasonable to consider them a national minority.

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[171] Linda Cardinal, « Gouvernance linguistique et démocratie : la participation des minorités de langue officielle à la vie publique au Canada, » *Gouvernance*, vol. 2, n° 2, 2006. p. 48-49.
[172] Kymlicka, Will. *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Oxford University Press, 1995.

Kymlicka describes the different entitlements possessed by the two categories of minorities he establishes to exist in a state, which he terms 'national' and 'ethnic' minorities.[173] He argues that a distinction can be made between the two in that the national minority did not choose its minority status, but was brought into it through the transfer of territory, conquest, colonization, or confederation.[174] This is to be contrasted with ethnic minorities which can be said to have willingly joined the state as it is constituted, tacitly accepting the principles on which it is founded and existing institutions and political systems it embodies. Because of the manner in which they entered the national fold, the rights to which they are entitled can legitimately differ, according to Kymlicka.

National minorities are entitled to self-government rights, which acknowledge the rights of these minorities to be included and represented in the state's institutions, as well as to autonomy and self-determination within the state (and potentially even secession).[175] Polyethnic rights, though, can be extended to all ethnic minorities (national or not) as these "are intended to help ethnic-minorit[ies] express their cultural, linguistic and/or religious heritage, principally in the private domain, without it hampering their success within the economic and political institutions of the dominant national society."[176] These polyethnic rights help promote integration into the larger society, while self-government rights often attempt instead a greater degree of separation from the national whole. Integration should be distinguished from assimilation, as it does not just aim to co-opt group members into the majority culture, but instead can be described as a

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[173] Kymlicka.
[174] Kymlicka.
[175] Kymlicka's assertion allows for secession as a right of national minorities in certain circumstances, however this right in international law involves strict legal conditions for a valid secession. These include massive and systemic violations of basic Human Rights, systemic discrimination, and a total lack of

"two-way street [...] which preserves essential aspects of [group] identity and culture [while changing] the national society as a whole, not only the minority."[177] This can be seen as more of a compromise, where group identities are recognized and respected as being part of a larger national culture or identity, one which is necessarily defined and legitimized by its diversity.

Both these kinds of rights mentioned above, are to be permanently accorded to minorities by the state, but Kymlicka's third category of rights, special-representation rights are of a more temporary nature – a quick-fix. The latter respond to a systemic discrimination in the political system which denies effective representation and voice to a minority group and address this disadvantage only until it no longer applies.[178]

According to Stephen May's summary of Kymlicka's theory "only national minority groups can claim the automatic right to formal representation of their language in the public domain, and to state-supported minority language education"[179] This 'promotion-oriented right' is exclusive to national minorities *as a right*, but not necessarily something to be denied to other minority groups within the national fold. As he further asserts "As long as some groups are not denied such measures of protection in a discriminatory manner – in particular, when they are similarly situated in relation to some other group in respect of which positive measures are provided – states may

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participation in the political life of the country. See *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.
[176] May, p. 118.
[177] Asbjørn Eide, "Chapter 5, The Council of Europe's Framework Convention for the Protection of National Minorities," in Kristin Henrard and Robert Dunbar eds. *Synergies in Minority Protection: European and International Law Perspectives*, New York: Cambridge UP, 2008. p. 137.
[178] May, p.118.
[179] May, p. 13.

legitimately grade their positive support to minorities so that groups with a longer

tradition enjoy more far-reaching entitlements."[180]

Canadian values have demonstrated in the past that Canada is a country of

compromise, of accommodating a plurality of ways of being and of ways of engaging

with the world. We have been praised the world over as a multicultural society, as a

society which allows various group identities not just to coexist but to be expressed

effectively in the public sphere. Recent battles have been for this inclusion to be

exercised as equal citizens, but without compromising their unique and different

identities. The substantive equality pursued by groups has the goal of equal treatment as

part of a societal mosaic called Canada.

"We need to solve now the "paradox of democracy" by which social power makes

some citizens more equal than others, and equality of citizenship makes some people

more powerful citizens."[181] Since the state is responsible for creating the rules of the

game, it will be the primary actor responsible for establishing them in a way that

promotes substantive equal citizenship instead of reflecting the power relations existing

when the country was founded. Perhaps this will require reevaluating and reexamining

the systems and institutions by which the state governs itself. Is it not time that the

country's political institutions be revisited to ensure they accurately serve modern

Canadian society and its values?

Possible representation mechanisms

Since the representation and political positioning of all groups in society is a

reflection of power relations, it is indeed by being aware of these systematic imbalances

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[180] Henrard, Kristin and Robert Dunbar. "Introduction" in Kristin Henrard and Robert Dunbar eds. *Synergies in Minority Protection: European and International Law Perspectives*. New York:Cambridge UP, 2008. p. 30-31.
[181] Young, p. 259.

and by altering the rules of the game that improvements to the status of minority groups can be achieved. Protecting the rights of minority groups requires positive actions on the part of the state as a whole. As has been demonstrated, any action the state takes (or does not take) has a significant impact on all of its people and their political power within the nation. Even by being passive, the democratic state necessarily benefits one group over the other as this neutral stance allows the majority will to succeed.

This is most clearly the case when discussing language. As Selma Sonntag explains, "while the state can be neutral in regard to religion, for example, it must use language to communicate with its citizenry. In choosing a language, or even multiple languages, the state exhibits a linguistic bias, most often that of the linguistic majority or dominant group."[182] Indeed it is important for the state to have a common language of communication in order to foster understanding and commonality among its citizens. The "common public language" argument rests solidly on its ability to foster understanding between citizens, and especially on its enabling function in fostering democratic deliberation. Yet, as the case of Canada illustrates, the state can still achieve these objectives with two (or more) languages provided that sufficient resources and attention are directed at ensuring understanding between these different linguistic groups – using effective simultaneous translation for example, or indeed encouraging and enabling bilingualism (or multilingualism) among its citizenry.

Thus the state's role in setting the stage for positive relationships and dialogue between its citizens requires it to engage proactively to be inclusive of official language minority communities. But what is the best way of achieving this? If we examine the question of representation in particular, it soon becomes clear that there are many

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[182] Sonntag, p. 3.

mechanisms through which the protection of minority groups can be ensured and enhanced, but which ones achieve this level of representation for minorities without undue damage to the democratic pillar of majority rule, will and voice?

In this thesis thus far we have examined the effects the drawing of electoral boundaries has on official language minorities in a First-Past-The-Post electoral system. While ensuring adequate consideration of communities of interest and identity when redistributing electoral districts could indeed prove one manner in which to protect their interests, there are many improvements to the process of electoral boundary redistribution as it exists in Canada today in order for this to prove an effective manner of ensuring effective representation for Canada's minority groups. Even if all problems identified earlier with our current process were addressed, a great deal of arbitrariness would continue to exist due to the independence of commissions and their lived experience and personal cultural biases. Considering official language minority interests as part of the federal electoral boundaries redistribution process is all well and good in the interim, but the ontological security of minority groups requires substantially more from the state; it is essential that clear institutional mechanisms serve as guarantees to the community that their identity will be respected and reinforced as part of the national society.

If more moderate changes to our current system are chosen to protect Canada's official language minorities, then redistricting will clearly be an important part of this effort. Since *Raîche* has set a precedent for the consideration of communities of interest as part of this process, it is unlikely that official language minority groups will be discounted again. Still, they may be forced to devote substantial resources and man power to act as watchdogs and ensure their right to be considered is respected, in some cases turning to the courts. This requirement for constant vigilance, while necessary, does

not engender positive relationships between citizens and institutions of the state; indeed having to turn to the courts to have basic guarantees such as those set out in the *Official Languages Act* respected seems to demonstrate bad faith on the part of the government and its institutions.

In order to ensure that minority groups have access to effective representation in our current political system, one possible solution could be to ensure that electoral districts where a national minority is in fact a majority be essentially frozen in time. They could in this way become immune from electoral boundary distribution and benefit from a more or less permanent status. The problems with this suggestion are clear at the outset. The population of a given district compared to others, as well as the internal composition of that population will necessarily change over time; borders would seem less and less reflective of the community's reality. Indeed the increased pull of urban areas for employment and for a different way of life has the effect of enticing minority group members (and especially their youth component) away from community bases and into a larger political whole. In addition, immigration and an increasing population in the rest of Canada is likely to result in external actors establishing themselves in minority electoral districts, again changing the make-up of the population and perhaps altering the majority status of the minority group and thus their ability to elect a representative to reflect their will.

Indeed with guaranteed districts, the challenges to representation by population and the equality principle addressed earlier in this thesis are substantially increased. Though these changes happen over time and the boundaries would likely remain defensible for a while, these concerns show that such a 'solution' to the democratic

deficit of official language minorities, would push the foundations of our system of representation to the limit.

For these reasons, guaranteed electoral boundaries are rarely presented as the ideal solution to the problem of achieving effective minority representation, at least not without a few additional stipulations. The most important of these is to have set districts be reviewable on a regular basis, such as every ten years, in order to ensure that they continue to reflect their original population and to serve their purpose in protecting the effective representation of the minority groups at stake.[183] While this review would be essential to ensuring the proper functioning of this method of minority protection, it still encounters several problems. One is that minorities require institutional protections which guarantee them something substantial and continuous; if boundaries can be reviewed on a regular basis, the threat to their ontological security remains – if the state giveth the state may taketh away. Secondly, since revisiting the validity of set districts' boundaries would occur at regular intervals it seems to parallel the current system of electoral boundary redistribution following each decennial census. Would reviewable guaranteed districts actually change anything or just maintain the status quo under a new name?

The only real change, in this author's opinion, that set districts to protect minority groups would create is indeed to frames of mind. Instead of approaching electoral boundary distribution with a bias towards changing boundaries, "the starting premise for redistribution [would] be continuity, not change" and the act of reviewing existing

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[183] Library of Parliament, *Points for consideration in advance of the electoral boundaries review of the 2003 Electoral Redistribution* which was prepared for the Subcommittee on electoral boundaries readjustment of the House of Commons Standing Committee Procedure and House Affairs, September 25th 2003, p. 9.

electoral districts would privilege the status quo.[184] Perhaps set districts would help

commissions to realize the impact of their decisions on communities and that they "do

not need to re-draw the electoral map to justify their existence.[185] Set districts under

review would bias commissions towards maintaining communities of interest as they

existed, changing boundaries only when truly warranted: "change for the sake of change

[w]ould be discouraged."[186] Set, but reviewable, districts may therefore prove more

effective in ensuring that communities of interest and identity are considered more

rigourously as part of the electoral boundary redistribution process, but essentially offer

no more guarantee for official language minority representation than existed prior to

Raîche.

If we accept that increased consideration during electoral boundary redistribution

offers little in the way of progress for the *guaranteed* effective representation of official

language minority groups, then other methods to enhance their voice in our polity should

be examined. One more such solution would be to add guaranteed seats to Parliament.

Instead of focusing on national minorities as part of a numerical whole, their distinct

status could receive a permanent seat in the House to be elected by universal suffrage

among members of these communities, who would not lose their ability to participate in

federal elections as part of their riding. This seat would be equal to all others in the

chamber, but reserved in the same way a seat is set aside for each of the territories

regardless of their population. Obviously, this would introduce non-territorial

representation into the House of Commons, but so long as the seats are appropriately

defended as allowing a voice to sub-state nationals and not as a slippery slope to

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[184] Ibid.
[185] Library of Parliament. *Draft Report of the Subcommittee on electoral boundary adjustment of the House of Commons Standing Committee on Procedure and House Affairs on the matter of the 2003 electoral boundaries redistribution*, p. 6 and 8.

favouring ethnic representation over traditional representation by population, they can likely be defended along the lines of Kymlicka's discussion of differential rights for particular minorities. "[F]ar from promoting a separatist politics which could threaten social cohesion, they are actively pursuing 'full membership in the larger society' [...and so] calls for guaranteed representation are very evidently driven by the desire for fuller inclusion," something that should be supported by the state in the name of national unity and fraternity.[187] One potential pitfall of this option is the complicated nature of defining who would have a seat. Even if they were attributed to national minorities, what would constitute a significant enough population among these to warrant a seat? While it would be clear that Acadians and Franco-Ontarians would likely get at least a seat each, what of Franco-Albertans or Franco-Saskatchewans, or further still, how would we incorporate the many, many Aboriginal nations in the country? Since no formula is readily available and the idea of guaranteed seats in Parliament requires more examination, this is unlikely to be the best option to implement immediately.

While the following pages will for the most part examine and suggest alternative representation mechanisms, there remains one more possibility within our current system as it stands: the Senate. While the Senate has been condemned in recent years as ineffective and undemocratic, with minimal changes it could prove much more effective in guaranteeing representation for Canadian diversity, be it regional, economic, cultural, ethnic, linguistic or other.

Reinvigorating the Canadian Senate

While most of this thesis discusses electoral systems, many democracies in the world complement this system of representation with another: appointed representation.

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[186] Ibid.
[187] Phillips, p. 125.

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While appointed representation has often been touted as undemocratic and unaccountable to the people it serves, there is a reason that so many western democracies have not dispensed with appointed positions in their entirety. In today's world appointed positions do not necessarily exist to preserve aristocratic political power; in fact the Senate in Canada can be said to serve an important purpose in modern times in that it ensures that a tyranny of the majority does not go unchecked or at least not unexamined.[188] This appointed body serves as a 'chamber of sober second thought' for the decision-making process. Since their job security is not dependent on the votes of a majority within a particular district, senators are free to reflect independently of political pressures on the moral and ethical implications of legislation on the population of Canada, including its minority groups and interests.[189] They are free also to stand up and defend the ideals and values that Canadians have asserted throughout their history and to remind elected representatives and Canadians in general, of the many considerations to be factored into the governing of this country. While this independence is often criticized as fostering unaccountability, its saving grace is found in its ability to serve this central function of checking majority and indeed mob rule. As with the proper functioning of many institutions of democracy, though, a useful and beneficial senate rests on the good will, good faith, and good intentions of its senators. They must indeed have a sense of virtue and duty which compels them to defend Canada's interests as a whole, instead of favouring particular segments of society. While senators are still fallible individuals, the fact that their positions are appointed allows them more liberty to stay true to the values and principles of the country than representatives, who are to some extent reliant upon the whims and momentary political endorsement of electors.

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[188] David E. Smith, p. 32-36.
[189] David E. Smith. P. 9.

Having defended the merits of the Senate, it must be noted that as with many ideal types of political arrangements, it is practically impossible that this institution will function as envisioned in such a noble and pure state. Senators are indeed appointed to reflect a variety of interests in the country, and often defend a particular interest or view point as part of the national whole. The Senate has become a way of ensuring equitable weight to Canada's different regions and to disproportionately reflect the country's various ethnic groups, for example, to ensure their voices are effectively heard. Prime ministers have attempted to appoint people from communities and groups which are unlikely to be assured seats in our current electoral system, those who are systematically discriminated against by a single-member plurality electoral system favoring majority rule. The senate is a place where the political "out-crowd" as well as those who 'win' politically, are able to voice concerns in a political forum and contribute to the deliberation exercises that contribute to the development of Canadian legislation.

Appointed positions should not automatically be discounted as irrelevant to democratic rule. The Senate should not necessarily be abolished as some Canadians insist. This chamber serves an essential function of protecting brash and hurried decisions from being implemented in our country and helps protect citizens from the unintended or unforeseen consequences of hasty decision-making[190].

Still, there are clearly reforms that need to be implemented in order for the Senate to prove an effective and legitimate forum for political activity. Changing the way in which senators are appointed could prove fruitful in regaining the public trust in this institution as well as fruitful in ensuring more legitimate representation for various sectors of the community.[191]

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[190] David E. Smith, p. xi, 6.
[191] David E. Smith, p. 50.

Our current appointment process involves the Prime Minister recommending to the Governor-General individuals for appointment. While there has been a concerted effort to select individuals from different groups and interests in order to reflect Canadian diversity and seem more inclusive, almost all appointments clearly reward political service along party lines.[192] Ideological favoritism is to be expected, however, as it increases the likelihood that the ruling party's legislation will receive more support in the senate, yet a greater problem exists with this system of appointment when we are discussing senators as representatives of minority interests. If the Prime Minister is choosing someone to represent a certain community, how can he be sure to choose someone who effectively represents this community's views as a whole and who is considered legitimate spokesperson by the community itself. The answer is simple: he can't.

Communities are made up of diverse individuals who maintain multiple interests and competing identities, there is no one world view that can be attributed to a given community or even a single individual. Instead the multiple identities experienced by individuals and groups may become more or less salient depending on the issue at hand; "which of these identities predominate in any given circumstance, and how they interact with each other, will depend on the context, the audience, and the ongoing balance between the internal definition and external ascription of social identities."[193] This is not to discount the fact that communities often are united on many issues of central importance, due to shared values. There are many existential concerns and interests that bind communities together, which is why we legitimate their calls for community-based representation and do not just treat them as a conglomerate of individuals. What could

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[192] David E. Smith, p. 124.
[193] May, p. 37.

increase the likelihood of effective representation by appointed political representatives, while protecting the independence of senators and the tenure which maintains this, would be for communities to compile lists of recommendations from which the Prime Minister could select his senatorial appointees. Legitimate spokespeople could be identified by the community, ones who are more likely to serve their interests then a community member selected at random by the Prime Minister and his party.[194] Alternatively the Prime Minister could identify prime candidates of interest and then consult with the community, either by allowing them to select or elect a representative from these individuals or by engaging in consultations and dialoguing with community members with the aim of incorporating their concerns into his final decision. The current government, under Prime Minister Stephen Harper has already suggested several changes to the Senate. These include engaging electors in consultations regarding potential senators to represent their province (Bill C-43) prior to appointment as well as limiting senators to serving eight-year terms.[195] Neither of these suggestions has been ratified into law, however, and Senate reform has yet to see the light of day.

Small changes to the selection process for senators could help better represent minority group interests within our current political system, depending on how they are designed. Again changes to the appointment process would be but an improvement, not a solution to the problem of minority underrepresentation. More substantial changes must be made to our current system of representation to achieve the objective of effective representation for official language minority groups.

Consultative/Advisory bodies

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[194] Claudette Tardif, a senator from Alberta was selected by such a process, whereby francophone associations in Alberta were consulted and put forward her name for nomination. From personal communication with Pierre Foucher, August 25th 2009.

Following this line of thought, consulting the communities can help ensure more effective representation not only when selecting senators or redrawing electoral boundaries, but indeed when engaging in any form of political activity.

Consultations, however, take a great deal of time and effort in order to ensure that the diverse interests of the community members can be voiced, heard, and considered. For this reason, creating local level deliberative associations can prove a useful way of identifying spokespeople for community interests who can then engage with the bureaucracy and various government bodies, commissions, committees and working groups.[196] A local level assembly based on deliberative democracy could regularly debate issues of importance to the community and then select by community ballot, delegates to represent the community to the greater national whole and institutions of the government. Grassroots level deliberation would ensure that community members can voice their individual concerns on political matters, while still presenting a unified front to external actors. It also solves the problem of the accountability of community representatives to their people and the traditional tendency of community elites to be favored by external actors as the legitimate voice of the community.

The next step, after democratically identifying legitimate community representatives, would be to institutionalize their systematic consultation with regards to certain political issues. Instead of just expecting government institutions to reach out to communities and consult when they deem necessary, a number of issues requiring mandatory consultation could be identified. Most obvious would be to identify issues

[195] Website of Prime Minister Stephen Harper, accessed July 5th 2009, <http://pm.gc.ca/eng/media.asp?id=1307>.
[196] Following the 2004 Acadian national convention, a Commission was set up to propose a democratic assembly for Acadians. The "Forum des Citoyens", established by the Société de l'Acadie du Nouveau-Brunswick following the Commission's report, was set up to meet periodically to discuss issues of importance to Acadian communities. A National Convention was also decided to be held every seven years.

directly related to the community and its existence as a separate identity from the national whole; that is, questions of language, local economic development, culture, ethnicity, religion, social policy, education and other issues that greatly impact a community's ability to maintain and promote its identity.

The most effective way to ensure consultation would be to also create permanent seats for representatives on relevant committees and working groups. Creating a space for permanent representation in deliberative political spaces is important in ensuring minority voices are heard in relation to issues impacting the community in question. These seats need not necessarily carry any political weight, but should at least allow status as an observer, allowing the representative to voice concerns and considerations that these political bodies may otherwise overlook without a first hand knowledge of the community in question.

Another important relationship to develop is between these communities and the public service, since the implementation of policies and programs that affect minority groups so often fall into the hand of bureaucrats. As Eric Montpetit notes «[les] ressources bureaucratiques [sont] importantes, [...] les fonctionnaires, eux, sont potentiellement en position favorable pour influencer les projets gouvernementaux. Dans ce contexte, plutot que de diriger leurs efforts vers le Parlement, les groupes canadiens sont susceptibles de viser la fonction publique.»[197] This strategy of communicating their needs and concerns to the bureaucracy helps ensure that groups are not only heard in principle in the development of legislation, but that this legislation is actually implemented in a way that achieves the teleological purpose it has adopted relative to

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Société de l'Acadie du Nouveau-Brunswick. « Forum provincial de la participation citoyenne. » <http://www.sanb.ca/?Id=38>.

[197] Éric Montpetit, "Pour en finir avec le lobbying: comment les institutions canadiennes influencent l'action des groupes d'intérêts, » *Politique et Sociétés*, vol. 21, n. 3, 2002, p. 102.

these minorities; measures for minority protection become more results-based and focused.

The responsibility to consult lies not only with the state, however. While the state is responsible for opening channels of communication and allowing and developing political space for community consultation, the community likewise has a responsibility to proactively engage with the state institutions. In addition to taking advantage of spaces for dialogue presented by the state, these groups must maintain their watchdog mentality and help identify issues which they wish to be consulted on and institutions with which they wish to dialogue. They should become active participants in policy networks, which Éric Montpetit defines as structures which "définit la nature des rapports qu'entretiennent des groups d'intérêts et des organisations administratives de l'État lors de l'élaboration et de la mise en oeuvre des politiques publiques."[198] In this way they could provide constructive advice to the state on ways to accommodate and incorporate their concerns and needs. They must not just critique the state's proposed policies for negative impacts on community interests, but become effective partners in developing solutions to political questions that serve the greater or rather greatest good possible. The spirit of deliberation, dialogue and cooperation is necessary to maintain this relationship and to demonstrate that communities are not insular societies but constructive members of the larger society as well.

These several measures to ensure adequate consultation would go far in fulfilling part of the Lund Recommendations; specifically recommendation number thirteen which states of consultative groups that:

> These bodies should be able to raise issues with decision makers,
> prepare recommendations, formulate legislative and other proposals,
> monitor developments and provide views on proposed governmental

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[198] Ibid, p. 106.

> decisions that may directly affect minorities. Governmental authorities
> should consult these bodies regularly regarding minority-related
> legislation and administrative measures in order to contribute to the
> satisfaction of minority concerns and to the building of confidence. The
> effective functioning of these bodies will require that they have
> adequate resources.[199]

As the recommendation notes, in order to serve all these functions, community deliberative associations will require not only positive support from the state in terms of invitations to be part of the political spaces which exists in the country, but will also require adequate resources to fulfill all their functions. In Canada, the resources required for official language minority civil society and local assemblies to operate could be allocated as part of section 43 of Part VII of the *Official Languages Act* (see annex 1).

Supervisory bodies

In addition to consultative bodies, communities of interests should also maintain independent supervisory bodies which serve as watchdogs not only to identify potential issues of interest to the community's well being, but also to monitor the state's performance on its commitments to consult, serve and support the groups members. Canada already has clear example of such a supervisory body on a national level in the Office of the Commissioner of Official Languages (OCOL), yet it could prove useful to consider more community specific supervisory bodies such as one specific to the needs of Francophone minority groups. At the moment civil society fills this community watchdog function along with the OCOL. These supervisory bodies should continue to produce and table reports on the status of the government's performance on its commitments, one's which could not only create political pressure for improvement but potentially have legal implications depending on the obligations involved in the original commitments.

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[199] Foundation on Inter-Ethnic Relations, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note*, September 1999.

Supervisory bodies and deliberative associations which are consulted on a regular basis, are instruments for minority protection which are easy to accommodate in our current political system yet which greatly benefit official language minority groups. Still there are additional mechanisms that could be put in place which should be examined that could be considered somewhat more revolutionary than these.

Local Autonomy in its various forms

> "Une communauté peut difficilement assurer sa reproduction sans controler des institutions qui lui sont propres. Ces institutions servent a ancrer et a transposer dans l'action, des valeurs, à répondre aux besoins spécifiques de cette communauté, à perpetuer une identité, à rassembler les membres de la collectivité. »[200]

Local autonomy and self-governance on certain issues could also prove beneficial to communities' development and their sense of control over some aspects of this development. This local autonomy could easily be incorporated into the Canadian state due to its federal nature which is accustomed to devolution.

Elected Assemblies

While the question of democratic deliberative assemblies was already touched upon when discussing consultative bodies, these assemblies would clearly have another function: they would serve as an elected assembly by which decisions could be made on issues and powers under the control of the community. It would serve as a "lieu de débat et de réflexion"[201] where the different individual viewpoints in the community on central issues could be brought forward and discussed as part of developing common positions on these issues. The most logical way to serve the Acadian populace as a whole would be to have one elected assembly, a 'national' one, in addition to local deliberative groups in

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[200] Venne, 2005 as cited in Johanne Poirier, p. 1.
[201] Mathieu G. Caissie, "Une assemblée délibérante de la société civile acadienne et francophone du Nouveau-Brunswick: LE CONSEIL GÉNÉRAL DE L'ACADIE » *Mémoire présenté à la Commission consultative sur la gouvernance de la société civile acadienne et francophone du Nouveau-Brunswick* Richibuctou, Acadie, Nouveau-Brunswick, le mercredi 24 mai 2006, p. 11.

the various municipalities. It has been suggested that an Acadian assembly, if created, could have powers similar to those devolved to municipalities.[202] The elections would be based on a new electoral map specific only to these community assembly elections. However the assembly would also have non-territorial elected seats since Acadians are not only dispersed throughout their traditional territory in clusters, but also make up an active diaspora in other Canadian provinces. In order for an assembly to be inclusive of Acadian views, there would need be delegates from the diaspora. Thus there would likely be several regional seats and/or ones located in urban centers outside Acadia, where population allows. Thus to all those who self-identify as Acadians or as part of an Acadian community, an invitation to be part of the electoral list should be extended. Alternatively, the diaspora could be represented not as part of the electoral list but through delegates from their francophone communities, including from local community groups and associations.[203]

While the specifics of a deliberative assembly for Acadians have been the subject of some debate, support for the idea seems in general to be accruing. The proposals likely garner support because they seem a plausible form of limited autonomy; this proposed third level of government quite easily mirrors the status of municipal government.

Administrative Nationalism

Local autonomy and devolution is already taking place in some municipalities. This devolution is most readily available in the form of administrative nationalism, which can be defined as "the quest for 'minority rule' over sub-state institutions as alternative collective tools to statehood, in order to ensure the minority's survival and enhance its

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[202] Roger Ouellette, cited in Johanne Poirier, p. 34.
[203] Poirier, p. 42.

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particular cultural traits."[204] A case of effective administrative nationalism can be illustrated in the city of Dieppe, New Brunswick.

The city of Dieppe was until recently considered a French suburb of the city of Moncton. It was almost entirely francophone and Acadian, whereas Moncton was only one third Francophone and Riverview, on the other side of Moncton, remained an Anglophone stronghold. Prior to 2002, these three adjacent communities had administrative duality in health and education and Moncton and Dieppe were officially bilingual. Since 1993 the threat of amalgamation of these three municipalities, an action the province has the power to undertake unilaterally, has resulted in Francophones increasingly defending Dieppe as their space of power.[205]

Dieppe's Francophones took five initiatives to protect their Acadian community's identity locally; they seceded from the regional water system as well as from the regional land use planning commission, created their own economic development commission, developed their own downtown, and declared themselves a Francophone city.[206] Administrative nationalism at the community or municipality level seemed the only way Acadians could act as a majority in political decision making. Since all minorities tend to cluster, there are many areas where this administrative action could function to fill local self-actualization needs; still, under representation in macro-level politics leaves many important areas of jurisdiction outside the influence of Acadian people if only granted administrative nationalism. Nevertheless, this form of governance could prove part of the greater solution to official language minority political representation and community actualization as long as Acadians maintain active representation and participation in the

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[204] Daniel Bourgeois & Yves Bourgeois, "Territory, Institutions and National Identity: The Case of Acadians in Greater Moncton, Canada," *Administration and Society* vol. 39, no. 5, 2007, p. 641-6.
[205] Ibid.
[206] Ibid.

larger political arenas. It is the most viable way of granting some form of autonomy to

Acadians, who occupy too small a political space, too small a territory and too small a

segment of the population to become totally self-governing. They would likely reject

absolute self-governance also due to their multiple and mixed identities which link them

to the larger society.

While all these the forms of minority accommodation mentioned thus far,

including electoral boundary redistribution protections, appointed positions, deliberative

associations, consultations, supervisory bodies, and limited self-governance in the form

of administrative nationalism are positive measures that could be implemented to protect

the political representation and voice of official language minority groups, one much

more radical proposal remains. Overhauling Canada's First-Past-The-Post political

system and replacing it with one based on proportional representation, which could serve

to better represent minority groups as well as the interests of Canadians as a whole. All of

the above suggestions, with the possible exception of electoral boundary redistribution

protections, should still be considered in the interest of protecting national minorities

(French Canadians and Aboriginal peoples), in addition to any electoral reform

undertaken.

Electoral Reform

The Democratic Deficit and Electoral Reform

> While single member constituencies may provide sufficient
> representation for minorities, depending upon how the constancies are
> drawn and the concentration of minority communities, proportional
> representation might help guarantee such minority representation[207]

Canadians are feeling an increasingly strong disconnect with the Canadian

political system in recent years. There is a growing consensus that "society has changed

since our institutions were developed/formulated," and that these institutions and the system to which they belong no longer serve the interests of citizens; thus votes are no longer considered legitimately reflected in the make up of parliament.[208] This sentiment is the result of a number of others factors as well: that political parties seem inaccessible and do not reflect the will of voters, that there is institutional discrimination in the system which prevents certain voices from being heard, that globalization and global citizenship has trumped the importance of national political participation, that politics has been increasingly perceived as the domain of immoral and self-interested individuals due to modern negatively geared media etc. These relevant concerns serve as the basis for disillusionment with politics and the political system in our country. This discontent is observable in public opinion polls, the drastic drop in reported political knowledge and interest, record low voter turnout, and in political participation as increasingly expressed in non-traditional ways such as by looking to civil society, by protesting and signing petitions, or by turning to the courts.

The differences between a First-Past-the-Post (FPTP) and Proportional Representation (PR) system were discussed earlier in their essence, but here they will be elaborated to examine the relationship between electoral system and the democratic deficit.

As was mentioned earlier the fact that First-Past-The-Post (also known as Single Member Plurality) system allows representatives to be selected by a plurality of constituents and not a majority has been increasingly perceived as undemocratic and has put into question the legitimacy of a single representative serving as the sole voice for a

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[207] Foundation on Inter-Ethnic Relations, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note*, September 1999.
[208] The Law Commission of Canada. *Renewing Democracy: Debating Electoral Reform in Canada Discussion Paper*, 2002, p. 11.

riding when the majority of the riding did not support (at least in terms of votes during elections time) the interests and stances informing the work of this member of parliament. While, of course, in the interest of being assured reelection and in the interest of good faith political service, a representative should temper his views and those that the plurality which elected him or her support with those of other constituents, this is not always the case. If for no other reason, representatives would be hesitant to compromise an established support base.

Whether or not a representative strives to represent his constituency as a whole or only serves the plurality which elected him or her, the perception of his loyalties by the constituents is enough to question his/her legitimacy as a representative of that riding. This has led people to propose other forms of representation whereby either some kind of majority is required to elect a member, or where there is more than one representative, or where some kind of combination of these ideas determines who will serve in the House of Commons. The idea is that the popular vote (in terms of numerical will, at least) will be more accurately reflected in the make-up of legislative assemblies; these schemes can be classified as some form of Proportional Representation or as a move towards it.

Since there are a plethora of variations on Proportional Representation that can be imagined, three of the most common kinds will be described here since they are the most likely contenders should Canada move towards a PR system. The Law Commission of Canada, when it undertook a study and discussion of electoral reform, looked to other countries with democracies and political cultures somewhat similar to our own for examples of functioning PR systems. It should be noted that so far, all these systems have been proposed in the form of referendums only at the provincial level and have failed to

capture the number of votes necessary to be implemented.[209] Whether due to a lack of

popular understanding of the newly proposed systems, a level of comfort and familiarity

with the status quo, or because people truly prefer an FPTP system to PR is unknown and

should prove the subject of a study apart from this one.

Alternative Vote

Countries such as Ireland and Australia have employed an Alternative Vote

electoral system, sometimes also referred to as Instant-runoff voting. Like FPTP,

constituents elect only one Member of Parliament, but this system is aimed at

guaranteeing that this representative is supported by a majority of the riding. Essentially

voters rank candidates in their order of preference, with how many choices they make

(they can still vote for only one candidate) voluntary. Should a single candidate be

selected as first preference by a majority of voters, the process stops there, as it would

under FPTP. Should no single candidate garner over 50% of the popular vote among

number one choices, then the candidate with the weakest support is eliminated and the

second preferences are factored into the count at full value. This process of eliminating

the weakest candidates and looking to the next preferences listed continues until a

candidate passes the 50% threshold and becomes the riding's representative.[210] Single

Transferable Vote, a variation on this system, was proposed and rejected in British

Columbia in 2005; though it received a majority of the popular vote, it did not amass the

60% required to enact such a change in electoral system.

Mixed Member Proportional System

The system rejected in 2007 by the population of Ontario, called Mixed Member

Proportional System, is another form of PR that has been successfully introduced in

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[209] The Law Commission of Canada. *Voting Counts: Electoral Reform for Canada*, 2004, p. 31-33.

countries such as New Zealand. Basically, there are two votes in this appropriately named 'mixed' system. The first vote is for a local representative, where one candidate wins (like in the FPTP system) with a plurality of the vote. It is the second tier which makes the system one of proportional representation; the second vote is from a party list, whereby the percentage of the popular vote received by each party will determine the percentage of available seats that will be filled with members of its list.[211] This is the system that was recommended in 2004 by the Law Commission of Canada.

Alternative Vote Plus

The last kind of proportional representation to be discussed here is Alternative Vote Plus or Alternative Vote Top-Up, something that was proposed and rejected for the United Kingdom in recent years. The idea behind this system of voting can be seen as combining the Alternative Vote system with the Mixed Member Proportional (MMP) system. Initially, like the Alternative Vote system, a single candidate is selected by the majority of voters based on voter preferences. Like MMP, however there would be a second vote for a party. This vote would not fill up designated separate seats like MMP, however, but would instead be examined to see how accurately the popular vote was reflected in the composition of the house based on candidates elected; then, seats would be distributed from party lists to allow the assembly as a whole to be as reflective as possible of the popular vote.

Examining electoral reform as a solution to problems of democratic deficit can be a tricky endeavour, as it seems to offer hope to those disenchanted by our current political systems and institutions, yet is such a massive and systemic change that it could have unintended consequences. Like any form of political organization, a PR-based electoral

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[210] The Law Commission of Canada. *Renewing Democracy: Debating Electoral Reform in Canada Discussion Paper*, 2002, p. 22.

system will serve to designate new winners and losers within the political arena. Notably those who benefit from the senatorial and grandfather clauses in Canada would stand to lose politically, and forms of accommodation such as additional seats may be worth considering to compensate for this.

While advocates of PR would claim that it more accurately represents the majority of the populace and that it would create more winners than losers, arguments for the greater good of the majority often have negative repercussions on the remaining minority. PR systems and FPTP systems will both produce winners and losers. While implementing a new electoral system may remedy some voter disenchantment, it will not solve all the problems that have created the democratic deficit. Negative media and an uneducated public will not suddenly change due to electoral reform for example. There are many reasons for the current crisis of traditional political participation in our society and without identifying all the various root causes of why are people not voting, systemic changes will fail to address the needs and concerns of the target populations. When examining electoral reform, it is not only important to keep in mind that it is not necessarily a quick fix to the democratic deficit, but also that repercussions must be explored to ensure that such a massive overhaul in our system will not *contribute* in some way to the democratic deficit. If education and an understanding of the system are considered reasons for voter abstention, non-voters could increase with the introduction of a new electoral system that would seem foreign and confusing to many (perhaps the reason that all electoral reforms proposed in Canadian provinces did not achieve the necessary majority vote). Also the effects of electoral systems on particular groups could be negative, since certain kinds of PR tends to favour the value of individual views and

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[211] Ibid, p. 24

votes across the country and could threaten community and local voice through lost voting clout. Pure proportional representation is an individual-based system where "[v]oters select, not a member from a local area, but an ideology from among those offered, with little way of expressing distinctive local concerns."[212] Such a system would likely upset the delicate balance of interests in our federation, where regional and local interests are recognized as very different across the county and where the respect for these differences serves as the foundation for our national compact.

To discuss electoral reform as a possible solution to the democratic deficit of minority groups in Canada (as an alternative or supplementary development to the implementation fixed seats and other possible institutional mechanisms for inclusive representation), it must be realized that its effect on them would very much depend on whether or not the proposed system allowed for some kind of local representation or not. As the case of Acadie-Bathurst presents quite clearly the value of members of parliament as ombudsmen is high to constituents seeking a link and affinity with a representative who is intimately linked to their communities, areas, and local concerns. Any system where constituents cannot easily identify and access *their* representative will be deemed detrimental to minority interests, which could become lost in the great machinery of government and bureaucracy. Politics and political institutions would in this case become even more daunting and intimidating to minority groups who already feel limited access to the system due to their relative voting clout.

Thus on the surface PR systems can seem to threaten minority group interests by favoring individual voting power, by in some cases favoring national over regional and local representation, and by in some cases distancing the representative from serving

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[212] Alan Stewart, p. 118.

local needs and concerns as intimately as in a FPTP system. As mentioned above, this is not an endorsement of FPTP by any means, but solely an acknowledgement that the successful implementation of PR in Canada should be examined in its effects on society at large and on the many groups that make up our nation; the country is a federal one, interests vary according to the multiple identities expressed within it. PR could prove beneficial to Canadian society, however any such system must take account of the compact of nations (this could be expanded to include French Canadians at large and Aboriginal groups) and the ever-increasing diverse community interests that exist within the country.

If a move to proportional representation was undertaken in Canada, the country's official language minority communities would likely be best served by a Mixed Member Proportional form of PR, since it would allow them to vote for partisan ideals on the national level (second tier), while voting as a bloc to ensure local level representation. Clearly this would not solve the problems of representation, but in addition to other solutions mentioned above, it could prove a much likelier method of ensuring this representation.

The ultimate goal of an electoral system should be to represent the people as best possible and as it has been suggested that "[i]nsofar as no electoral system is neutral from the perspective of varying views and interests, States should adopt the system which would result in the most representative government in their specific situation."[213] This question clearly requires further reflection and examination by the Canadian polity.

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[213] Foundation on Inter-Ethnic Relations, explanatory note 7.

Regardless of which method is implemented to support the realization of effective representation for Canada's official language minority communities, «[i]l convient toutefois de reconnaître d'emblée l'importance capitale d'assurer aux minorités une participation effective au sein des organes du pouvoir fédéeraux et provinciaux,» ainsi que dans leurs propres institutions d'autogouvernement au niveau plus local.[214] It is unlikely that any of the solutions proposed here would be effective in isolation, instead a holistic vision must support efforts to promote the effective representation of official laanguage minority groups and their communities.

This will require significant changes to the way we have engaged with these national minority groups thus far and will require important communication measures to justify these developments to the larger Canadian society.

The modern political climate seems to be growing more accepting of minority accommodation however, as part of a move toward a renewed vision of social justice. As Kristin Henrard and Robert Dunbar observe, "[i]t is now becoming generally accepted that full and effective equality may require special and differential treatment, and special measures of support to certain groups."[215] That changes are well-thought out before being undertaken and that they remain cost-effective and transparent is "key in ensuring acceptance among majority opinion for minority language policies."[216]

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[214] Poirier, p. 5.
[215] Henrard and Dunbar, "Introduction," p. 12.

Conclusion

As Canada is increasingly perceived as a multinational state which accommodates and respects difference, the role of representation proves central to asserting the legitimacy of federal institutions and ensuring the linguistic security of the various identities that make up this country. Absolute adherence to the equality principle is neither feasible nor desirable in a country like Canada, which since its founding has attempted to protect its minorities from the tyranny of the majority – something necessary in a country that proudly asserts the diversity of its population and its geographical makeup. Achieving a balance between absolute equality and pluralist considerations is necessary for effectively representing Canadians as a whole, and especially for protecting the voices of official language minority communities as was discussed in this thesis.

This study began by exploring theories of representation and how various systems of representation influence the distribution of political voice and political power in a given country. It showed that in designing a system of representation the polity must first decide on what expectations they have for and from their elected assemblies. In Canada, as Chapter 2 demonstrated, the representation system has always aimed at balancing the equality principle with ensuring effective representation for minority voices.

When it comes to official language minority groups, however, effective representation has not always been actualized. Chapter 3 detailed the historical discrimination suffered by Acadians and their struggle to be recognized as a valued part of the national whole. While their rights were gradually expanded through the course of the twentieth century, the case study explored in Chapter 4 demonstrated how guaranteeing effective representation for official language minority groups in national

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[216] Holt and Packer, p. 109-110.

institutions is still a pertinent concern. The case of *Raîche v Canada*, in 2004, would acquiesce that this effective representation for official language minorities is to be pursued and guaranteed through existing legal frameworks such as the *Electoral Boundaries Readjustment Act* and the *Official Languages Act*.

Chapter 5 detailed the case of *Raîche v Canada*, explaining its importance to Acadian communities in Northern New Brunswick, and discussing the precedent it may have set for defining communities of interest and identity for future redistributions of federal electoral boundaries. Overall the importance of Canada's commitment to official language minorities was the key lesson to be derived from *Raîche v Canada*. While the court case does help to further narrow and define the concepts of community of interest and identity, it truly only indicates that official language minorities should be duly considered as part of these categories when electoral boundaries are being redrawn. This conclusion, however, is tied to legal obligations under the *Official Languages Act*, this legislation being more of a guarantor of their linguistic rights as minorities than the *Electoral Boundaries Readjustment Act* would likely prove on its own. The case of *Raîche* is but one more small step in defining community of interest/identity as an increasingly important part of the process of electoral boundary redistribution. It sets a precedent whereby official language minority status will be considered a legitimate indicator of communities of interest and identity, and will require due consideration in future boundary readjustments.

The overall purpose of this thesis is not only to describe the case of *Raîche v Canada*, however, nor to discuss the evolving definition of community of interest or identity as a legal term, but instead to tie these two issues to the question of how best to ensure the effective representation of official language minority communities on the

national stage. In addition to the protections offered by the legal terms of community of

interest and identity which gained new importance in the case of *Raîche v Canada* and

through the federal government's responsibilities as outlined in Part VII of *Official*

Languages Act, these minorities will require the implementation of new relationships and

mechanisms through which to engage with the state. For this reason, several options for

pursuing this effective representation are presented in the last chapter to instigate an

active discourse surrounding the future of representation in Canada.

Developing an alternate, balanced form of effective representation is much more

challenging than aspiring to pure and simple representation by population – indeed

achieving justice often requires much more effort than letting systemic injustice take its

toll, but in Canada pursuing justice and substantive equality between official language

groups has been a long-standing and noble part of our national history.

The first Acadian Premier of New Brunswick Louis Robichaud asserted in 1967:

"I believe in the experiment that is Canada. I believe that we have come a very long way

in replacing hostility with partnership. "[217] It is no doubt this belief, this faith in the

relationship between governments and between peoples, which is so necessary to the

success of a federal system. The idea that difference is to be recognized and respected

instead of assimilated and suppressed is thus a positive and most Canadian value. Let it

serve as a cardinal one as the polity moves forward in determining its future and the way

in which it incorporates the diverse lived experiences and world views of this rich

cultural mosaic.

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[217] Louis Robichaud, "We must move! We must Act," radio address, Feb 9th 1967.

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