Reconsidering the Constitution, Minorities and Politics in Canada[1]

YASMEEN ABU-LABAN *University of Alberta*
TIM NIEGUTH *University of Alberta*

The constitution and constitutional discourse have loomed large on the agenda of Canadian political science since the 1960s. Over time, political scientists have approached the constitution and its role in society from a number of angles reflecting perceived primary axes of power and dominant cleavages within Canadian society. Thus, federalism, regionalism and British-French dualism have been prominent in explorations of constitutional politics, while such questions as the relation of the constitution to class or gender have been less central.

Given Canada's multi-ethnic, multiracial and multilingual character, it is surprising that a less central issue in empirical analysis has related to ethnic minorities,[2] especially considering the relevance of immigration, particularly in Canada's major cities of Montreal, Toronto and Vancouver, and the public debate over the vices or virtues of multiculturalism (as policy and ideology). We suggest that the underexamination and undertheorization of ethnic minorities, and therefore eth-

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2 In this article we use the terms ethnic minorities, ethnocultural minorities and minorities to refer to the collectivity of Canadians who are of non-British, non-French and non-Aboriginal origin.

Yasmeen Abu-Laban, Department of Political Science, University of Alberta, Edmonton, Alberta T6G 2H4; Yasmeen.Abu-Laban@ualberta.ca
Tim Nieguth, Department of Political Science, University of Alberta, Edmonton, Alberta T6G 2H4; tnieguth@ualberta.ca

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nicity, in the context of constitutional politics introduces a number of biases into the study of both ethnicity and the constitution. This article aims to bridge the gap between Canadian political science and Canadian ethnic studies by linking what have been traditional concerns of these respective fields: constitutional politics in political science,[3] and multiculturalism and the "other ethnic groups" of non-British/non-French/non-Aboriginal origin in ethnic studies. In doing so, our objective is to focus on the evolving Canadian symbolic order, and the recognition given to ethnic collectivities as expressed in the constitution and constitutional dialogues.

We take a threefold approach in pursuing this objective. First, we examine the relative absence of discussions of race and ethnicity within Canadian political science. We suggest that as a result, to the extent that minority ethnic groups have been addressed in the context of constitutional politics, an important strand of an otherwise heterogeneous political science literature has been informed by four implicit fundamental assumptions. These assumptions have led to what we label the "watershed approach" to ethnic minorities and the Canadian constitution. Stated briefly, the assumptions are: the entrenchment in 1982 of the Canadian Charter of Rights and Freedoms has created new constitutional actors in the form of ethnic minorities, and stimulated an ethnic constitutional discourse; consequent on the introduction of the Charter, the political power of racial and ethnic minorities has greatly increased in the constitutional sphere; this increase in power cannot be reversed; and ethnic minorities utilize this power to pursue objectives which are limited to constitutional self-interest, and thus generate conflict.

Second, we question the fundamental assumptions behind the watershed approach by examining the actual demands and concerns of minority ethnic groups as voiced by leaders of ethnocultural organizations. [4] Specifically, we examine the manner and extent to which multiculturalism or other minority concerns entered into constitutional debates during the decade preceding the patriation of the constitution, during the patriation of the constitution, during debates over the Meech

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3 See Allan Tupper, "English-Canadian Scholars and the Meech Lake Accord," *International Journal of Canadian Studies* 7 (1993), 351.

4 Specifically, we examine both official position papers/documents as well as presentations made by minority leaders in government fora dealing with constitutional issues since 1980 of both national and umbrella associations. The focus on ethnocultural leaders/spokespersons has its limitations in that the pertinent question of representation/representativeness is difficult to assess; nonetheless this approach can yield important insight into the dynamics of race, ethnicity and the constitution.

Abstract. This article analyzes the assumptions in the existing literature about ethnic minorities and the constitution which converge on treating the introduction of the Canadian Charter of Rights and Freedoms in 1982 as a watershed event. It tests these assumptions by examining how multiculturalism and ethnic minority concerns entered into constitutional debates historically and contemporaneously. It is argued that by revisiting Canada's constitutional story with a broader historical lens, post-Charter constitutional politics can be seen as an episode in the ongoing conflict as well as give and take of recognition between dominant and subordinate social forces in which the state is implicated. Building on this, an alternative account is advanced.

Résumé. Cet article analyse les hypothèses des travaux sur les minorités ethniques et la constitution qui soutiennent que l'introduction de la Charte canadienne des droits et libertés de 1982 a été à l'origine des revendications de ces groupes. Il vérifie la validité de ces hypothèses en examinant comment les minorités multiculturelles et ethniques concernées ont été amenées à s'impliquer dans les débats constitutionnels au cours de l'histoire et de la période contemporaine. Cet examen révèle que, lorsqu'on adopte une perspective historique plus large, les revendications constitutionnelles postérieures à l'adoption de la Charte apparaissent comme un simple épisode d'une lutte de longue date, impliquant l'Etat, dont l'enjeu était la reconnaissance des droit des minorités par les forces sociales dominantes. En s'appuyant sur ce constat, l'article propose une alternative à l 'explication proposée par la littérature existante.

Lake and Charlottetown constitutional accords and during the post-Charlottetown period.

Third, by taking the empirical evidence in the second section as a point of departure, we provide an explanation for our findings which critiques the fact that the temporal horizon of many empirical discussions within Canadian political science on the constitution and ethnic minorities is limited by what is portrayed as a decisive turning point—the introduction of the Charter in 1982. This limited temporal horizon has often led to greater weight being accorded to the Charter than to state policy and societal relations of power.[5] What we take to be a complex relationship between the state, ethnic groups and constitutional politics in Canada is best understood by placing a stronger emphasis on time. We argue that by revisiting the Canadian constitu-

5 While we focus on empirical discussions, it should be noted that Canadian political philosophers like Charles Taylor and Will Kymlicka have focused on identity and minorities, although their internationally recognized work has more to do with illuminating the optics of liberalism, than the specific rough-and-tumble of the politics of constitutional change. In contrast, the work of James Tully is a major normative contribution to the study of constitutionalism, diversity and recognition which draws from a range of historical and contemporary examples to address whether modern constitutions can recognize and accommodate cultural diversity. See Charles Taylor, "The Politics of Recognition," in Amy Gutmann, ed., *Multiculturalism and the Politics of Recognition* (Princeton: Princeton University Press, 1992); Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995); and James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995).

tional story with an eye towards not only 1982, but to Canadian history, post-Charter constitutional politics can be seen as an episode in the ongoing conflict as well as the give and take of recognition between dominant and subordinate social forces in which the state is implicated. Viewed from this perspective, the constitution has always either implicitly or explicitly reflected relations between ethnic collectivities (including Canadians of British and French origin, Aboriginal peoples and ethnic minorities).

Ethnic Studies, Political Science and the Watershed Approach

The field of Canadian ethnic studies came out of the Royal Commission on Bilingualism and Biculturalism. As so-called third force (non-British, non-French, non-Aboriginal) Canadians challenged the notion of a bilingual and bicultural Canada, the Commission provided an impetus for greater research in the 1960s on the role of "other ethnic groups."[6] The introduction of multiculturalism as official federal policy in 1971 further contributed to the development of the field of Canadian ethnic studies through funding provided to academics.[7] Despite its multidisciplinary character, early in its evolution, ethnic studies tended to be skewed by the interests of those trained in some disciplines more than others. In fact, in 1977, historian Howard Palmer observed that in Canadian ethnic studies "sociologists have made the greatest contribution," but "political scientists in Canada have been relatively slow to do research on ethnic voting behaviour."[8] Indeed, ethnic studies (in Canada and elsewhere, including Australia) was described as marked by a "shortage of solid research on the political behaviour of ethnic groups."[9]

The descriptions of practitioners of ethnic studies concerning the laggardly pace of political scientists to engage in the field of ethnic studies are echoed by the observations political scientists have made about the place of race and ethnicity within the discipline. V. Seymour Wilson argued in his 1993 Presidential Address to the Canadian Political Science Association that:

> As political scientists it seems we have not been particularly comfortable dealing with cultural and racial pluralism and their effects on polit-

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6 Howard Palmer, "History and Present State of Ethnic Studies in Canada," in Wsevolod Isajiw, ed., *Identities: The Impact of Ethnicity on Canadian Society*, Canadian Ethnic Studies Association Vol. 5 (Toronto: Peter Martin, 1977), 173.

7 Evelyn Kallen, "Academics, Politics and Ethnics: University Opinion on Canadian Ethnic Studies," *Canadian Ethnic Studies* 13 (1981), 121-22.

8 Palmer, "History and Present State of Ethnic Studies in Canada," 174-75.

9 Jerzy Zubrzycki, "Research on Ethnicity in Australia and Canada," in Isajiw, ed., *Identities*, 186.

> ical life. In this country we approach the study of societal pluralism almost completely from our perspective on Quebec nationalism, despite the varied nature of the subject matter.[10]

The lack of attention to race and ethnicity is not confined to Canadian political scientists: in 1996, Rupert Taylor, writing on the study of race and ethnicity in American political science, noted that "literature to date on 'race' and 'ethnicity' within political science does not constitute a great body of work."[11]

The reasons for the relative inattention within political science to the role of race and ethnicity in politics are numerous.[12] Yet there are areas of study relating to race and ethnicity and politics that warrant continued and greater exploration. There is little literature in the discipline that assesses the impact of public policies relating to antiracism and human rights for minorities.[13] There is also much work to be done on the political participation and the representation of minorities and ethnocultural associations in national, provincial and urban political processes.[14] Notably, among Canadian politics specialists, the area of race, ethnicity and politics that has attracted relatively greater attention relates to the constitution. Canadian constitutional expert Alan Cairns was among the first to point out the importance of this topic when he argued that political scientists must begin to grapple with the theme of ethnicity, a theme which could not be addressed from the more traditional focus on federal-provincial government relations. Writing at the time of the debate over the Meech Lake constitutional amendment, Cairns lamented:

> . . . there are good reasons to fear that political scientists will lose ground as constitutional analysts in the future. In the absence of a significant intellectual reorientation they will correctly come to be viewed

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10 V. Seymour Wilson. "The Tapestry Vision of Canadian Multiculturalism," this JOURNAL 26 (1993), 646.

11 Rupert Taylor, "Political Science Encounters 'Race' and 'Ethnicity,' " *Ethnic and Racial Studies* 19 (1996), 891.

12 Wilson argues that the reasons include the sense amongst some political scientists that ethnicity should disappear as a political force; that class is more important than ethnicity; and that Canadian political science's traditional concern over federalism addresses at best only those ethnic/national groups that may be territorially accommodated. (Wilson, "The Tapestry Vision," 646-47).

13 See the discussion in Audrey Kobayashi, "Advocacy from the Margins: The Role of Minority Ethnocultural Associations in Affecting Public Policy in Canada," in Keith G. Banting, ed., *The Nonprofit Sector in Canada: Roles and Relationships* (Montreal: McGill Queen's University Press, 2000), 233-35.

14 Daiva Stasiulis, "Participation by Immigrants, Ethnocultural/visible Minorities in the Canadian Political Process," in Canada, Department of Canadian Heritage, *Immigrant and Civic Participation: Contemporary Policy and Research Issues* (November 1997)12-29.

as too wedded to institutional arrangements, such as federalism, of diminished constitutional importance.[15]

While legal scholars have increasingly been addressing both the historical and contemporary relationship of race, racism and the law,[16] to the extent that Canadian political scientists have heeded Cairns's call in analyzing constitutional politics and the role of ethnic minorities, a series of assumptions have emerged which truncate historical analysis. While different authors adhere to these assumptions to varying degrees (even within their own writings) the cumulative effect is the genesis of an overall approach to ethnicity and the constitution which is relatively coherent, and characteristic of much of the discipline as a whole. What we call the watershed approach contains four fundamental assumptions.

One underlying assumption is that the entrenchment of the Charter created a new set of constitutional actors and, at the very least, invigorated the political activities of ethnic minorities and other subordinate groups (including women and Aboriginal peoples). Thus, for example, Cairns has argued that the Charter created new actors "defined inter alia, by gender, language and ethnicity" with explicit constitutional concerns.[17] According to Guy Laforest's examination of Prime Minister Pierre Trudeau's legacy, the "Charter created a whole series of new constitutional players: women and their organizations, multicultural groups and visible minorities, native peoples, and official-language minorities."[18] Similar judgments abound in much political science literature which is more specifically concerned with constitutional politics. Jennifer Smith, for example, draws on Alan Cairns to argue that the Charter has given constitutional status to a number of groups. These "Charter minorities" are "groups who consider particular provisions of the Charter of Rights and Freedoms to be relevant primarily to themselves." [19]

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15 Alan C. Cairns, "Political Science, Ethnicity and the Canadian Constitution," in David P. Shugarman and Reg Whitaker, eds., *Federalism and Political Community: Essays in Honour of Donald Smiley* (Peterborough: Broadview, 1989), 117.

16 See Carol A. Aylward, *Canadian Critical Race Theory: Racism and the Law* (Halifax: Fernwood, 1999).

17 Alan C. Cairns, "Citizens (Outsiders) and Governments (Insiders) in Constitution-Making: The Case of Meech Lake," *Canadian Public Policy* 14 Supplement (1988), S138.

18 Guy Laforest, *Trudeau and the End of a Canadian Dream* (Montreal: McGill-Queen's University Press, 1995), 137-38.

19 Jennifer Smith, "Representation and Constitutional Reform in Canada," in David Smith, Peter MacKinnon and John Courtney, eds., *After Meech Lake: Lessons for the Future* (Saskatoon: Fifth House, 1991), 75.

Some authors have taken this assumption a step further by suggesting that the Charter did not merely create ethnic constitutional actors, or invigorate their engagement in constitutional politics, it also triggered an "ethnic discourse . . . that debates the relative status to be accorded to the two 'founding' British and French peoples and later arrivals who have made Canadians a multicultural and multiracial people."[20] F. L. Morton broadly suggests that with

> the adoption of the Charter of Rights in 1982, the political issues raised by government policies toward [a number of different] minorities in Canada became inextricably linked with the constitutional issues raised by the equality rights provisions of section 15. What were once essentially policy issues to be resolved through the political accommodation of the parliamentary process have taken on a new constitutional dimension and are now subject to judicial resolution.[21]

Likewise, it is alleged that the Charter was not only instrumental in enhancing the role of ethnic and other minorities in the judicial process; it was also crucial in establishing the very discourse which called for and legitimized their involvement in the process of constitutional politics. According to Cairns, the

> inclusion of section 27 in the Charter, with its reference to the multicultural heritage of Canada, inevitably generates a specific debate on the relevance of ethnicity for how we treat each other in the public domain and how we view ourselves as people. . . . [There is now] an ethnic constitutional discourse stimulated by section 27. . . . [22]

The second assumption guiding the watershed approach is that the Charter has greatly increased the political power of a variety of subordinate social groups by granting them formal constitutional recognition. Their constitutional standing provided these groups with a stake in constitutional politics and thus contributed to a politicization of the social

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20 Alan C. Cairns, *Charter versus Federalism: The Dilemmas of Constitutional Reform* (Montreal: McGill-Queen's University Press, 1992), 74.

21 F. L. Morton, "Group Rights Versus Individual Rights in the Charter: The Special Cases of Natives and Quebecois," in Neil Nevitte and Allan Kornberg, eds., *Minorities and the Canadian State* (Oakville: Mosaic, 1985), 71.

22 Alan C. Cairns, *Reconfigurations: Canadian Citizenship and Constitutional Change* (Toronto: McClelland and Stewart, 1995), 120-21. Cairns's position on this is somewhat contradictory. He has also said that "the written constitution has always been sensitive to ethnicity, with a preamble referring to a 'Constitution similar in Principle to that of the United Kingdom,' allocation of legislative authority over 'Indians and Lands reserved for Indians,' to the federal government (Section 9 [24]), and indirectly in the limited French-and English-language requirements of Section 133." (*Charter versus Federalism*, 109). Nonetheless, he does not discuss how social power is differentially reflected in the provisions or absences of the Constitution.

conflicts they represent. A comment by Neil Nevitte and Roger Gibbins is indicative of the extent of this consensus, despite (or precisely because of) the fact that it was made in the context of discussing political dynamics surrounding group rights and their implications for political culture, rather than in the context of discussing constitutional politics per se. Nevitte and Gibbins argue that "the constitutional entrenchment of the Canadian Charter of Rights and Freedoms in 1982 has given a variety of minority groups—the new 'Charter Canadians'—greater constitutional leverage, and has given their claims greater political saliency, than was the case in Canada before 1982. . . . "[23] More dramatically, Guy Laforest has suggested that the "interest groups that represent [these new constitutional] players have in a sense colonized the constitution."[24]

This development is treated as a subversion of the "rationality" of traditional constitutional discussions between governments. Cairns has argued that the "constitutional language of ethnicity wielded by ethnic elites is emotional and passionate—a Mediterranean language—rather than calculating and instrumental. Its affinities are with such concepts as shame, envy, resentment, honour, and pride."[25] In addition, the enhanced status of ethnic minorities and other subordinated groups is perceived as a subversion of the democratic process by special interest groups—the "Court Party"—through a judicialization of Canadian politics undermining the power of "elected," "representative" and thus, presumably, more legitimate institutions.[26]

A third assumption guiding the watershed approach is that the political power of ethnic minorities and other nondominant groups, once recognized on a constitutional level, has consequently been cemented and is thus a permanent feature on the political landscape. Cairns, for example, observes that

> if one looks at the organizations that participated in the Meech Lake fora of Manitoba, New Brunswick, Ontario, and the federal government, one is struck by the fact that the organizations were overwhelmingly drawn from two broad categories: aboriginal organizations and organizations representing Charter communities. These organizations dominated the expression of organized interests. . . . As a result, the constitutional debate

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23 Neil Nevitte and Roger Gibbins, *New Elites in Old States: Ideologies in the Anglo-American Democracies* (Toronto: Oxford University Press, 1990), 88.

24 Laforest, *Trudeau*, 138.

25 Cairns, "Political Science," 122; Laforest, *Trudeau*, 138, and Roger Gibbins (*Conflict and Unity* [2nd ed.; Scarborough: Nelson, 1990], 262), among others, incorporate Cairns's description of the nature of ethnic minority constitutional discourse.

26 Rainer Knopff and F. L. Morton, *Charter Politics* (Scarborough: Nelson, 1992).

> in this country has been about issues of community-social issues, ethnic issues, linguistic issues, issues of gender cleavage.[27]

The assumption of solidified minority power is reflected, for instance, in the widely accepted notion of "constitutional minoritarianism" (a term originally coined by Cairns) which describes changes in Canada's political culture fostered by the Charter. Thus, the Charter is said to have "catalyzed a group of 'single-clause particularisms' into political existence. You could refer to it as 'constitutional minoritarianism': a bunch of actors devoted to the protection and enhancement of their niche-identity status in the constitution."[28] In his analysis of Trudeau's politics, Laforest—drawing on Cairns—contends that the Charter promoted

> a political culture founded on constitutional minoritarianism. For various reasons, the power of these [new constitutional] actors, and their ability to influence the later rounds of constitutional negotiation, can only grow. They henceforth possess rights, status within the system, and real constitutional identity. The social movements with which they are associated—new ethnicities, feminism, native resurgence—are passing through a period of growth throughout the world. Moreover, these groups have developed their own bureaucratic infrastructure, which can rely on experts, university curricula, and specialized journals, as well as on sympathetic treatment by the media. Immigration is gradually in the process of transforming Canada into a country that is ever more open to multiculturalism and racial pluralism.[29]

The assumption that the power of ethnic minority groups has been solidified by the Charter once again extends beyond analyses of constitutional politics, and also influences analyses of the impact of the Charter on Canada's institutional framework. In arguing that the Charter has strengthened the role of the judiciary vis-à-vis elected representative institutions, the increased weight of the judiciary in the policy-making process is presented as benefiting minority groups. Thus, Rainer Knopff and F. L. Morton suggest that "Charter Canadians" pursued constitutional recognition "in order to entrench policies they could not easily achieve through the legislative process. . . . Since it is the courts that 'enforce' Charter rights against reluctant and recalcitrant legislatures, the Charter groups have a vested interest in judicial power."[30] Put dif-

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27 In Richard Simeon and Mary Janigan, eds., *Toolkits and Building Blocks: Constructing a New Canada* (Toronto: C.D. Howe Institute, 1991), 53.

28 Alan Cairns, ibid., 53. See also Cairns, *Reconfigurations.*

29 Laforest, *Trudeau*, 138. A similar thesis is presented by some sociologists. See Gilles Bourque and Jules Duchastel, "Les identités, la fragmentation de la societé canadienne et la constitutionnalisation des enjeux politiques," *International Journal of Canadian Studies* 14 (1996), 77-94.

30 Rainer Knopff and F. L. Morton, "Canada's Court Party," in Anthony Peacock,

ferently, the judicialization of politics consequent on the entrenchment of the Charter is seen as serving, among other things, minority interests; it provides an additional access point to the policy-making process and allows minority groups to attain goals which they were not able to secure by more traditional means.

The fourth assumption guiding the watershed approach typically views the constitutional concerns of subordinate groups (including ethnic and cultural organizations) as limited by narrow self-interest.[31] As Jennifer Smith puts it, "they pursue a partial interest—their own, at least as they conceive it—on particular issues."[32] Moreover, the involvement of these groups in the constitutional process is allegedly characterized by, and essentially limited to, a protective interest in those sections of the Charter which these "Charter Canadians" perceive as their property (that is those sections which grant them constitutional standing).[33] In other words, there is a tendency to view minority groups in an implicitly negative light as self-interested, parochial and thus only as conflict-producing, and to ignore the possibility of forms of mutual recognition and coalition-building.

In particular, the constitutional recognition of subordinate groups in the Charter is seen as producing conflict along three axes. First, there is a conflict between new actors (groups) and old actors (governments). As Cairns has observed of the Meech Lake discussions, one is "struck by the vehemence, and bitterness with which various groups challenged the legitimacy of a closed door elite bargaining process restricted to governments."[34] Second, there is an inherent conflict between multiculturalism and dualism.[35] Third, there is conflict among the new actors themselves as they vie with each other for attention and status.[36] In the words of Knopff and Morton, "those who are already members of the

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ed., *Rethinking the Constitution: Perspectives on Canadian Constitutional Reform, Interpretation, and Theory* (Toronto: Oxford University Press, 1996), 66.

31 See Knopff and Morton, *Charter Politics*, 90.

32 Smith, "Representation," 77.

33 Cairns, "Political Science" and *Reconfigurations*; a similar point is made by Smith, "Representation."

34 Cairns, "Citizens (Outsiders) and Governments (Insiders)," S125.

35 Pierre Fournier, *A Meech Lake Post-Mortem: Is Quebec Sovereignty Inevitable* (Montreal: McGill-Queen's University Press, 1991) ix-31; Laforest, *Trudeau*, 138; Cairns, "Citizens (Outsiders) and Governments (Insiders), S.129. Outside the discipline of political science, this thesis is also well-entrenched. See for example, Gilles Bourque and Jules Duchastel, "Pour une identité canadienne post-nationale, la souveraineté partagée et la pluralité des cultures politiques," *Cahiers de recherche sociologique* 25 (1995), 17-58; and Gérard Bouchard, *La nation québécoise au futur et au passé* (Montreal: VLB Editeur, 1999).

36 Cairns, "Citizens (Outsiders) and Governments (Insiders), S138.

[constitutional] club will also fight among themselves for relative advantage."[37]

Most of the assumptions underlying the watershed approach to constitutional politics and ethnicity are closely paralleled by similar assumptions in much of the constitutional literature on other social groups (such as women, First Nations or gays and lesbians) and their relation to the constitutional order. These assumptions have, in turn, been subject to fundamental critique as a result of empirical analysis. For example, dealing with the assumption that the introduction of the Canadian Charter of Rights and Freedoms in 1982 represents a turning point in political activity, Miriam Smith's thorough analysis of the gay liberation movement in the 1970s convincingly demonstrates that long before the introduction of the Charter, rights-based claims and court challenges were a key element of this movement's strategies. As a result, Smith contends that a frequent argument in the literature—that the Charter itself fostered a rights-claiming political culture—is exaggerated. [38]

Similarly, the work of Alexandra Dobrowolsky demonstrates that the Canadian women's movement was active in the constitutional sphere during the late 1970s and early 1980s, long before the introduction of the Charter. As she puts it, "clearly, the citizenry's constitutional involvement predates the Charter."[39] In addition, Dobrowolsky indicates that the constitutional standing granted to women in the Charter did not produce and irreversibly entrench a significantly enhanced position of power for the women's movement in constitutional politics. Instead, women's organizations were excluded from much of the constitutional politics surrounding, for example, Meech Lake and, particularly, the Charlottetown Accord.[40] Examining the gay and lesbian movements, Didi Herman has sharply criticized the idea that lesbians and gays gained control over political institutions as a result of the judicialization of politics perceived to stem from the Charter by analysts Knopff and Morton.[41] Similarly, John Borrows has observed that the effects of the Charter, with its emphasis on the language of rights, not only have generated internal divisions within First Nations com-

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37 Knopff and Morton, *Charter Politics*, 82.

38 See Miriam Smith, "Social Movements and Equality Seeking: The Case of Gay Liberation in Canada," this JOURNAL 31 (1998), 285-309.

39 Alexandra Dobrowolsky, *The Politics of Pragmatism: Women, Representation and Constitutionalism in Canada* (Don Mills: Oxford University Press, 2000), 40.

40 Ibid., 159.

41 Didi Herman, "The Good, the Bad and the Smugly: Sexual Orientation and Perspectives on the Charter," in David Schneiderman and Kate Sutherland, eds., *Charting the Consequences: The Impact of Charter Rights on Canadian Law and Politics* (Toronto: University of Toronto Press, 1997), 212.

munities, but may not inevitably produce the desired outcome (that is self-government).[42]

The accuracy of the idea that the women's movement pursued a narrow constitutional agenda in the post-Charter period has been empirically tested by Linda Trimble. Trimble uncovers the diverging positions taken by francophone and anglophone women on the Meech Lake Accord, and demonstrates that the overall constitutional agenda of women was not limited to the Charter, but encompassed a whole range of other issues such as Senate reform or the division of powers, which took into account interests of other "constitutional players" or "Charter Canadians."[43]

Given these important findings in relation to a number of social groups, it might be fruitful as well to re-evaluate empirically the watershed characterization of the objectives of other subordinate groups, including ethnic and racial ones. Indeed, while the Charter (particularly Section 27 that asserts that "this charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians") undoubtedly provided a new legal framework for the pursuit of individual and group claims by ethnic minorities,[44] whether race/ethnicity mattered constitutionally before the Charter, or the ways and implications of how ethnic and racialized minorities have pursued claims after the Charter deserves re-examination.

Revisiting the Watershed Approach: Ethnic Minorities and the Constitution in Canadian History

From the 1850s to the 1960s

The claim that the Charter created new ethnic constitutional actors and stimulated an ethnic constitutional discourse (that it fostered, in other words, an arena for ethnic politics within constitutional and judicial

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42 John Borrows, "Contemporary Traditional Equality: The Effect of the Charter on First Nations Politics," in Schneiderman and Sutherland, eds. *Charting the Consequences*, 169-99.

43 Linda Trimble, " 'Good Enough Citizens': Canadian Women and Representation in Constitutional Deliberations," *International Journal of Canadian Studies* 17 (1998), 131-56.

44 See Canadian Human Rights Foundation, ed., *Multiculturalism and the Charter: A Legal Perspective* (Toronto: Carswell, 1987). The evidence on early Charter rulings suggests that Section 27 has mainly been used to modify rights claims from other sections—in particular Section 2 (religious freedom) and Section 15 (equality rights). See G.L. Gall, "Multiculturalism and the Canadian Charter of Rights and Freedoms: The Jurisprudence to Date under Section 27," in Canadian Ethnocultural Council, *Taking Stock: The Jurisprudence on the Charter and Minority Rights* (Ottawa: 1991), 73-186.

politics) is clearly deficient. It fails to take into account that the meaning of constitutional politics depends largely on the power relations between different social groups, including ethnic ones, in which the state is embedded. For instance, historically, Canadian law has not been applied without ethnic and racial bias; in fact, Canadian jurisprudence has often upheld practices of ethnic and racial discrimination. Examining a number of landmark Supreme Court cases during 1914-1955 involving race, James Walker observes that it

> has become common in recent years to regard "race" as a social construct. Over the half century represented in these case studies, in Canada as elsewhere, "race" was also a legal artifact. And in the process of its formulation, the Supreme Court of Canada was a significant participant, legitimating racial categories and maintaining barriers among them.[45]

As well, in terms specifically of constitutional politics, the Canadian constitution has always incorporated ethnic and racial groups differentially into the socio-political order. The clearest example for this can be found in the constitutional status accorded to French Canadians and "status Indians" in the *Constitution Act, 1867*. As Evelyn Kallen notes,

> Canada, from Confederation, has been constitutionally predicated on the inegalitarian notion of special group status. Under the Confederation pact and the subsequent *Constitution Act of 1867*, Canada's "founding peoples"—English/Protestant and French/Catholic groups—acquired a special and superordinate status as the majority or dominant ethnic collectivities, each with a claim for nationhood within clearly delineated, territorial boundaries.... By way of contrast, under the terms of s.94(24) of the 1867 Constitution, aboriginal nations... became Canada's first ethnic minorities. The provisions of s.94(24) gave the Parliament of Canada constitutional jurisdiction to enact laws concerning Indians and lands reserved for Indians. Under ensuing legislation, notably the various *Indian Acts*, once proud and independent aboriginal nations... acquired a special and inferior status as virtual wards of the state.[46]

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45 James Walker, *"Race," Rights and the Law in the Supreme Court of Canada* (Toronto: Osgoode Society for Canadian Legal History, 1997), 302; see also Elizabeth Comack, ed., *Locating Law: Race/Class/Gender Connections* (Halifax: Fernwood, 1999).

46 Evelyn Kallen, "The Meech Lake Accord: Entrenching a Pecking Order of Minority Rights," *Canadian Public Policy* 14 Supplement (1988), 110-11. On a similar note, Henry and Tator point out that from "the earliest period of Canadian history, the notion of a hyphenated Canadian was part of the national discourse. There was English Canada and French Canada. In the creation of this

In this context, it should be noted that regardless of their constitutional status, the political and social status of the two majority groups has historically been less than equal, in favour of those of British origin. Indeed, the French were seen as a cultural "other" by many Canadians of British-origin and socially constructed as a separate and inferior race (or racialized).[47] The constitutional recognition of French Canadians was not the product of any normative considerations, but was won as a result of persistent efforts by French Canadians to achieve recognition within the constitutional order. Constitutional recognition was, in other words, the outcome and expression of conflict and power struggles between different ethnic communities. Thus, Stanley Ryerson has argued that the establishment of Canada as a federal state was a result of pressures by French Canadians.[48]

Clearly "ethnic" discourse and considerations were already present at the inception of Confederation—as James Tully has observed, constitutions themselves "cannot eliminate, overcome or transcend [the] cultural dimension of politics."[49] By extension, constitutional politics cannot be separated from ethnocultural and race relations. In

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cultural duality, the Fathers of Confederation disregarded the cultural/racial plurality that existed even at the time of Confederation. Aboriginal cultures and societies were ignored and excluded from the national discourse. As other cultural groups were rendered invisible, Canada imagined a national culture consisting of a unique blend of English and French values. As a result, three categories of citizens were recognized: English Canadians, French Canadians, and 'others.' Only the first two groups had constitutional rights" (Frances Henry and Carol Tator, "State Policy and Practices as Racialized Discourse: Multiculturalism, the Charter, and Employment Equity," in Peter Li, ed., *Race and Ethnic Relations in Canada* [2nd ed.; Toronto: Oxford University Press, 1999], 92).

47 As one well-known example, in his famous report, Lord Durham uses "nation" and "race" interchangeably. Thus he states "I found two nations warring in the bosom of a single state: I found a struggle, not of principles, but of races" (23). Indicating he also saw French Canadians as inferior, he wrote "The superior political and practical intelligence of the English cannot be, for a moment, disputed" (35). See Lord Durham, "Lord Durham's Report: An Abridgement of *Report on the Affairs of British North America* by Lord Durham," ed. by Gerald Craig (Toronto: McClelland and Stewart, 1963).

48 Stanley Ryerson, *Unequal Union: Confederation and the Roots of Conflict in the Canadas, 1815-1873* (Toronto: Progress Books, 1968), 362. For a similar point, see (among others) Samuel LaSelva, *The Moral Foundations of Canadian Federalism: Paradoxes, Achievements, and Tragedies of Nationhood* (Montreal: McGill-Queen's University Press, 1996), 136. Christian Dufour suggests that the establishment in 1867 of Canada as a federal state in general and the establishment of a predominantly French province in particular marked the first modest political victory of French Canadians (*A Canadian Challenge* [Lantzville: Oolichan Books, 1990], 66). The modesty of the gains of French Canadians leads Dufour to call for Quebec separation. See also Christian Dufour, *La rupture tranquille* (Montreal: Boréal, 1992).

49 Tully, *Strange Multiplicity*, 6.

Canada, these relations were historically marked by the legalized subordination of nonwhite people, as evidenced by the segregation of schools and other institutions for Blacks in Nova Scotia, New Brunswick, Ontario and Quebec, or the denial of the franchise to the Chinese, Japanese and South Asians in British Columbia.[50]

In addition, to imply that the presence of ethnic communities or the ethnic dimension of constitutional politics are recent phenomena indicates a narrow conception of ethnicity as the exclusive preserve of ethnic minorities. In other words, the British and French origin groups become "de-ethnicized." Given that, historically, French Canadians were, in some instances, racialized, this is problematic at best.

Minority ethnic communities faced considerable obstacles in overcoming their subordination and marginalization from Canadian legal and political institutions. The inability of the Canadian Jewish community to reverse the Canadian government's decision not to take in Jewish refugees during the 1930s and 1940s, despite campaigns and the fact that three Jewish MPs were elected in 1935, provides a graphic example.[51] It is therefore not surprising that by 1960, ethnocultural associations like the Canadian Jewish Congress were active in pursuing the entrenchment of a bill of rights in the Canadian constitution.[52]

The B and B Commission and the Victoria Conference

Ethnic discourse and social relations between ethnic communities also informed constitutional politics of the last few pre-Charter decades. The Royal Commission on Bilingualism and Biculturalism (B and B Commission), established in the early 1960s to address the conflictive relationship between Canada's "two founding nations" (French and British Canadians), acknowledged the importance of recognizing the contribution of "other" ethnic groups and Canada's multicultural heritage after considerable pressure had been exerted by organizations which represented "third force" Canadians.[53]

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50 Frances Henry, Carol Tator, Winston Mattis and Tim Rees, *The Colour of Democracy: Racism in Canadian Society* (2nd ed.; Toronto: Harcourt Brace, 2000), 69-77.

51 For a full discussion, see Irving Abella and Harold Troper, *None is Too Many: Canada and the Jews of Europe 1933-1948* (3rd ed.; Toronto: Lester, 1991).

52 Cynthia Williams, "The Changing Nature of Citizen Rights," in Alan Cairns and Cynthia Williams, eds., *Constitutionalism, Citizenship and Society in Canada* (Toronto: University of Toronto Press, 1985), 105-06.

53 See Canada, Royal Commission on Bilingualism and Biculturalism, *Report of the Royal Commission on Bilingualism and Biculturalism*, Book IV: *The Cultural Contribution of the Other Ethnic Groups* (Ottawa: Queen's Printer, 1969); and Michael Hudson, "Multiculturalism, Government Policy and Constitutional Enshrinement—A Comparative Study," in Canadian Human Rights Foundation, ed., *Multiculturalism and the Charter: A Legal Perspective* (Toronto: Carswell 1987), 63.

Following one conference in 1950, the 1960s witnessed a succession of federal-provincial conferences to address issues concerning Canada's constitution, such as the distribution of powers between the two levels of government or the introduction of an amending formula. The seventh in this series of conferences was held in 1971 in Victoria. The compromise the 11 first ministers arrived at during this conference included a (much less extensive) precursor of the 1982 Charter, an amending formula, and an expansion of federal legislative powers in the field of social policy (subject to provincial paramountcy). The compromise ultimately did not succeed because it did not sufficiently address Quebec's demands (for example, it did not provide for fiscal compensation in case a province chose not to participate in federal social policy initiatives). The compromise failed to grant Quebec enough freedom to "put its distinctive stamp on a modern set of public policies,"[54] thus limiting its power to pursue a vigorous nation-building project.

While multiculturalism did not figure directly in the 1971 Victoria compromise, it continued to be very much part of political and constitutional discourse. In 1971, Prime Minister Trudeau (in response to the recommendations made by the B and B Commission) announced his government's policy of "multiculturalism within a bilingual framework." In this way, notably, the state created a framework by which ethnic minorities could pursue state resources and recognition.[55]At the Victoria conference itself, Alberta's premier, Harry Strom, insisted on the need to recognize that "Canada is a multi-cultural country."[56] Although it should be pointed out that Strom used multiculturalism to negate the centrality of Canadian dualism, it was under his leadership in 1971 that Alberta became the first province to adopt its own version of the federal multiculturalism policy. On a similar note, shortly after the Victoria compromise had failed, the 1972 report by the parliamentary Special Joint Committee on the Constitution of Canada recommended, among other things, that the development of Canada as a bilingual and multicultural country be included as an objective in the preamble of the constitution.[57]Also in 1972, the Ukrainian Canadian

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54 Peter Russell, *Constitutional Odyssey: Can Canadians Become a Sovereign People?* (2nd ed.; Toronto: University of Toronto Press, 1993), 90.

55 Yasmeen Abu-Laban and Daiva Stasiulis, "Ethnic Pluralism Under Siege: Popular and Partisan Opposition to Multiculturalism," *Canadian Public Policy* 18 (1992), 365-86.

56 In Canada, *Constitutional Conference Proceedings, Victoria, British Columbia, June 14, 1971* (Ottawa: Information Canada, 1971), 42.

57 Canada, Parliament, Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada, *Final Report of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada* (Ottawa: Information Canada, 1972).

Professional and Business Federation held a convention in Toronto at which the issue of constitutional reform was of central concern.[58]

Entrenching the Charter

The ethnic dimension of pre-Charter constitutional politics is also apparent in the persistent efforts of ethnic minority organizations to get their concerns addressed in a charter of rights. In this context, the politics surrounding the introduction of a charter during the 1980-1982 patriation process—another round of Canada's "mega-constitutional politics"[59] prompted by Trudeau's promise (made during the 1980 referendum campaign on Quebec independence) to renew the federation—are of particular interest. Minority groups were fighting to have multiculturalism guaranteed in the constitution from the late 1970s.[60] Thus, the Ukrainian Canadian Congress (UCC) appeared before the Special Joint Committee on the Constitution of Canada in 1980 (as did other ethnic organizations). In its presentation, the UCC objected to the provisions in Section 1 of the proposed charter which allowed fundamental rights to be suspended, and argued that the constitution should in some form recognize Canada's multicultural character—either in the preamble, or by including a right for everyone to preserve and develop their cultural and linguistic heritage in Section 15 (which protected equality rights).[61]

Similar preoccupations are evident, for example, in the presentation made by the Council of National Ethnocultural Organizations of Canada (later renamed the Canadian Ethnocultural Council or CEC)[62] to the Special Joint Committee in 1980. Citing historical precedents of systemic ethnic and racial discrimination in Canada—such as the continued dispossession of First Nations members or the internment of Japanese Canadians during the Second World War—spokespersons for the CEC stated that the "history of Canada is a history of prejudice and discrimination to many of us who are of non Anglo-Saxon origin,"[63] and

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58 Michael H. Marunchak, *The Ukrainian Canadians: A History* (2nd ed.; Winnipeg: Ukrainian Academy of Arts and Sciences, 1982), 812.

59 Russell, *Constitutional Odyssey*, 75.

60 Kobayashi, "Advocacy from the Margins," 231.

61 Canada, Parliament, Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada* (Ottawa: Supply and Services, 1980), 14:54.

62 The CNEOC was founded in 1980 with support from the Secretary of State as an umbrella organization for national ethnocultural organizations. It had originally 30 member-organizations. See Leslie Pal, *Interests of State: The Politics of Language, Multiculturalism and Feminism in Canada* (Montreal: McGill-Queen's University Press, 1993), 203-09.

63 Canada, Parliament, Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada, *Minutes of Proceedings and Evidence*

emphasized the need for a constitutionally entrenched bill of rights in order to "guarantee that what happened to us will never again happen in Canada. Our plea to you is to give us the right to life, liberty and protection of security."[64] The CEC's concern with protecting minority rights prompted the organization to object to the "reasonable limits" formulation contained in Section 1 of the proposed charter, since the "very purpose of an entrenched Charter of Rights and Freedoms is to protect minorities and individuals from supposedly reasonable discriminatory actions by an emotional majority."[65] On the same note, the CEC stated that "we endorse the Charter of Rights and Freedoms because we believe that it is the best way to protect human rights in our Canadian society."[66] This, however, was not the only purpose the CEC perceived for an entrenched charter; it also argued that the Charter "should be an example to the world, a clear, candid and strong bill which would assure the present and future generations of all Canadians equality before the law, in status and in society."[67]

As noted, one assumption behind the watershed approach is that subordinate groups pursue a politics of self-interest. Thus, minority groups are commonly described in implicitly negative terms as pursuing a narrow agenda, emphasizing the concerns of a particular clientele. Unsurprisingly, this notion contains a lot of truth—unsurprisingly, because in a liberal-pluralist society, it is to be expected that diverse interest groups engage in political activity to further their own interests. However, while ethnocultural organizations are indeed largely preoccupied with their own immediate concerns, which may conflict with other social groups, they nonetheless often give forms of recognition to the concerns of other groups. At the 1980 hearings, for instance, the CEC submitted that

> we wish to indicate our support to two sectors of our society who have been consistently discriminated against. They are the handicapped and the native peoples of Canada . . . we feel that special consideration of their problems in the constitution is necessary to rectify past injustices and the certain possibility of future discrimination.[68]

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of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada (Ottawa: Supply and Services, 1980), 22:76.

64 Ibid., 77.
65 Ibid.
66 Ibid., 89.
67 Ibid., 75.
68 Ibid., 80.

The Meech Lake Accord

The failure to secure Quebec's consent to the newly patriated constitution meant that the central question of "bringing Quebec back into the Canadian constitutional family remained." As Richard Simeon has noted, a number of factors converged in 1987 to make the agreement of the 11 first ministers to the Meech Lake Accord possible. These included the commitment of the federal government of Brian Mulroney to reconciliation; the election of the Liberal government of Robert Bourassa in Quebec in 1985; and the fact that the final accord met the five conditions outlined by the Quebec government.[69] These five conditions included recognition of Quebec as a "distinct society"; greater provincial powers in immigration; a provincial role in Supreme court nominations; limits on federal spending power in areas of provincial jurisdiction; and a veto for Quebec in any future constitutional amendments to national institutions.[70]

The unraveling of this consensus, and the eventual failure of the Meech Lake Accord in 1990 is a familiar story. However, the details of the concerns of ethnic minorities for the accord are worth revisiting, because the assumption in the literature is that their primary concerns were over multiculturalism and characterized by the desire to ensure that Section 27 on multiculturalism, and to a lesser extent Section 15 on equality rights, were strengthened, or at least not weakened. It is undoubtedly the case that multiculturalism was of major concern for minorities. It should be noted in this context that in the period up to 1989, multiculturalism policy itself met with a secure consensus amongst political parties, relatively stable funding, and was actually expanding by way of legislation to create a separate department devoted to multiculturalism in the federal bureaucracy.[71] Indeed, in 1988, the government of Brian Mulroney passed the *Canadian Multiculturalism Act*, which gave multiculturalism a secure legislative basis.

Minorities were concerned about the perceived weak wording and subordinate location of the reference to Section 27 (on multiculturalism) in the Meech Lake Accord compared to English/French bilingualism, as well as the impact of recognition of Quebec as a "distinct society" for multiculturalism. For example, in a speech at the annual meeting of the National Association of Canadians of Origin in India in 1987, Anthony Parel argued that the fundamental concern of Indo-Canadians (and, by

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69 Richard Simeon, "Meech Lake and Shifting Conceptions of Canadian Federalism," *Canadian Public Policy* 14 Supplement (1988), S8-10.

70 Ibid., S9.

71 Abu-Laban and Stasiulis, "Ethnic Pluralism Under Siege," 365-86; Yasmeen Abu-Laban, "The Politics of Race and Ethnicity: Multiculturalism as a Contested Arena," in James P. Bickerton and Alain-G Gagnon, eds., *Canadian Politics* (2nd ed.; Peterborough: Broadview, 1994), 242-63.

extension, other minority groups) related to the impact the Meech Lake Accord would have on multiculturalism rather than on the "mire of purely constitutional and legal debates."[72] Parel concluded that adopting Meech Lake would be antithetical to multiculturalism,

> if you make Quebec your permanent home, become French in speech and in civic culture; if you make the rest of Canada your permanent home, become English in speech and in civic culture. Everything you want to be and everything you want to do in Canada and as Indo-Canadians would have to be built on this basic cultural and constitutional foundation.[73]

Yet, it should be noted that the experiences of distinct groups led to some different emphases when it came to multiculturalism. For instance, the National Association of Japanese Canadians (NAJC) took the position that the existing Charter and its notwithstanding clause (S. 33) that could override Section 15 did not provide the necessary protection to ensure that the enactment of the *War Measures Act* and abrogation of rights experienced by Japanese-Canadians from 1941-1949 "can never happen to another ethnic minority or any minority group."[74] Coinciding with the period in which redress was being sought for the human rights abuses suffered during internment (a process actively begun in 1977 and concluded in 1988),[75] the NAJC registered support for multiculturalism but noted that fundamental rights, while linked to multiculturalism, were not necessarily identical with it. The linkage forged was primarily the result of state handling of the Japanese-Canadian redress issue through the minister of multiculturalism, rather than the Department of Justice. As the president of the NAJC, Arthur Miki noted:

> It has been a dilemma to us, because we felt that it [redress] should have been a justice issue and dealt with in that manner. However, I think the previous government shifted it to multiculturalism for whatever reasons they deemed necessary to do that. However, we have indicated to government officials too, that somehow—there is a bridge. It is not completely out of multiculturalism because we are talking about a minority group and so on, but I think the issue itself is really a justice issue.[76]

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72 Anthony Parel, "The Meech Lake Accord and Indo-Canadians," *Canadian Ethnic Studies* 20 (1988), 129.

73 Ibid., 137.

74 Canada, Parliament, Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord, *Minutes of the Proceedings and Evidence of the Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord*, (Thursday, August 13, 1987) 7:90.

75 Audrey Kobayashi, "The Japanese-Canadian Redress Settlement and the Implications for 'Race Relations,' " *Canadian Ethnic Studies* 24 (1992), 1-6.

76 Canada, Parliament, Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord, *Minutes*, 7:96.

He further noted that while "cultural and heritage preservation" was important to his organization, language "has not been an issue that our association has been pushing."[77]

In contrast, the UCC emphasized multiculturalism in relation to nonofficial languages. The UCC's president, Thor Broda, argued that the "weakness of the accord is its failure to recognize the fact that Canada is both a multicultural and officially bilingual society. . . . In our view it is inaccurate to describe Canada just in terms of the two predominate languages spoken. Cultures cross linguistic duality."[78] Thus, while multiculturalism was clearly articulated as a concern by several groups, it was viewed in different terms by different groups, attesting to the manner in which multiculturalism had become a general framework for the pursuit of varied state resources, and recognition.

The Meech Lake episode is, therefore, instructive for it shows that the focus by minorities on multiculturalism resulted in part from the fact that multiculturalism was the framework endorsed by the state itself to deal with minority concerns. Moreover, multiculturalism was widely accepted by major political actors (including political parties) as an acceptable framework. Nonetheless, even in this climate of consensus over the validity of the multicultural framework to pursue state demands and resources, the issues of concern for minority groups went beyond the Charter, and went beyond just ethnocultural minority groups. This can be seen in the submission of the CEC, which in 1987 consisted of a coalition of 35 national ethnic organizations. In addition to questioning the perceived weakness of multiculturalism in the proposed Accord, a number of non-Charter rights issues were highlighted: affirmative action to increase minority presence in the Senate, which at the time was 15 per cent compared to the population of 33 per cent; a mechanism to assure minority presence on the Supreme Court; that the general public and Parliament have a say on matters related to changes in immigration policy; and the rigidity of the amending formula.[79]

Moreover, the concerns of ethnic minorities were not limited to issues relating to non-British/non-French/non-Aboriginal minorities. George Corn, president of the CEC stated: "Entrenching rights for one sector of society must not take place at the cost of another. That would be a dangerous precedent to set. It is important that in gaining Quebec's signature this accord not override the interests of ethnic minorities, linguistic minorities, native people or women."[80] To this end, the

77 Ibid., 7:95.
78 Ibid., 7:98.
79 Canada, Parliament, Special Joint Committee of the Senate and the House of Commons on the 1987 Constitutional Accord,*Minutes*, 7:42-44.
80 Ibid., 7:42.

CEC recommended that "representatives of the aboriginal people should be consulted to make changes to ensure that their concerns are met, especially in respect to self-government," as well as that the proposed accord not hamper the "equality of women, minorities and the disabled," and it should include a provision that nothing in it would affect the Charter rights of these groups.[81] Indeed, it is this formally stated recognition of other groups which helps explain why, at the end of August 1987, a coalition of community organizations representing ethnic and racial minorities, women, people with disabilities, unions and human rights groups could send an open letter to Canada's premiers asking for a delay in ratifying the accord to allow for public scrutiny and debate.[82] While the first ministers agreed in June 1990 to adopt an amendment after the ratification of the Meech Lake Accord to ensure that Section 28 (gender equality rights) would be secure, this was not proposed for Section 27 (multiculturalism).

The Charlottetown Accord

If the Meech Lake discussions and the accord's ultimate failure underscored the problematic character of an agreement reached by first ministers, the process leading to the Charlottetown accord reflected a major difference in process: notably its widespread public consultation which culminated in a national referendum in October 1992. At the same time, and in contrast to Meech Lake, more overt opposition to multiculturalism marked this constitutional process. This became evident with the release of the report of the Citizens' Forum on Canada's Future (the Spicer Commission) in June 1991, which based its recommendations on the views of a purported 400,000 groups and individuals. The Spicer Commission argued that "federal government funding for multiculturalism activities other than those serving immigrant orientation, reduction of racial discrimination and the promotion of equality should be eliminated, and the public funds saved be applied to these areas."[83] The trashing of spending on cultural maintenance by the Spicer Commission signifies the more vocal opposition to the policy and symbolism of multiculturalism voiced by academics, political parties and members of the general public by the 1990s, as well as shifts in state policy.[84]

In September 1991, the Mulroney government released a set of pro-

81 Ibid., 7:42-43.

82 Kallen, "The Meech Lake Accord," S117.

83 Canada, Citizens' Forum on Canada's Future, *Report to the People and Government of Canada* (Ottawa: Minister of Supply and Services Canada, 1991), 370.

84 Abu-Laban and Stasiulis, "Ethnic Pluralism under Siege," 365-86; Abu-Laban, "The Politics of Race and Ethnicity," 242-63.

posals to govern constitutional amendment entitled *Shaping Canada's Future Together*. This document contained no specific mention of multiculturalism, even in the proposed Canada Clause which was to be a statement of "who we are and what we value as a people."[85] It is interesting to note that leaders in the CEC responded initially with a sense that there was a need to make the proposed Canada Clause even more "Canadian" with the addition of several symbols which went beyond multiculturalism:

> We want to think about whether there are ways in which the Canadian flag and the national anthem can be mentioned or entrenched. We want to look at whether other mechanisms that keep us in contact with each other, such as our national broadcasting system, telecommunications, transportation and postal systems, should be entrenched or talked about in the Constitution. Similarly, the values in terms of the policies we have, such as accessible and affordable education, health care and old age security, are things that make Canada unique. We want to talk about whether these things that can be included in what we call an even more Canadian Canada clause.[86]

Overall, the CEC's final brief was couched in terms of a desire for a broadly based inclusive recognition of diverse collectivities. Thus the CEC held that in "this *Canada Round* of constitutional development, it is our hope that the interests of all Canadians will be responded to. We would be most concerned of [sic] any substantial group is 'left out' this time."[87]

It is clear that the Canadian Ethnocultural Council and some of its member associations were concerned about the absence of multiculturalism from the proposed Canada Clause. The CEC argued that it supported a "Canada clause somewhat like the one suggested in the government's proposal, but a tightened up version that would mention 'multiculturalism' or 'multicultural nature.' "[88] The sentiment that multiculturalism ought to be recognized in the Canada Clause was echoed by the National Association of Japanese Canadians, the Hellenic Canadian Congress, the National Congress of Italian Canadians, the

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85 See Canada, *Shaping Canada's Future Together: Proposals* (Ottawa: Minister of Supply and Services, 1991).

86 Andrew Cardozo, as cited in Canada, Parliament, Special Joint Committee of the Senate and of the House of Commons on a Renewed Canada, *Minutes of the Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on a Renewed Canada* (October 31, 1991), 14:6.

87 Canadian Ethnocultural Council, *Canada for all Canadians: Building a Strong Canada Through Respect for Diversity*, Submission to the House of Commons and Senate Special Joint Committee on a Renewed Canada (February 1992), 1; emphasis in original.

88 Ibid., 2.

Canadian Jewish Congress and the German-Canadian Congress.[89] The CEC held that the Canada Clause should contain a recognition of Canada's multicultural nature; two linguistic majorities and minorities; Quebec as a distinct society; Aboriginal Peoples; and the equality of women and men.[90] One of the assumptions in the watershed approach is that in the post-Charter period subordinate groups vie with each other and with dominant groups for recognition. This is verified by what happened during Charlottetown, where there was considerable division within and among political parties and dominant and subordinate groups in the referendum process. At the same time, however, as the CEC's stated position suggests, even in this period social relations were not exclusively conflictive, and contained at least the potential for mutual forms of recognition.

The constitutional concerns of the CEC also covered a number of specific issues unrelated to Section 27, including Senate reform, the division of powers between the federal government and the provinces, the social charter, and Aboriginal rights. For example, the CEC argued that Senate reform must incorporate the ideas of being reflective of the population, effective and elected (for example, through proportional representation).[91] In particular, the CEC emphasized that the Senate should better reflect the diversity of Canadians in terms of region, cultural origin, linguistic group, gender and Aboriginal peoples.[92] In addition, revealing internal debates on the desirability of devolution of powers to the provinces, the CEC supported "the rationalization of our political institutions" and stated that "the test for deciding on jurisdiction should be efficiency, effectiveness and responsiveness to the people concerned."[93] It supported the idea that a "new 'Statement of Canadian Principles' or 'Social Charter' be included in the constitution outlining the policies that define the basic socio-economic standards all Canadians can expect, which would include such policies as health care, old age security, housing, accessible and affordable education."[94] And, as with Meech Lake, the CEC endorsed recognition of Aboriginal peoples' right to self government "on an urgent basis and call[ed] for the matter to be settled in an appropriate manner such a [sic] conferences between governments and the Aboriginal Peoples."[95] The CEC position on Aboriginal peoples was reiterated and amplified in a sepa-

89 Ibid., 3.
90 Ibid., 2.
91 Ibid., 6.
92 Ibid., 5.
93 Ibid., 9.
94 Ibid., 10.
95 Ibid., 11.

rate submission to the Royal Commission on Aboriginal Peoples in 1993.[96]

Despite the evident concern of the CEC for explicit recognition of multiculturalism in the constitutional amendment, and its endorsement of the parliamentary Special Joint Committee's (the Beaudoin-Dobbie Committee) proposed Canada Clause giving "recognition of the irreplaceable value of our multicultural heritage,"[97] the Charlottetown Accord did not meet their goals. While the Charlottetown Accord (agreed to by first ministers, territorial and Aboriginal leaders in August 1992) gave the Canada Clause a more expansive role as an interpretive clause for the entire constitution, including the Charter, it did not include a reference to multiculturalism. Instead, it simply reiterated the ethnic/racial equality rights of Section 15 by holding that "Canadians are committed to racial and ethnic equality in a society that includes citizens from many lands who have contributed, and continue to contribute to the building of a strong Canada that reflects its cultural and racial diversity."[98] Equality rights are significant, but multiculturalism's absence is relevant, given that it relates to the symbolic order, that ethnocultural groups wanted it included and that it offers a discourse that can potentially augment collective, not just individual, rights. Despite the absence of multiculturalism from the Accord, it won the support of the CEC whose then-president, Dmytro Cipywnyk, argued that "our bottom line is to keep Canada united."[99]

Though the Charlottetown Accord was rejected by a majority of Canadians voting in the referendum on October 26, 1992, this part of the constitutional story illustrates that the Charter recognition of minority groups via Section 27 did not cement their presence or their power in the constitutional representation of Canada. Despite the relatively more open and consultative process of Charlottetown as compared to Meech Lake, multiculturalism was actually absent from the wording of the Charlottetown Accord. The subsequent support given the

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96 Specifically, the CEC (1) called for recognition that Aboriginal Peoples have an "inherent right" to self-government; asked that (2) the issue of self-government be given the highest priority and resolved as soon as possible; and that (3) the national Aboriginal organizations including the Native Women of Canada and hereditary chiefs be included in any future constitutional meetings of first ministers. See Canadian Ethnocultural Council, *In Support of the Aspirations of Aboriginal Peoples*, Submission to the Royal Commission on Aboriginal Peoples (August 1993), 2.

97 Canada, Parliament, Special Joint Committee on a Renewed Canada, *Report of the Special Joint Committee on a Renewed Canada* (Ottawa: Queen's Printer, 1992), 24.

98 Canada, First Ministers and Aboriginal and Territorial Leaders, Charlottetown. *The Charlottetown Accord—Draft Legal Text* (October 9, 1992).

99 Canadian Ethnocultural Council, *Ethno Canada*14 (1992), 1.

Accord by the CEC in the absence of a strengthening of Charter rights suggests that the concerns of minorities not only went beyond Section 27, but beyond constitutional self-interest.

Post-Charlottetown and The Calgary Declaration

While not a formal constitutional accord, the Calgary Declaration (which can be read as a response to the 1995 Quebec referendum on sovereignty) contained seven principles for discussion agreed to by the nine provincial premiers outside Quebec and the territorial leaders in September 1997. These principles included the idea that there is a "unique character of Quebec society," and that "Canada's gift of diversity includes aboriginal peoples and cultures, the vitality of the English and French languages, and a multicultural citizenry drawn from all parts of the world."[100] These principles have not always garnered popular support. For example, focus group surveys, along with written submissions and telephone responses from British Columbia, suggest that both multiculturalism and Quebec being identified as unique were resisted by many British Columbians. This was typified by one focus group participant who stated "there is too much emphasis in this country about multiculturalism and multi.... and not enough emphasis on just being a good old Canuck."[101] Although the findings of survey data on multiculturalism vary greatly depending on the questions asked, given its absence from the Charlottetown text, it seems unlikely that multiculturalism will be strengthened in any renewed constitutional effort.

Nonetheless, the Canadian Ethnocultural Council and many ethnocultural group leaders continue to support multiculturalism within a bilingual framework. In October 1997, the CEC produced "Canadian Unity and Identity—The Advantages of Diversity," based on roundtable discussions among members of ethnocultural minority groups and multicultural organizations in Toronto, Vancouver, Winnipeg and Montreal. Members of the roundtable argued for "reinforcement" of "an inclusive pan-Canadian identity and unity," and "reciprocity" by which there would be "an acknowledgment of distinctness of diverse cultures."[102] According to the CEC, "diversity is at the centre of our national identity," and "ethnocultural groups recognized the need to alleviate Quebec's feelings of estrangement by promoting a reciprocal understanding between Quebecers and other Canadians."[103]

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100 British Columbia, B.C.'s Unity Talks, *Appendices: Report on the Calgary Declaration* (1998), 17-18.

101 Ibid., 18.

102 Canadian Ethnocultural Council, *Canadian Unity and Identity-The Advantages of Diversity* (Ottawa: 1997), 5.

103 Ibid., 5, 8.

The period from 1993 to 2000 was not secure for multiculturalism. In 1993, the outgoing Conservative government disbanded the separate Department of Multiculturalism and Citizenship—a move favoured by the Liberals, who shifted multiculturalism into the Department of Canadian Heritage. The Liberal government of Jean Chrétien in its first mandate (1993-1997) launched a major strategic review of multiculturalism, and in October 1996 announced a renewed multiculturalism programme emphasizing the themes of "identity," "civic participation" and "social justice."[104] In this context, the new programme sought to "foster a society that recognizes, respects and reflects a diversity of cultures such that people of all backgrounds feel a sense of belonging and attachment to Canada."[105] The CEC criticized the new programme for its perceived withdrawal of support for cultural identity as contained in the 1988 *Canadian Multiculturalism Act*,[106] and argued that social justice, multiculturalism and equality are compromised by increasingly insufficient levels of federal funding.[107]

Quebec has still not formally agreed to the constitutional amendments of 1982; and the Supreme Court ruling in August 1998 on the secession of Quebec is sufficiently nuanced as likely to bring some form of constitutional debate back to the forefront of Canadian politics,[108] but the role of ethnic minorities in constitutional discussions is uncertain. Although constitutional discourse surrounded ethnicity prior to the *Constitution Act, 1867*, and multiculturalism since the 1970s, it is not inevitable that multiculturalism will be part of any constitutional amendments, nor is it clear that the power of racial and ethnic minorities has increased in constitutional politics. Indeed, given the budget cutbacks to multiculturalism, the changes wrought in the federal multiculturalism programme that emphasize "attachment to Canada," and the general decline of multiculturalism as an area of state priority, the future of the multicultural ethos seems to rest at least as much in the domain of state and social forces as with the provisions of Section 27 of the Charter.

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104 Yasmeen Abu-Laban, "welcome/STAY OUT: The Contradiction of Canadian Integration and Immigration Policies at the Millennium," *Canadian Ethnic Studies* 30 (1998), 203.

105 Canada, Department of Canadian Heritage, *Multiculturalism: Program Guidelines* (April 1997), 1.

106 Canadian Ethnocultural Council, *Multiculturalism, Citizenship and the Canadian Nation: A Critique of the Proposed Design for Program Renewal*, (Ottawa, 1997), 5.

107 Ibid., 7.

108 David Schneiderman, "Introduction," in David Schneiderman, ed., *The Quebec Decision* (Toronto: James Lorimer, 1999), 13.

Explaining Ethnic Minorities and Constitutional Politics

Political scientists traditionally have ignored questions of race and ethnicity, and have not been heavily represented in the development of ethnic studies in Canada. This has consequences for the discipline. In examining the existing empirical discussions of ethnic minorities and constitutional politics within Canadian political science, we have identified key assumptions lying behind what we call the watershed approach to minorities and the constitution that do not stand up to empirical or historical analysis. Contrary to these assumptions, the entrenchment of the Canadian Charter of Rights and Freedoms in 1982 did not ethnicize a previously ethnically neutral constitutional discourse, or create "ethnic constitutional actors." Indeed, before the entrenchment of the Charter, minority ethnic collectivities sought to gain recognition for multiculturalism in a constitutionally entrenched charter. While the Charter granted constitutional standing to ethnic minorities through multiculturalism, it is questionable whether this actually produced an increase in political power for ethnic minorities. In fact, as a totality, the discussion of post-Charter constitutional politics suggests that the Charter has certainly not cemented and increased ethnic minority power when it comes to the pursuit of collective recognition.

What explains our findings on ethnic minorities, the constitution and politics in Canada? Primarily, we suggest that many of the inaccuracies associated with the watershed approach result from a lack of historical depth: the attention paid to pre-Charter relations between ethnic minorities and the constitution is scarce at best. However, as Philip Abrams has suggested, any explanation of social phenomena necessarily needs to proceed historically.[109] A greater accent on history permits the development of a more differentiated view of the relation between ethnicity and the Canadian constitution. Thus we suggest that a greater emphasis on time is central to explaining the shifting position of ethnic minorities in Canadian constitutional politics.

Drawing on history is useful, first, for enabling the incorporation of an examination of Canada as a "white settler society" into one's understanding of ethnicity and the constitution. In fact, the superordinate position of British-origin settlers, in relation to French, Aboriginal and other ethnic groups, was etched into state institutions and symbolism early on.[110] In particular, we would stress the fact that Cana-

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109 Philip Abrams, *Historical Sociology* (Ithaca: Cornell University Press, 1982).

110 For a historical discussion of the development of Canada as a white settler society, and its implications for social power relations, see Daiva Stasiulis and Radha Jhappan, "The Fractious Politics of a Settler Society: Canada," in Daiva Stasiulis and Nira Yuval-Davis, eds., *Unsettling Settler Societies: Articulations of Gender, Race, Ethnicity and Class* (London: Sage, 1995), 95-131.

dian constitutional politics, by virtue of operating in the context of a white settler society characterized by power differentials among ethnic, racial and other groups, has always been subsumed by ethnicity—sometimes by design, sometimes inadvertently. In other words, any analysis of constitutional politics must take into account the social context which stems from Canada's colonial legacy in order to understand the significance of the presence or absence of specific constitutional stipulations.

A greater sensitivity to the historical dimension of constitutional politics further facilitates a re-evaluation of the relative importance of the state, and of social relations of power, in defining the role of ethnicity in the constitution and in constitutional politics. Assumptions guiding the watershed approach place much emphasis on the Charter as a central factor in this respect. However, greater attention to the temporal dimension of constitutional politics suggests that the importance of the constitution might have been overrated. Rather than being a decisive factor in itself, constitutional politics can be interpreted as a reflection or manifestation of the broader ongoing development of conflict and forms of recognition between ethnic minorities and other social groups (including British-and French-origin Canadians). In this development, the state itself plays a role through its policies and nonpolicies.[111]

The importance of the state in defining the role of ethnicity in general and in constitutional politics in particular is readily apparent, for example, in the origins of Canada's multiculturalism policy. The policy of multiculturalism within a bilingual framework marked an important symbolic turning point from state policies which at best minimally accommodated the so-called French fact but typically stressed Anglo-conformity.[112] Indeed, minority leaders have generally accepted the multicultural and bilingual framework. This framework, as articulated initially by Prime Minister Trudeau and manifested subsequently in state policy and funding to minority ethnic groups, structured minority activity prior to the Charter.[113] In fact, the fate of many minority ethnic associations, including the Canadian Ethnocultural

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111 While the importance of situating the constitution in relation to state and society has been recognized by Alan Cairns in some of his writings, our position differs in that we see the state itself as important in shaping ethnic relations through its policies and nonpolicies. See Alan Cairns, *Charter versus Federalism*, 99-100.

112 Abu-Laban and Stasiulis, "Ethnic Pluralism Under Siege," 365.

113 For different accounts of the implications of state funding in relation to ethnic minorities, see Daiva K. Stasiulis, "The Political Structuring of Ethnic Community Action: A Reformulation," *Canadian Ethnic Studies* 21(1980) and Leslie Pal, *Interests of State*.

Council, is directly tied to multiculturalism policy.[114] As well, and perhaps more importantly, multiculturalism was the product of a particular juncture of Canadian politics, characterized by state intervention in society and high state spending. In many ways the account we give of ethnic minorities and constitutional politics over the 1980s and 1990s suggests that the political space to pursue an expanding agenda based on multiculturalism reached its zenith in the 1980s (especially with the inclusion of Section 27 on multiculturalism in the Charter) and began to wane by the 1990s.[115] Notably, in the 1980s there was secure consensus amongst the main political parties of the time (the Liberals, the New Democrats and the Progressive Conservatives) as well as ethnic minority leaders, that multiculturalism was the appropriate framework to pursue state resources and recognition.[116]

The demise of the postwar Keynesian consensus and the ascendancy of neo-liberalism have fundamentally altered ideas of the proper role of the state in society; the return of the minimalist state challenges the very foundations of multiculturalism as a policy, as well as having implications for how marginalized social groups mobilize and influence the political process.[117] Although many Quebec politicians and academics have been critical of multiculturalism since its inception for its perceived weakening of the claims of French Quebeckers for recognition, in the late 1980s and 1990s criticisms against multiculturalism became more vociferous outside Quebec. This vigorous and sustained attack was seen in the writings of some academics, as well as in the critical stance adopted towards multiculturalism for its perceived divisiveness and for requiring state spending on "private" matters of ethnicity by the Reform party, and by some well-known members of minority groups such as novelist Neil Bissoondath.[118] This helps us understand the relative ease with which explicit discussion of multiculturalism was left out of the Charlottetown Accord; it was also in the 1990s that multiculturalism began to receive less funding and de-emphasize cultural preservation and the arts. In fact, as noted, by the 1993 federal election both the outgoing Conservatives of Kim Camp-

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114 Kobayashi, "Advocacy from the Margins," 229-61.

115 Abu-Laban, "The Politics of Race and Ethnicity," 242-63; and Kobayashi, "Advocacy from the Margins," 229-61.

116 Abu-Laban and Stasiulis, "Ethnic Pluralism Under Siege," 366.

117 For a discussion of how neo-liberalism is challenging the women's movement, see Janine Brodie, *Politics at the Margins: Restructuring and the Canadian Women's Movement* (Halifax: Fernwood, 1995).

118 See Reginald Bibby, *Mosaic Madness: The Poverty and Potential of Life in Canada* (Toronto: Stoddart, 1990) for an academic critique based on survey data. See also Neil Bissoondath, *Selling Illusions: The Cult of Multiculturalism in Canada* (Toronto: Penguin, 1994); and Reform Party of Canada, "Blue Sheet: Principles and Policies of the Reform Party of Canada," (1996-1997).

bell and the incoming Liberals of Jean Chrétien actually opted to disband the Department of Multiculturalism and Citizenship—a move that was in keeping with the shifting positions of the traditional political parties in light of the influence of the Reform party.[119] More broadly, as Audrey Kobayashi observes, the CEC, with its commitment to multiculturalism, has "to a significant degree lost sympathy in Ottawa."[120]

Given these observations, it seems most accurate to describe the constitutional recognition granted multiculturalism in Section 27 of the Canadian Charter of Rights and Freedoms as one outcome of an episode of conflict and recognition in which the strong support of the state and the main political parties shifted the balance of power in favour of ethnic minority demands. By the time of the Charlottetown Accord and in the post-Charlottetown period, however, state support for multiculturalism clearly wavered, and a combination of forces led to attacks on the policy and on its symbolism.

Conclusion

This article has demonstrated the failure of much of the existing constitutional literature to explain adequately the relation among ethnic minorities, politics and the Canadian constitution. In tracing the ebb and flow of gains, losses and demands of minorities in constitutional politics in Canada, we suggest that the future relationship between constitutional politics and ethnicity, far from being influenced by the entrenchment of the Charter per se, will be contingent on how a number of factors influencing state-society relations and relations between ethnic groups will develop and interact. We briefly conclude with a by-no-means exhaustive list of factors which political scientists might consider in future analyses of the constitution, minorities and politics in Canada. These factors include, first, the current critiques of multiculturalism both as ideology and public policy and their implications for the status of ethnic minorities. Second, the ascendancy of neo-liberal distinctions between public and private realms which firmly locate ethnicity in the latter and thus delegitimize state intervention. Third, the fact that the concerns articulated by ethnic minorities—as the record of the two post-Charter decades illustrates—are not necessarily present in proposed constitutional amendments is significant. And, fourth, the processes of state retrenchment which undercut state intervention in areas crucial to ethnic relations and identity.

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119 Abu-Laban and Stasiulis, "Ethnic Pluralism Under Siege," 372-76.
120 Kobayashi, "Advocacy from the Margins," 252.

A fifth factor which needs to be considered is the impossibility of state neutrality where issues of culture and ethnicity are concerned. Many state actions have significant cultural implications—most clearly in, but certainly not limited to, those actions which are explicitly designated "cultural policy." Relegating issues of culture and ethnicity to the "private sphere" would not eliminate the ethnic and cultural implications of state actions. In essence, nonintervention of the state in issues of cultural relations represents a decision to leave the various cultural groups to their own resources in defining their relative position in society, preserving their identity and structuring their relationships. Since resources are typically unevenly distributed among groups, nonintervention effectively gives advantage to the dominant social group(s).[121]

Sixth, one would need to take into account the de-territorialized character of ethnic minority groups and its implications for the political capital these groups can command to influence the political process. In this context, the fact that ethnic minorities in Canada are geographically dispersed and do not control state apparatuses of their own may well mean that the extent and nature of state activity is relatively more important for their status than for ethnic collectivities which, in one sense or another, seek or have achieved self-government or self-administration.

A final factor which should be considered is the development of political struggles and the formation and transformation of coalitions among ethnic minorities, and among them and other social groups. As this article has demonstrated, the relations among different ethnic minority groups and other social groups are neither static nor only conflictive. We do not underestimate the potential for, and existence of, conflict among ethnic minorities and other collectivities. However, we have identified and focused on the way in which minority groups engage in forms of mutual recognition. This provides a counterweight to much of the existing literature. For example, in discussing the relationship between multiculturalism and dualism, many political scientists focus almost exclusively on its conflictive aspects.[122] Yet, ethnocultural minorities have been supportive of some form of recognition for Quebec, and self-government for Aboriginal peoples. James Tully has noted that demands for recognition by distinct cultural groups are

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121 For a discussion on culture and state neutrality, see Tim Nieguth, "Privilege or Recognition: The Myth of State Neutrality," *Critical Review of International Social and Political Philosophy* 2 (1999), 112-31.

122 See, for example, Kenneth McRoberts, *Misconceiving Canada: The Struggle for National Unity* (Toronto: Oxford University Press, 1997), 135; and David Bell, *The Roots of Disunity: A Study of Canadian Political Culture* (rev. ed., Toronto: Oxford University Press, 1992), 74.

based on a shared sense of longing for self-rule and a sense that the status quo is unjust.[123] The forms of recognition among groups at particular socio-historical junctures is dependent on the dynamic of social power relations, on political discourse and on the role of the state. In this context, it is open whether recognition is superficial, meaningful, unilateral or mutual.

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123 Tully, *Strange Multiplicity*, 4-5.