

Multiculturalism and the Canadian Charter of Rights and Freedoms

Varun Uberoi

University of Oxford

Section 27 of the Canadian Charter of Rights and Freedoms states: ‘This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians’, and we know surprisingly little about why the Canadian Federal Government agreed to insert it in the Charter and how this occurred. In this article I will use new historical evidence to explain both these things and I proceed in three stages. Firstly, I explain why the Canadian Federal Government agreed to include what became Section 27 in the Canadian Charter. Secondly, I explain how it was actually included. I then conclude the article by explaining why the evidence in it not only explains why and how Section 27 was included in the Charter; it also increases the possibility that a largely unsubstantiated claim made by certain prominent scholars is true. The claim is that the Canadian Federal Government’s policy of multiculturalism was used to shape the Canadian national identity.

The Canadian Federal Government’s (CFG’s) policy of multiculturalism has recently attracted attention from some of the most prominent scholars in the world. Nobel Laureate Amartya Sen claims that multiculturalism began with the CFG’s policy (Sen, 2006). Anthony Giddens claims that multiculturalism is misunderstood and an accurate understanding of it can be obtained by examining the CFG’s policy (Giddens, 2006). Bhikhu Parekh claims that aspects of the CFG’s policy can be effective in Britain (Parekh, 2000). Tariq Modood uses the CFG’s policy as an example of what he believes multiculturalism is (Modood, 2007). Attention from such luminaries causes us to ask what we actually know about the CFG’s policy of multiculturalism and when we do so, we are forced to admit that there are gaps in our knowledge.

For example, we know something about the historical antecedents of the CFG’s policy of multiculturalism and a limited amount about the role that this policy played in debates about Quebec secession (Joshee, 1995; Palmer, 1988; McRoberts, 1997; Webber, 1994). However, we know surprisingly little about why the CFG agreed to insert Section 27 (a clause about Canada’s multicultural heritage) in its Charter of Rights and Freedoms and how this occurred.¹ Equally, we know surprisingly little about why the CFG introduced a Multiculturalism Act and how this Act was created. Further, we know surprisingly little about why the CFG created a Department of Citizenship and Multiculturalism and how it did so. These are among the many gaps in our knowledge about aspects of the CFG’s policy of multiculturalism; they exist because these aspects of the CFG’s policy of

multiculturalism are like aspects of any relatively recent government policy: there is only so much information about them that is in the public domain.

For sure, some of what the CFG did to create these aspects of its policy has been placed in the public domain and can be found in parliamentary debates, government statements, White Papers, newspaper articles, transcripts of speeches and so on. Equally, most of the documents that indicate what pressure political activists, civil society groups and others put on the CFG are in the public domain. Yet there is also a great deal of information about these aspects of the CFG's policy that is not in the public domain. Such information is not in the public domain because the CFG has not placed it there and this information relates to what the CFG did to create these aspects of their policy of multiculturalism; when, how and why they did it. The documents that will reveal this information are the *internal* government memoranda, correspondence between ministers and civil servants, minutes of meetings between ministers and civil servants, Cabinet minutes and so on. But as the vast majority of such documents have not been declassified they are seemingly unavailable to us. The gaps in our knowledge that I have referred to must seem, then, as if they can only be partially filled by what we can discern from the documents that are in the public domain.

However, this is not the case. The CFG, various former Cabinet Ministers and their advisers have given me unfettered access to the documents that can help us more adequately to fill these gaps in our knowledge. Equally, many of the former Cabinet Ministers and civil servants who helped to create these aspects of the CFG's policy agreed to be interviewed, thus enabling me to augment my documentary data with interview data. Hence, using new historical evidence, this article will help to fill the first of the gaps listed above. It will help to explain why the CFG agreed to include Section 27 in the Canadian Charter of Rights and Freedoms and how this occurred.

Indeed, Section 27 states: 'This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians', and explaining why the CFG agreed to include it and how this occurred is important for both specific and general reasons. Looking at the specific first, as discussed, such an explanation will help to fill one of many gaps in our knowledge about aspects of the CFG's policy of multiculturalism. Equally, explaining why the CFG agreed to include Section 27 in the Charter and how this occurred will correct a view held by many in which it is claimed that the CFG agreed to include Section 27 because it was lobbied to do so by those who claimed to represent Canadians of neither British nor French origin (Abu-Laban and Gabriel, 2002, p. 110; Chrétien, 2000, p. 342; Tarnopolsky, 1982, p. 440; Tully, 1997, pp. 176–7). As I will show, other factors also helped to ensure that Section 27 was included in the Charter.

Turning to the general, by explaining why the CFG agreed to include Section 27 in the Charter and how this occurred we *also* reveal evidence that increases the

possibility that an unsubstantiated claim made by certain prominent scholars is true. The claim is that the CFG's policy of multiculturalism was used to shape the Canadian national identity (Joppke, 2004, p. 245; Kymlicka, 2003b, p. 1; Modood, 2007, p. 147). Indeed, as the scholars who make this empirical claim offer little or no empirical evidence to support it, their claim is likely to be criticised or ignored. This is especially because policies of multiculturalism are often thought to undermine national identities, not shape them (Bissoondath, 1994, p. 71, p. 77; Cable, 2005, p. 47; Cameron, 2007; Gwyn, 1995, pp. 195–6; Pal, 1995, p. 256; Phillips, 2006, p. 113). But by explaining why and how Section 27 was inserted into the Charter, we find evidence which increases the possibility that the CFG's policy of multiculturalism was indeed used to shape the Canadian national identity.

In this article then I will try to explain why the CFG agreed to include Section 27 in the Charter and how the latter occurred. I will proceed in three stages. Firstly, I will examine why the CFG agreed to include a reference to the multicultural nature of Canada in the Canadian Constitution. Secondly, I will explain what factors enabled the inclusion of Section 27 in the Charter. Thirdly, I will conclude the article by showing that the evidence in it not only explains why the CFG agreed to insert Section 27 into the Charter and how this occurred, but also increases the possibility that it is true to claim that the CFG's policy of multiculturalism was used to shape the Canadian national identity.

A Reference to the Multicultural Nature of Canada

Before I begin this section, there are two points to note. Firstly, in this Section I deliberately do not focus on Section 27 itself but on why the CFG committed itself to include a reference to the multicultural nature of Canada in the Constitution. This is because Section 27 was simply the way in which the CFG honoured its commitment to include such a reference.

Secondly, it is also important to note that including a constitutional reference to the multicultural nature of Canada was a small part of a broad process of constitutional renewal. This process had many components and one of the most important was patriating the Canadian Constitution. As Alan Cairns observes, 'like all nationalist minded' Canadian prime ministers, Pierre Elliot Trudeau wanted to patriate the Canadian Constitution (Cairns, 1995, p. 68). This is because it was still a British Act of Parliament that could be changed by the latter. Trudeau also insisted on devising a Charter of Rights and Freedoms that would codify the rights of Canadians and describe what it meant to be Canadian (Trudeau, 1993, p. 323). Further, at the request of Quebec and the Western provinces, the redistribution of federal/provincial governmental powers was also being discussed.² In short, including a constitutional reference to the multicultural nature of Canada was a small part of a broad process of constitutional renewal.

With these points in mind, we can begin to explain why the CFG agreed to include a constitutional reference to the multicultural nature of Canada by noting

that three factors made them do so. The first was a growing acceptance of the multicultural nature of Canada among members of the Canadian political elite (outside Quebec) and this included the CFG. By the Canadian political elite, I mean simply politicians, intellectuals, leaders of civil society organisations and so on and until the 1960s most of these people saw Canada as a 'Britain of the North' (Mackey, 2002, p. 30; see also Abu-Laban and Gabriel, 2002, p. 109; Kymlicka, 2003a, p. 376). However, such a conception of Canada obviously excluded the Québécois who are of French, not British, origin. Equally, it disregarded a belief held by many in Quebec that Canada was the product of 'two founding races' (Gagnon and Iacovino, 2007, p. 103, emphasis added; McRoberts, 1997, p. 40). Some in the CFG feared that such exclusion and disregard was encouraging the separatist movement in Quebec; thus in July 1963 the CFG established a Royal Commission on Bilingualism and Biculturalism. This Commission would, *inter alia*, show how to 'develop the Canadian Confederation on the basis of an equal partnership between the two founding races'; hence to many it seemed that one exclusive understanding of Canada was being traded for another (Innis, 1973). After all, Canada would go from a 'Britain of the North' to a 'bilingual and bicultural' nation. But unless they assimilated, a bicultural conception of Canada excluded approximately 30 per cent of Canadians whose ancestors were from neither Britain nor France. Those who claimed to represent these Canadians refused either to assimilate or be excluded, hence they argued that Canada's nature was not bicultural, it was multicultural.

The Ukrainian Canadian Committee's submission to the Royal Commission on Bilingualism and Biculturalism illustrates the point well. 'We recommend that the terms of reference of the Commission on Bilingualism and Biculturalism be reviewed even at this late date, and incorporate them in a positive statement recognizing the multi-racial, multi-lingual and multicultural complexion of our country' (Ukrainian Canadian Committee, 1964, p. 4). Equally, consider Senator Yusyk's maiden speech in the Senate:

The word 'bi-cultural'... is a misnomer. In reality Canada was never bi-cultural; the Indians and Eskimos have been with us throughout our history; the British group is multicultural – English, Scots, Irish and Welsh; and with the settling of other ethnic groups, which now make up almost one third of the population, Canada has become multicultural in fact (Senate Debates, 3 March 1964).

However, by the 1970s it was not just those who claimed to represent Canadians of neither British nor French descent who claimed that Canada's nature was multicultural. Other members of Canada's political elite did so as well, including the CFG. Hence, Pierre Elliot Trudeau, then prime minister of Canada, claimed at a Citizenship Day Fair in June 1970, 'Sometimes the word "biculturalism" is used, but I don't think that it accurately describes this country. I prefer "multiculturalism" ' (Cab. Doc. 864-71, 1971).

But only a few years earlier the CFG seemed convinced of the bicultural nature of Canada, so what made them accept the multicultural nature of Canada? The

CFG is likely to have had many reasons. For example, the latter may have been the only accurate conception of Canada that was available as approximately 30 per cent of Canadians possessed neither British nor French ancestry (Breton *et al.*, 1986, p. 35; Fleras and Elliot, 1992, pp. 71–72). Equally, the CFG may have accepted the multicultural nature of Canada to undermine the Québécois claim to a ‘special status’ in Canada. This is because if Canada’s nature was multicultural and not bicultural, then the Québécois were just one of many cultural groups in Canada (Bourassa, 1971; Lévesque and Chaiton, 1977, p. 178; McRoberts, 1997; Ryan, 1971). I do not discount these and many other potential reasons (Abu-Laban, 1999). However, I cannot examine them all because I would need a separate paper to do so.

But at least one reason why the CFG accepted the multicultural nature of Canada was that, by the 1970s, they were trying to cultivate a national identity that would be meaningful to all Canadians, not just those of British or French descent. Hence on 7 April 1970 the following was said in a Cabinet document: ‘If a *meaningful Canadian consciousness* is to evolve, a series of imaginative programmes which recognize the various publics of this country: children and families, young people, rich and poor, citizens and immigrants, ethnic minorities or charter groups etc. will have to be developed’ (Cab. Doc. 440-70, 1970, emphasis added). Indeed, one such ‘imaginative programme’ was the CFG’s policy of multiculturalism. Introduced in October 1971, the policy of multiculturalism was the CFG’s most significant acceptance of the multicultural nature of Canada yet. It is notable then that one reason for introducing this policy was the hope that it would cultivate a national identity that was meaningful to all Canadians. Thus the policy of multiculturalism was partly justified to members of the Cabinet by claiming that it would serve the CFG’s new Citizenship Objectives, one of which was ‘developing the Canadian identity’ (Cab. Doc. 864-71, 1971). Equally, when the policy of multiculturalism was discussed in Cabinet committee, one of the ministers who proposed it, Robert Stanbury, ‘noted the importance and major significance of the policy as a new concept of the presentation of Canadianism’ (Cab. Doc. 981-71, 1971). Stanbury’s claims were echoed by the Minister of Supply and Services, James Richardson, who claimed that the policy would be ‘a unifying force to build a strong Canadian identity’ (Cab. Doc. 981-71, 1971). As the CFG wanted to create a national identity that was meaningful to all Canadians, it had a reason to join certain other members of Canada’s political elite, and accept the multicultural nature of Canada.

This brings me to the second factor that made the CFG agree to include a constitutional reference to the multicultural nature of Canada: as the CFG accepted the multicultural nature of Canada, they were willing to include references to it in parts of the Constitution that were being used to describe what Canada was and what it should be. It might seem odd that parts of the Constitution were being used for this purpose. But the 1972 report of the Joint Committee of the Senate and the House of Commons on the Constitution of

Canada helps to explain why (JCSH, 1972). This is because in this report the preamble to a new constitution was described as ‘the only place ... where we can state in broad language what kind of a country Canada is and what it aspires to be’. Indeed, by containing such a statement, the preamble would ‘play an important role as a source of inspiration’ that ‘could have a greater psychological value for citizens than any other part of the document’ (Bayefsky, 1987, pp. 233–4). It was thought that if the Canadian Constitution contained a description of what Canada was and what it should be, it would inspire Canadians and help to explain what it meant to be Canadian.

Hence the CFG designated parts of its constitutional package for the description of what Canada was and what it should be and as it accepted the multicultural nature of Canada, it was willing to include references to it in these parts. To illustrate the point consider Bill C-60. Published when constitutional negotiations recommenced in the summer of 1978, C-60 explained what the CFG’s intended constitutional plans were and, *inter alia*, a constitutional preamble was proposed. The latter spoke of ‘the evolution of the English and French speaking communities in a Canada shaped by *men and women from many lands*’ (emphasis added). Equally, in the Statement of Aims the following words were used:

fraternity does not require uniformity nor need diversity lead to division; and as elements of that proposition ... to ensure throughout Canada equal respect for the *many origins, creeds and cultures* and for the differing regional identities that help shape its society, and for those Canadians who are a part of each of them (Bayefsky, 1987, p. 347, emphasis added).

Note, however, that the references in C-60 are implicit. On its own the CFG was only prepared to go so far. A final factor was required before the CFG would agree to include an explicit reference to the multicultural nature of Canada. This final factor was pressure from ethnocultural groups.³

To illustrate the point, consider how the CFG reacted to demands from the Canadian Consultative Council on Multiculturalism (CCCM). The CCCM was comprised of the leaders of many ethnocultural groups and was an official advisory body to the Minister of State for Multiculturalism. The CCCM demanded that the preamble in Bill C-60 be changed from:

The Parliament of Canada, affirming the will of Canadians to live and find their futures together in a federation based on equality and mutual respect, embracing enduring communities of distinctive origins and experiences, so that all may share more fully in a freer and richer life

to:

The Parliament of Canada, affirming the will of Canadians to live and find their futures together in a federation based on equality and mutual respect, embracing *an English and French speaking multicultural society* of distinctive origins and experiences, so that all may share more fully in a freer and richer life (emphasis added).

Equally, they demanded that the Statement of Aims be changed from:

fraternity does not require uniformity nor need diversity lead to division; and as elements of that proposition ... to ensure throughout Canada equal respect for the many origins, creeds and cultures and for the differing regional identities that help shape its society, and for those Canadians who are a part of each of them

to:

fraternity does not require uniformity nor need diversity lead to division; and as elements of that proposition ... *to encourage and assist the various ethnic communities in Canada to preserve and develop their respective cultures* and to foster active intercultural exchange (CCCM, 1979, emphasis added).

In response to this pressure, the Minister of State for Federal Provincial Relations, Marc Lalonde, addressed the CCCM's annual conference and acquiesced by saying:

this new Constitution will be written for Canadians and it must faithfully reflect the reality of Canada today. Since this country is bilingual and multicultural, the Constitution will recognise this fact without ambiguity. I can tell you without hesitation that the government itself has absolutely no objection to inserting the word 'multiculturalism' in the text of the Constitution, although the bill on the text of the Constitution, which was made public last June, already does take into account the realities of Canada's diverse nature (CCCM, 1980).

Three factors made the CFG agree to include a reference to the multicultural nature of Canada in the Constitution. Firstly, an increasing number of Canada's political elite accepted the multicultural nature of Canada and this included the CFG. Secondly, as the CFG accepted the multicultural nature of Canada it was willing to include implicit references to it in relevant parts of the Constitution. Thirdly, only when ethnocultural groups began to demand explicit constitutional references to the multicultural nature of Canada did the CFG agree to provide them.

When Trudeau's government lost power in May 1979, his successor Joe Clark retained a commitment to include a constitutional reference to the multicultural nature of Canada. Hence, Clark's Minister of State for Multiculturalism and Amateur Sport, Steve Papproski, stated in his first speech to the CCCM: 'I will ensure that any government action which sets out to define us as a people, be it a constitutional revision or an act of parliament, the multicultural character of Canada will be respected' (Papproski, 1979). Yet as Clark had a minority government, there was a limit to what he could do. Clark's government fell within a year, and in March 1980, the Liberals regained power. Trudeau's quest for constitutional renewal recommenced and the process of including what became Section 27 in the Charter began.

How was Section 27 Included in the Charter?

In this section I will explain how Section 27 came to be included in the Charter. This, however, is impossible without first examining why the CFG failed to

create a constitutional preamble. This is because the CFG intended to honour its commitment to include a constitutional reference to the multicultural nature of Canada by inserting such a reference in a constitutional preamble. Only when this proved impossible was a clause in the Charter discussed. Six factors explain why the CFG failed to create a preamble and how Section 27 rose from its ashes.

The first factor that prevented the creation of a preamble is conflicting conceptions of Canada. The preamble was intended to be an almost poetic description of what Canada was and what it should be but there was little agreement as to what should go in it. This is because the CFG referred to Canada's multicultural nature in all its suggested versions of a preamble and representatives of Quebec's provincial government disagreed with these references. In the absence of evidence, one can point to several reasons for such disagreement (Bourassa, 1971; Lévesque and Chaiton, 1977; Ryan, 1971). However, there is evidence and it suggests that Quebec's provincial government disagreed with the CFG's references to the *multicultural* nature of Canada because it wanted them to be replaced with references to the *bicultural* nature of Canada.

The First Minister's Conference (FMC) organised in early June 1980 illustrates the point. In preparation for the FMC, the Federal Government sent the following Statement of Principles (Preamble) to all Provincial Premiers:

We, the people of Canada proudly proclaim that we are and always shall be, with the help of God, a free and Self governing people.

Born of a meeting of the English and French presence on North American soil which had been the home of our native peoples and enriched by the contribution of millions of people from the four corners of the earth, we have chosen to create a life together which transcends the differences of blood relationships, language and religion and which willingly accepts *the experience of sharing our wealth and cultures while respecting our diversity.*

We have chosen to live together in one sovereign country, a true federation, conceived as a constitutional monarchy and founded on democratic principles.

Faithful to our history, and united by a common desire to give new life and strength to our federation, we are resolved to create together a new constitution which:

Shall be conceived and adopted in Canada.

Shall reaffirm the official status of the French and English languages in Canada, and the diversity of cultures within Canadian society.

Shall enshrine our fundamental freedoms, our basic civil human and language rights including the right to be educated in one's own language, French or English where numbers warrant, and the rights of our native peoples, and shall define the authority of Parliament and of the Legislative Assemblies of our several provinces.

We further declare that our Parliament and provincial legislatures, our various governments and their agencies shall have no other purpose than to strive for the happiness and fulfilment of each and all of us (Statement of Principles, 1980, emphases added).

The only record of discussions about this preamble that survives is in Jean Chrétien's (then federal Minister of Justice and Minister in charge of constitutional negotiations) briefing notes and it shows that René Lévesque (the Premier of Quebec) argued against the above references to the multicultural nature of Canada at the FMC. Lévesque is said to have 'issued a long statement ... criticising the draft on the grounds that it did not endorse self-determination for Quebec and was not strong enough, in his view on dualism' (Briefing Note, 1980).

Lévesque's commitment to dualism was a commitment to a bicultural conception of Canada which obviously conflicted with the CFG's multicultural conception of Canada. But the controversy caused by conflicting conceptions of Canada is also illustrated when we consider the constitutional negotiations over the preamble that followed the FMC. Further negotiations occurred over the summer of 1980 when the Continuing Committee of Ministers on the Constitution (CCMC) was reformed.⁴ During the CCMC, Quebec's representatives again argued for a reference to the bicultural nature of Canada in any proposed preamble and the CFG's strategy for negotiations over the latter draws attention to this:

Federal Position

- (1) Work with the provinces on the preparation of a preamble of a new Constitution.
- (2) Be prepared to consider suggestions for change including complete new drafts.
- (3) Maintain opposition to references to self determination of a province or a particular group of people within Canada, but retain the notion (in present draft) of self determination of all Canadians or Canada. *Avoid references to two peoples and two nations – in the political sense* (Federal Approach to the Constitution, 1980, emphasis added).

Chrétien's summary of the CCMC negotiations is also instructive as it states that 'there was widespread support for an appropriate expression of Canadian linguistic equality but *not cultural duality*' (Report on Constitutional Negotiations, 1980, emphasis added). Clearly then the CFG and Quebec's provincial government held conflicting conceptions of Canada.

This brings us to the second factor that prevented the creation of a constitutional preamble because the CFG responded to these conflicting conceptions of Canada by trying to find agreement and consensus. But consensus was always logically impossible as there is no way to agree over conceptions of a nation that are mutually exclusive. This is because there is no middle ground between the conceptions. Nonetheless, Chrétien stated at the CCMC: 'we will be happy to receive any suggestions for changes in the draft that the Prime Minister discussed at the First Ministers Conference and clearly the draft ... would need some adjustments if it is to serve as a preamble to a new constitution' (Chrétien, 1980).

The implausibility of this consensual strategy can also be demonstrated by considering that twelve issues dominated constitutional negotiations: Charter of

Rights and Freedoms, Patriation and Amending Formula, Principles/Preamble to the new Constitution, Equalisation (redistributing wealth between provinces), Supreme Court, Family Law, Fisheries, Resources, Offshore Resources, Powers over the Economy, Communications and the Senate. All of them were potential bargaining chips and progress on any one of them might result in watering down or even eradicating the need for a preamble that contained a reference to the multicultural nature of Canada. As the CFG's Cabinet minutes show, Chrétien felt that there 'was a lingering feeling among the provinces that they would not concur to the finalisation of any particular agreement unless they receive a quid pro quo in return' (Cab. Doc. 63-80CBM, 1980).

Some might contest my claim that consensus was an implausible strategy. After all, on 29 August 1980 the CCMC *agreed* 'to present the attached draft of a Preamble and Statement of Purpose for the consideration of first ministers':

In accordance with the will of the citizens of Canada, the government of Canada and the governments of the provinces of Canada have expressed their intention to remain freely united in a federation as a sovereign and independent country, under the Crown of Canada with a Constitution similar in principle to that which has been in effect in Canada.

The fundamental purpose of the Federation is to preserve and promote freedom, justice and well being for all Canadians by:

Protecting individual and collective rights including those of the native people; ensuring that laws and political institutions are founded on the consent of the people; fostering economic opportunity, and the security *and the fulfilment of Canada's diverse cultures*; recognizing the distinct French speaking society centred in though not confined to Quebec; contributing to the Freedom and well being of all mankind (CCMC Best Efforts Draft, 1980, emphasis added).

Some sort of consensus must have been found. Otherwise this preamble would not have been submitted to First Ministers for discussion at another FMC. Equally, this preamble contains a reference to the multicultural nature of Canada. However, it is unlikely that the provinces and the CFG endorsed this preamble in anything other than a half-hearted sense. This is because prior to the FMC in September 1980, Chrétien conceded in Cabinet that 'his assessment was that the chances were against an agreement at the Conference' (Cab. Doc. 73-80CBM, 1980). Civil servants were also sceptical about the chance of agreement. Hence, in a memo to ministers they stated: 'No agreement reached can be total since there are deep seated differences in interests that will remain' (Notes to Assist in the Handling of the FMC, 1980).

Consensus over the preamble (and indeed the whole constitutional package) was always an implausible strategy and sure enough no consensus was found at the FMC. Illustrating the folly of his consensual strategy, the following week Trudeau announced his intention to renew the Constitution without the consent of the provinces and on 2 October 1980 Trudeau tabled a Joint Resolution before the

House of Commons and Senate. The Resolution contained the constitutional package that he would pursue and it was comprised of a Patriated Constitution and Amending Formula, a Charter that would be applicable to the provinces and Equalisation. Note that a preamble – and therefore a reference to the multicultural nature of Canada – had now been deleted from Trudeau's proposed constitutional package. As Trudeau was acting without the consent of the Provinces, he decided to minimise controversy and exclude those aspects that he did not feel were absolutely necessary (Cab. Doc. 71-80CBM, 1980).⁵ Furthermore, the Charter and not the preamble was always Trudeau's favoured means to define what it meant to be Canadian. Hence, in his speech after the collapse of the FMC, Trudeau said that the Charter represented 'our conception of Canada' (Trudeau, 1980).

This brings me to the third factor that explains how Section 27 came to be included in the Charter. Many ethnocultural groups did not react kindly to the demise of the preamble. This is because Trudeau was planning to define Canada through the Charter alone. Yet the versions of the Charter that he proposed contained no reference to the multicultural nature of Canada. Certain ethnocultural groups began, therefore, to demand the inclusion of a reference to the multicultural nature of Canada in the new constitutional package.

Hence on 23 October 1980 the Chairman of the Ukrainian Canadian Committee wrote to Trudeau and said that:

during the 13th Tri-Annual Congress of the Ukrainian Canadian Committee ... three very important resolutions were passed by the delegates of the conference ... Resolution No.1 deals with the proposed revision of the Canadian Constitution and the necessity of entrenching in the revised constitution the fact that Canada is a multicultural nation (Letter to the Prime Minister, 1980).

Trudeau's Minister of State for Multiculturalism, James Fleming, also received letters demanding a constitutional reference to the multicultural nature of Canada. For example, in a jointly signed letter from the CCCM Executive, Fleming was asked to 'convey to his Cabinet colleagues that the Committee supports ... the entrenchment of the policy of multiculturalism in the preamble and in the substantive portion of the constitution' (CCCM, 1980). Indeed, the CCCM's Ad Hoc Committee on a New Constitution urged the CFG to include a constitutional preamble which 'emphasized that Canada is a bilingual and multicultural country' (CCCM, Committee on the New Constitution, 1980).

Many ethnocultural groups also submitted demands for a constitutional reference to the multicultural nature of Canada to the Joint House of Commons and Senate Committee on the Constitution of Canada. This committee had been established to scrutinise the new constitutional package and it received letters from many groups, including the Chinese Canadian National Council for Equality and the Chinese Benevolent Association of Vancouver, which stated: 'our first recommendation is that there be a Preamble to the proposed Charter ... Such a

Preamble should address the pluralistic and democratic nature of Canadian society and stress the integrity and mutual respect that exists between the different cultures that have made this country great' (Submission to the Joint Committee, 1980). Equally, when appearing before the Committee, the chairman of the Council of National Ethno-Cultural Organisations stated: 'The Constitution must be a document which will reflect the reality of Canada today and of the future: one of those realities is the diversity of Canada' (Minutes of Proceedings, JCSH, 1980).

Many ethnocultural groups demanded a reference to the multicultural nature of Canada in the Constitution. The Minister of State for Multiculturalism, James Fleming, wanted to meet this demand and, therefore, helped to do so. This then is the fourth factor that enabled the inclusion of Section 27 in the Charter. We can demonstrate that Fleming wanted to meet this demand by considering a letter from him to Senator Haidasz. Fleming stated:

I would encourage you as a former Minister of Multiculturalism and Privy Councillor to draw your concerns to the attention of the Prime Minister and Minister of Justice. Otherwise I fear too few voices will be channelling *the concerns of our various ethno-cultural groups to the government*' (Letter to Senator Haidasz, 1980, emphasis added).

Equally, a memo from Fleming's Executive Assistant, Susan Scotti, to Fleming is instructive. Scotti states: 'At your request, I had a discussion with Walter Tarnopolsky because of his distinguished reputation and his interest in human rights and Multiculturalism' (emphasis added). Scotti asked Tarnopolsky where a reference to the multicultural nature of Canada could go in the Charter, which illustrates that Fleming wanted Tarnopolsky to identify a suitable place in the Charter for such a reference (Memo, Susan Scotti, 1980). In turn, the memo also illustrates that Fleming wanted to refer to Canada's multicultural nature in the Charter.

We can demonstrate that Fleming helped to insert a reference to the multicultural nature of Canada in the Charter by considering how he lobbied for it. As Fleming explains, 'I'm not sure whether it was a priority for my colleagues in Cabinet but for me it was, I even promised Eddy Goldenberg a case of rum if he got a reference to the multicultural nature of Canada into the Charter and I fought hard for it within Cabinet' (Interview with James Fleming, 18 April 2005). Chrétien's former adviser, Edward Goldenberg, remembers the discussions that he had with Fleming, 'Jim would talk to me about getting a reference on how culturally diverse Canada was all the time' (Interview with Edward Goldenberg, 11 May, 2004).

Equally, Fleming is likely to have lobbied his Cabinet colleagues to include a reference to the multicultural nature of Canada in the Charter at a Cabinet meeting on 11 December 1980. At this meeting the Cabinet decided that 'consideration be given to a new provision which would have the effect of

reflecting Canada's multicultural character and establishing a right to observe traditions reflecting the multiple sources of Canada's cultural heritage' (Cab. Doc. 86-80CBM, 1980).

Fleming was certainly present at this Cabinet meeting although he does not remember what he said in it (Interview with James Fleming, 18 April 2005).⁶ Indeed, the Cabinet minutes do not explain what particular Cabinet ministers said, but Fleming is likely to have encouraged his Cabinet colleagues to make this decision. This is because the Cabinet documents that were devised for discussion at this meeting *do not* suggest that Cabinet ministers should 'consider' including the above provision in the Charter (Cab. Doc. 656-80 MC(E), 1980; Cab. Doc. 656-80MC(A)(E), 1980; Cab. Doc. 656-80CR (MEO), 1980). This means that at least one, but possibly more, members of the Cabinet must have suggested such a provision during the Cabinet meeting itself. But which Cabinet minister/s could have done this? Neither Trudeau nor Chrétien showed any interest or they would have proposed such a provision earlier.⁷ In comparison, Fleming wanted to include the provision and had been lobbying Chrétien's main constitutional adviser to do so. Hence, when the Cabinet met on 11 December 1980, Fleming is likely to have encouraged his Cabinet colleagues to include a reference to the multicultural nature of Canada in the Charter.

Indeed, the latter seems even more likely when we consider a memo that was sent from Bruce Anderson, Fleming's Special Assistant, to the Prime Minister's Office (PMO) on the same day as the Cabinet meeting. It states:

As I mentioned, none of the groups whose views were presented before the Joint Committee register opposition to the process of reform initiated by the government. Rather, their criticisms are focused largely on clauses in the proposed Charter which they feel should be amended to better protect their rights as members of ethnic minority groups (Memo, Bruce Anderson, 1980).

As Anderson states, 'I was maybe 21 or 22 at the time, I wasn't allowed to send memos to PMO without the say so of Jim' (Interview with Bruce Anderson, 19 April 2005). Fleming concurs: 'Bruce was a bright kid, but multiculturalism wasn't even something that he worked for me on, his responsibilities were elsewhere, at any rate any communication with PMO from my office was agreed by me first' (Interview with James Fleming, 18 April, 2005). This means that on the same day that the Cabinet decided to 'consider' including a provision about the multicultural nature of Canada in the Charter, Fleming lobbied the PMO to do the very same thing. If on 11 December 1980 Fleming was prepared to urge the PMO to include a reference to the multicultural nature of Canada in the Charter, he is likely to have urged his Cabinet colleagues to do so as well.

Including a reference to the multicultural nature of Canada in the Charter, however, required more than political support from Fleming. It also required support from civil servants. Indeed, the support of civil servants is the fifth factor that enabled the inclusion of a reference to the multicultural nature of Canada in

the Charter. These supportive civil servants worked at the Department of Justice and their importance is demonstrated when we examine how they reacted to the 11 December Cabinet decision. The Cabinet had agreed to *consider* the inclusion of a clause that ‘reflects Canada’s multicultural character’ and establishes ‘a right to observe traditions reflecting the multiple sources of Canada’s cultural heritage’. Note that in essence these are two separate provisions. One is a statement about what Canada is, whereas the other grants an enforceable right to culture, and civil servants were opposed to including an enforceable right to culture in the Charter. Roger Tasse, then Deputy Minister at the Department of Justice, explains why.

We didn’t even know what multiculturalism and indeed culture meant, how could we grant a right to it? Also how could someone enjoy their culture in the same way that they would in another country. They could do to a point but not fully. The implications for such a clause were so broad that they were inconceivable (Interview with Roger Tasse, 20 July 2004).

Mary Dawson, who was Associate Chief Legislative Council at the Department of Justice and helped to draft the Charter, echoes this view: ‘What does culture mean? What is multiculturalism? These terms are vague and unexplained even today let alone 25 years ago. What specific legal implications might it [a right to culture] have, none of us knew, the legal risk therefore was huge’ (Interview with Mary Dawson, 21 April 2005). Civil servants, therefore, advised against including an enforceable right to culture in the Charter. They also began to support including a reference to Canada’s ‘multicultural character’ in the Charter.

For example, on 15 December 1980 civil servants, through Chrétien, submitted a memorandum to the Priorities and Planning (P&P) Cabinet Committee. Consider the way that civil servants advised against the two options that might lead to an enforceable right to culture. The first option was to amend the Limitation Clause which was designed to place reasonable limits on the rights of an individual. The Limitation Clause stated: ‘The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society’. Civil servants suggested that the Limitations Clause could refer to a ‘*pluralistic*, free and democratic society’ as opposed to a ‘free and democratic society’. Yet they cautioned:

While this is no doubt a correct perception of our society, injection of the concept of ‘pluralism’ into the key interpretive provision of the Charter might tend to limit rather than broaden the scope of *certain rights such as freedom of speech and minority language rights*. Equally, it could raise questions as to whether limits on rights in a free and democratic society are different from those in one which is also ‘*pluralistic*’ (Cab. Doc. 719-80 MC(E), 1980, emphasis added).

Another option was amending Section 22, which stated:

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

Civil servants suggested adding ‘*To ensure the continued preservation and enhancement of the diverse cultural heritages of Canadians*’ to the beginning of the clause (emphasis added).⁸ However they cautioned that such an amendment was ‘rather negative in tone and is of course, confined only to the ambit of language rights. Consequently it would not appear to be an appropriate approach’ (Cab. Doc. 719-80 MC(E), 1980).

Now consider the recommended option: an interpretive clause that referred to Canada’s multicultural character and avoided creating an enforceable right to culture. The proposed interpretive clause would state: ‘The provisions of this Charter shall be interpreted in a manner consistent with the objective of promoting the preservation and enhancement of the diverse cultural heritages of Canada’ (Cab. Doc. 719-80 MC(E), 1980). Illustrating their preference for a clause about the multicultural nature of Canada as opposed to one that created an enforceable right to culture, civil servants offered no cautionary statements about the proposed interpretive clause.

The importance of civil servants can also be demonstrated when we consider that they advised the Federal Cabinet not to abandon a clause about the multicultural nature of Canada. On 17 December 1980, P&P did not approve the interpretive clause recommended above. Instead they asked ‘the Minister of Justice ... to prepare for Cabinet consideration a clause guaranteeing an individual the freedom to preserve his or her multicultural heritage under section 2’ (Cab. Doc. 719-80CR (MEO), 1980). Section 2 of the Charter stated:

Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

It seems that the Ministers of P&P wanted to add something like ‘freedom to enjoy one’s cultural heritage’ to the list above and civil servants responded by writing another memorandum (Draft Memorandum to Cabinet, 1980).⁹ They argued that creating an enforceable right to culture ‘could well give rise to arguments that such a guarantee implied some obligations on the state to ensure some protection on third languages and cultures. For example, would the Canadian Broadcasting Corporation’s (CBC’s) legal duty to provide services in English and French not be violating a Ukrainian’s freedom to enjoy his cultural heritage equally?’ Civil servants were reluctant to accede to the demands of their political masters. They stated: ‘*if a provision on multiculturalism is to be included in the Charter, it be along the lines of the interpretive Clause*’ (Cab. Doc. 723-80MC(E), 1980, emphasis added). This unusually strong language had the desired effect. On 18 December 1980 the Cabinet accepted that ‘the multicultural nature of Canada ... be reflected in the Charter of Rights and Freedoms with an interpretive clause

along the lines set out' (Cab. Doc. 723-80RD, 1980). The Cabinet had given its assent to what would become Section 27 and they had done so, in part, because civil servants favoured a clause about the multicultural nature of Canada over a clause that granted an enforceable right to culture.

This leads to the sixth and final factor that enabled the inclusion of Section 27 in the Charter: most people accepted the inclusion of Section 27, hence its inclusion went unopposed. The point is illustrated when we examine how those who were likely to oppose Section 27 reacted to its inclusion. For example, both federal opposition parties proposed to *supplement* rather than remove the clause. The Progressive Conservatives proposed to supplement Section 27 with an addition to Section 25:

The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of:

- (a) any aboriginal treaty or other rights or freedoms that may pertain to the aboriginal peoples of Canada including any right or freedom that may have been recognised by the Royal Proclamation of October 7, 1763; or
- (b) any rights or freedoms that may pertain to any cultural community; or
- (c) any other rights or freedoms that may exist in Canada.

The New Democratic Party (NDP) suggested that Section 27 be amended to read: 'This Charter shall be interpreted in a manner that is consistent with the preservation and enhancement of the multicultural heritage of Canadians; and ensures the distinct cultural, economic and linguistic identities of the aboriginal peoples of Canada' (Summary of Proposed Amendments, 1981). The Progressive Conservatives wanted to *add* an enforceable right to culture and a provision that upheld the cultural and land rights of aboriginal groups. The NDP wanted to *add* a provision that upheld the cultural rights of aboriginal groups. Neither the Progressive Conservatives, nor the NDP, wished to remove Section 27. Opposition parties, therefore, accepted the inclusion of Section 27.¹⁰

Representatives from the provincial governments might also have opposed the insertion of Section 27. Yet there is no evidence to suggest that this occurred. Some, however, like Michael Hudson might disagree with this view and would do so by pointing to the constitutional negotiations of November 1981. Negotiations recommenced because the Newfoundland Court unanimously ruled that unilateral action by the CFG was illegal. An appeal to the Supreme Court of Canada was subsequently made which compelled the Federal and Provincial Government to return to the negotiating table.¹¹ On 5 November 1981 an agreement was reached and all provinces, except Quebec, signed an Accord. The Accord, claims Hudson, 'made no reference to multiculturalism, but when the government tabled a new resolution on 20 November 1981, the current text of section 27 was included in the Charter' (Hudson, 1987, p. 78). Hudson seems to think then that Section 27 was removed either before or on 5 November and reinserted at some point before 20 November. He might, therefore, claim that

someone must have opposed Section 27 to have had it removed, albeit only temporarily. Yet it is unlikely that there was any opposition to Section 27. This is because it is unlikely that Section 27 was removed. In Chrétien's (the leading Cabinet Minister's) 'Working Draft' of the 5 November Accord, Section 27 is included and unchanged (Working Draft, 1981).

Yet surely Lévesque opposed Section 27. After all, as with the preamble, Section 27 enshrined a conception of Canada that conflicted with his own and in doing so was a symbolic rejection of the Québécois claim to a special status in Canada. While this is true, I can find no evidence to suggest that Lévesque opposed Section 27. At a Cabinet meeting on 12 November 1981, Chrétien reported on a conversation that he had with Claude Morin, the Quebec Minister for Inter-governmental Affairs. Morin had listed the problems that his government had with the constitutional package and none of them suggest any difficulty with Section 27 (Cab. Doc. 40-81CBM, 1981). Equally, at a special meeting of the Cabinet on 16 November 1981 where 'Amendments to the Constitutional Resolution intended to accommodate Quebec' were discussed, there was no discussion about removing Section 27 (Cab. Doc. 42-81CBM, 1981). If removing Section 27 was not something that the CFG felt the need to discuss to assuage Quebec's provincial government, then it is unlikely that Lévesque opposed its inclusion in the Charter. Indeed, Lévesque was never opposed to just one part of the Charter; he was opposed to the very notion of a Charter. This is because he knew that it would have precedence over Quebec law, thus reducing Quebec's ability both to argue that it was different to other provinces and also to retain those differences (Gagnon and Iacovino, 2007; Taylor, 1991, pp. 69-71; Tully, 1997, p. 163). As Lévesque opposed the very notion of a Charter, he is even less likely to have opposed a section of it because to do so he would have to accept the notion of a Charter. It is little wonder that I can find no evidence of Lévesque opposing Section 27.

The inclusion of Section 27 in the Charter seemed then to go unopposed and Chrétien's main constitutional adviser Edward Goldenberg sums it up well: 'We got a reference to the multicultural nature of Canada into the Charter, once it was there very few people wanted to argue with us, I mean what could they say, that Canada isn't multicultural? ... It was popular and unproblematic' (Interview with Edward Goldenberg, 11 May 2004).

Conclusion

In this article I have tried to fill a gap in our knowledge. Using new historical evidence, I have tried to explain why the CFG agreed to include Section 27 in the Charter and how this occurred. We should now, therefore, have a much better understanding of why and how Section 27 was included in the Charter than we did at the beginning of this article.

Indeed, with this better understanding in mind, we can return to the view that I referred to in the introductory section. Recall that this was the view in which

Section 27 was included in the Charter because the CFG was lobbied to include it by those who claimed to represent Canadians of neither British nor French ancestry (Abu-Laban and Gabriel, 2002, p. 110; Chrétien, 2000, p. 342; Tarnopolsky, 1982, p. 440; Tully, 1997, pp. 176–7). This view is obviously incorrect because, as we have seen, lobbying from such groups only made the CFG agree to include an *explicit* constitutional reference to the multicultural nature of Canada. Equally, had the CFG not failed to create a constitutional preamble, it is unlikely that there would have been any need for Section 27. Further, had those who claimed to represent Canadians of neither British nor French ancestry not been helped by Fleming, civil servants and by the fact that few objected to Section 27, the latter might never have come into existence. The evidence in this article illustrates, then, that the efforts of those who claimed to represent Canadians of neither British nor French descent were just one of many factors that helped to bring Section 27 into existence.

However, the evidence in this article also does something else. It indicates that those who helped to insert Section 27 into the Charter did so to shape the Canadian national identity. Recall those who wanted to include an explicit constitutional reference to the multicultural nature of Canada. They wanted to include such a reference in a constitutional preamble that would describe Canada. They thus wanted it to be clear that one of the many things that define Canada is its multicultural nature. Equally, recall the ethnocultural groups which opposed Trudeau's decision to abandon a constitutional preamble. They did so because they had lost an opportunity to make it clear that one of the many things that define Canada is its multicultural nature. Further, recall that the CFG wanted what became Section 27 to refer to Canada's 'multicultural character'. Indeed, when it came to a choice between including a right to culture or a reference to Canada's 'multicultural character' in the Charter, civil servants and then politicians favoured the latter. Those who helped to insert Section 27 into the Charter did so to shape the Canadian national identity and this fact is important.

This is because it increases the possibility that a claim made by many prominent scholars is true. The claim is that the CFG's policy of multiculturalism was used to shape the Canadian national identity. Hence Will Kymlicka claims that 'Canadians are unique in the way they have incorporated Canada's policy of accommodating diversity into their sense of national identity' (Kymlicka, 2003b, p. 1). Tariq Modood claims that the CFG's policy of multiculturalism has been 'integral to a nation-building project' (Modood, 2007, p. 147). Christian Joppke claims that the CFG's policy of multiculturalism represents 'a dimension of national self-definition' (Joppke, 2004, p. 245). In different ways these and other scholars claim that the CFG's policy of multiculturalism was used to shape the Canadian national identity, yet they offer little or no empirical evidence to support their empirical claim. These scholars can then be criticised for not doing so or indeed their claim can be ignored because it is unsubstantiated. Indeed, the likelihood of

either of these things occurring is quite high because policies of multiculturalism are often thought to undermine national identities, not shape them.

This is certainly true in Canada. Hence the scholar Leslie Pal says that the funding that various ethnocultural groups in Canada get through the CFG's policy of multiculturalism 'fragments rather than unifies national identity' (Pal, 1995, p. 256). The writer Neil Bissoondath claims that multiculturalism has evoked 'uncertainty as to who and what is a Canadian' (Bissoondath, 1994, p. 71). Similar claims are made in other countries also. For example, the leader of the Conservative party in Britain recently claimed in a speech that the policies of those who believe in multiculturalism 'undermine the very thing that should have served as a focus for national unity – our sense of British identity' (Cameron, 2007). The journalist Melanie Phillips claims that 'British identity was steadily eviscerated by multiculturalism' (Phillips, 2006, p. 122).¹²

Indeed, one can see why these people might think that policies of multiculturalism undermine national identities. After all, scholars may disagree over what national identities are, but at the very least they are a type of shared identity and, like any shared identity, a national identity can only exist if many identify themselves in the same way (Smith, 2001). Yet policies of multiculturalism, *inter alia*, help the citizens of a polity to identify themselves in different ways and thus may reduce their ability to share a national identity. Those who think that policies of multiculturalism undermine national identities seem to have a good reason to do so. They are unlikely, therefore, to accept that instead of undermining a national identity there is a policy of multiculturalism that is being used to shape a national identity and are likely to criticise or ignore those who make such a claim.

Yet when Kymlicka, Modood and Joppke claim that the CFG's policy of multiculturalism is being used to shape the Canadian national identity, this is exactly what they are claiming and the evidence in this article should make it harder to criticise or ignore their claim. This is because the evidence indicates that all those who helped to insert Section 27 into the Charter did so to shape the Canadian national identity. Thus Section 27 is an aspect of the CFG's policy of multiculturalism that was used to shape the Canadian national identity and, therefore, an example of what Kymlicka, Modood and Joppke are claiming. Of course, *I am not* saying that Section 27 is the only example of what these scholars are claiming. Nor am I saying that the example of Section 27 is sufficient to show that what they claim is true. But by explaining why and how Section 27 came to be included in the Charter, I have identified an empirical example of what they are claiming and thus increased the possibility of it being true.

(Accepted: 5 February 2008)

About the Author

Varun Uberoi, Department of Politics and International Relations, University of Oxford, Social Science Building, Manor Road, Oxford OX1 3UQ, UK; email: varun.uberoi@politics.ox.ac.uk

Notes

I am grateful to Tariq Modood, Paul Statham, Nasar Meer and the two reviewers of this article for their advice and comments.

- 1 Little has been written about how Section 27 of the Charter of Rights and Freedoms came into existence. This is perhaps because Section 27 is an interpretive provision that has few legal implications in its own right. See Tarnopolsky, 1982, p. 441. See also Hogg, 1982; Jedwab, 2003; Beckton, 1987; Gall, 1987.
- 2 The Quiet Revolution in Quebec had led to Quebec's provincial government demanding an increase in its own powers. Equally, Quebec's provincial government increasingly began to claim that the CFG was encroaching on its powers. Further, the increasing prosperity of Western Canada and in particular Alberta's new-found oil and natural gas deposits created a tug of war between the federal and Western provincial governments. Both claimed that they should have the power to regulate, develop, tax and benefit from this new-found wealth and, like Quebec's provisional government, Alberta's provincial government felt that the CFG was encroaching on its powers.
- 3 This is not my term. It is a term often used in Canada to refer to either ethnic minorities generally, or their representatives in civil society organisations.
- 4 This committee had been formed during earlier constitutional negotiations.
- 5 In this document Trudeau suggests that should constitutional negotiations fail, the size of any unilateral constitutional package was dependent on the level of support he had for constitutional reform (Cab. Doc. 71-80 CBM, 1980).
- 6 Fleming claims: 'I know that I fought for a reference to the multicultural nature of Canada both in Cabinet and in all my discussions with Eddy [Goldenberg], but I can't say that on 11 December 1980, I definitely made anything happen' (Interview with James Fleming, 18 April 2005).
- 7 Chrétien might dispute this. When interviewed he claimed to have 'always wanted a multiculturalism clause in the Charter' and that the CFG even had a strategy to include one. He explained: 'we deliberately excluded some things from the Charter. We knew that some groups would want to improve the Charter. We wanted them to speak out because it would make us look good if we met their demands' (Interview with Jean Chrétien, 9 September 2004). While there is no reason for Chrétien to lie I can find no evidence to support his claim. Yet it is notable that Chrétien contradicts himself. This is because writing many years after he was Minister for Justice he stated: 'The story of the joint committee is an extraordinary example of a political process working as it should ... the successful nature of the lobbies of the normally un-powerful and unorganized natives, women's groups, representatives of the handicapped and the multicultural groups. Canadians spoke clearly to the committee about their desire for a charter of rights and freedoms ... As a result of the committee hearings the government proposed numerous amendments to strengthen the draft of the Charter of Rights and Freedoms' (Chrétien, 2000, pp. 342-3). Clearly, the two positions on what happened are inconsistent. Either the Federal Government was Machiavellian and always planned to include the demands of ethnocultural groups or the inclusion of these demands illustrates 'the democratic process working as it should'.
- 8 Sections 16-20 of the Charter were about bilingual service provision.
- 9 Civil servants also used this as an opportunity to make the recommended interpretive clause 'more precise, sharper and crisper', and use the words that we now see in Section 27 (Interview with Mary Dawson, 21 April 2005).
- 10 Both parties withdrew their proposed amendments just over two weeks after tabling them.
- 11 The Supreme Court did not state that the actions of the federal government were illegal. They were thought, however, to breach convention.
- 12 A sceptic might claim that the people cited are not always referring to *policies of multiculturalism*; in some cases they are referring to *multiculturalism*, which has many meanings (Kallen, 1982; Kymlicka, 1999). However, the sceptic need only examine the context from which these quotes were taken to understand that those who were not explicitly referring to policies of multiculturalism were implicitly doing so.

References

- Abu-Laban, A. and Gabriel, C. (2002) *Selling Diversity*. Peterborough: Broadview Press.
- Abu-Laban, Y. (1999) 'The Politics of Race, Ethnicity and Immigration', in J. Bickerton and A. Gagnon (eds), *Canadian Politics*. Peterborough: Broadview Press, pp. 463-83.
- Bayefsky, A. (1987) *Canada's Constitution Act 1982 and Amendments, a Documentary Record*. Toronto: McGraw-Hill, Ryerson Ltd.
- Beckton, C. F. (1987) 'Section 27 and Section 15 of the Charter', in Canadian Human Rights Foundation, *Multiculturalism and the Charter*. Toronto: Carswell, pp. 1-13.

- Bissoondath, N. (1994) *Selling Illusions*. Toronto: Penguin.
- Bourassa, R. (1971) 'Objection to Multiculturalism,' *Le Devoir*, 17 November 1971, in H. Palmer (ed.), *Immigration and the Rise of Multiculturalism*. Toronto: Copp Clark Publishing, pp. 151–3.
- Breton, R. (1986) 'Multiculturalism and Canadian Nation-Building,' in A. Cairns and C. Williams (eds), *The Politics of Gender, Ethnicity and Language in Canada*. Toronto: Toronto University Press, pp. 27–66.
- Briefing Note (1980) 'Briefing for Jean Chrétien in preparation for CCMC', 3 July. Library and Archives Canada (hereafter LAC), MG32, Series G15, File, Miscellaneous.
- Cab. Doc. 440–70 (1970) 'Citizenship Policy and Legislation', RG 2, Interim Box 12, Vol 6365, file 440–70, 7 April. This and all following Cabinet Documents released under the Access to Information Act.
- Cab. Doc. 864–71 (1971) 'The Multicultural Society, A Response to Book IV of the B and B Commission', 13 July.
- Cab. Doc. 981–71 (1971) 'Canada: The Multicultural Society, A Response to Book IV of the B and B Commission', Undated.
- Cab. Doc. 656–80 MC(E) (1980) 'Possible Amendments to Proposed Resolution on Constitution of Canada', 25 November.
- Cab. Doc. 656–80CR (MEO) (1980) 'Report of Committee Decisions', 10 December.
- Cab. Doc. 656–80MC(A)(E) (1980) 'Addendum to Cabinet Document 656–80MC (E)', 8 December.
- Cab. Doc. 71–80 CBM (1980) 'Progress Report on Three Weeks of Constitutional Negotiations', Cabinet Minutes for 31 July.
- Cab. Doc. 719–80 MC(E) (1980) 'Possible Amendments to Proposed Resolution on Constitution of Canada', 15 December.
- Cab. Doc. 719–80CR (MEO) (1980) 'Report of Committee Decisions', 17 December.
- Cab. Doc. 723–80MC(E) (1980) 'Possible Amendments to Proposed Resolution on Constitution of Canada', 17 December.
- Cab. Doc. 723–80RD (1980) 'Possible Amendments to Proposed Resolution on Constitution of Canada', 18 December 1980.
- Cab. Doc. 73–80CBM (1980) 'Constitutional Revision', 5 September 1980.
- Cab. Doc. 86–80CBM (1980) 'Possible Amendments to Proposed Resolution on Constitution of Canada', 11 December 1980.
- Cab. Doc. 63–80CBM (1980) 'Constitutional Discussion', 3 June.
- Cab. Doc. 40–81CBM (1981) 'The Constitution', 12 November.
- Cab. Doc. 42–81CBM (1981) 'The Constitution', 16 November.
- Cable, V. (2005) *Multiple Identities*. London: Demos.
- Cairns, A. (1995) 'The Political Purposes of the Charter', in D. Williams (ed.), *Reconfigurations Canadian Citizenship and Constitutional Change*. Toronto: McClelland and Stewart, pp. 194–215.
- Cameron, D. (2007) 'Bringing Down the Barriers to Cohesion', Speech made by Conservative Party Leader, 29 January.
- CCCM (1979) 'Appendix D to CCCM Memo', 2 February. LAC, RG6, File 3200–23 Vol. 2.
- CCCM (1980) 'CCCM Memo', 12 September. LAC, RG6, File 3200–23, Vol. 2.
- CCMC Best Efforts Draft (1980) 'CCMC Best Efforts Draft of Preamble', LAC, RG6, Accession 2002–1145, Box 9, File, 3200–23.
- CCCM, Committee on the New Constitution (1980) 'Memo from Canadian Consultative Council's Executive to James Fleming', 23 October. LAC Accession 2002–1145, Box 9, File 3200–23.
- Chrétien, J. (1980) 'Chrétien's Opening Statement', 5 July. LAC, MG32, Series G15, File, Miscellaneous.
- Chrétien, J. (2000) 'Bringing the Constitution Home', in T. Axworthy and P.E. Trudeau, *Towards a Just Society: The Trudeau Years*. Toronto: Penguin Books, pp. 326–53.
- Draft Memorandum to Cabinet (1980) 'Draft Memorandum to Cabinet, Possible Amendments to Proposed Resolution on Constitution of Canada', 17 December . LAC, MG35, Series G15, Miscellaneous.

- Federal Approach to the Constitution (1980) 'Draft Federal Government's Approach to Constitutional Reform and its Initial Negotiating Position on the Twelve Items'. Released under the Access to Information Act.
- Fleras, A. and Elliot, J. (1992) *Multiculturalism in Canada*. Scarborough: Nelson.
- Gagnon, A. G. and Iacovino, R. (2007) *Federalism, Citizenship and Quebec*. Toronto: University of Toronto Press.
- Gall, G. L. (1987) 'Multiculturalism and the Fundamental Freedoms; Section 27 and Section 2', in Canadian Human Rights Foundation, *Multiculturalism and the Charter: A Legal Perspective*. Toronto: Carswell, pp. 29–58.
- Giddens, A. (2006) 'Misunderstanding Multiculturalism', *The Guardian*, 14 October [online]. Available from: <http://www.guardian.co.uk/comments/free/2006/oct/14/tonygiddens>.
- Gwyn, R. (1995) *Nationalism Without Walls*. Toronto: McClelland and Stewart.
- Hogg, P. (1982) *Constitution of Canada Act 1982*. Toronto: Carswell.
- Hudson, M. R. (1987) 'Multiculturalism, Government Policy and Constitutional Enshrinement – A Comparative Study', in Canadian Human Rights Foundation, *Multiculturalism and the Charter: A Legal Perspective*. Toronto: Carswell, pp. 59–122.
- Innis, H. (1973) *Bilingualism and Biculturalism, an Abridged Version of the Royal Commission's Report*. Toronto: McClelland and Stewart Ltd.
- JCSH (1972) 'Joint Committee of the Senate and of the House of Commons on the Constitution of Canada', Final Report 1972.
- Jedwab, J. (2003) 'To Preserve and Enhance: Canadian Multiculturalism Before and After the Charter', in J. E. Magnet, G. A. Beaudoin, G. Gall and C. Manfred (eds), *The Canadian Charter of Rights and Freedoms, Reflections on the Charter after Twenty Years*, Ontario: Lexis Nexis, pp. 307–44.
- Joppke, C. (2004) 'The Retreat from Multiculturalism in the Liberal State', *British Journal of Sociology*, 55 (2), 237–57.
- Joshee, R. (1995) 'An Historical Approach to Understanding the Canadian Multicultural Policy', in T. Wotherspoon and P. Jungbluth (eds), *Multicultural Education in a Changing Global Economy: Canada and the Netherlands*. New York: Waxman Publishing Company, pp. 23–40.
- Kallen, E. (1982) 'Multiculturalism, Ideology, Policy and Reality', *Journal of Canadian Studies*, 17 (1), 57–63.
- Kymlicka, W. (1999) *Finding Our Way*. Oxford: Oxford University Press.
- Kymlicka, W. (2003a) 'Being Canadian', *Government and Opposition*, 38 (3), 326–53.
- Kymlicka, W. (2003b) 'Canadian Multiculturalism in Historical and Comparative Perspective: Is Canada Unique?', *Forum Constitutionnel*, 13 (1), 1–8.
- Letter to the Prime Minister (1980) 'Letter to Prime Minister Trudeau from Ukrainian Canadian Committee', 23 October, LAC, MG 35, Box 125, File 350-2 Vol 1.
- Letter to Senator Haidasz (1980) 'Letter to Senator Haidasz', 12 November. Photocopy obtained by the author during an interview.
- Lévesque, R. and Chaiton, A. (1977) 'Education in a Changing Society: A View from Quebec', in A. Chaiton and N. McDonald (eds), *Canadian Schools and Canadian Identity*. Toronto: Gage, pp. 176–85.
- McRoberts, K. (1997) *Misceiving Canada*. Oxford: Oxford University Press.
- Mackey, E. (2002) *The House of Difference*. Toronto: Toronto University Press.
- Memo, Bruce Anderson (1980) 'Memorandum from Bruce Anderson to Geoff O'Brien/Marie-Helene Fox', Prime Minister's Office, 11 December. Photocopy obtained by the author during an interview.
- Memo, Susan Scotti (1980) 'Memo from Susan Scotti to Jim Fleming', 20 November. Photocopy obtained by the author during an interview.
- Minutes of Proceedings, JCSH (1980) 'Minutes of the Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada', 9 December, Issue 22, p. 75.
- Modood, T. (2007) *Multiculturalism – A Civic Idea*. Cambridge: Polity.
- Notes to Assist in the Handling of the FMC (1980) LAC, MG32, Series G15, File Miscellaneous.
- Pal, L. (1995) *Interest of the State: The Politics of Language, Multiculturalism and Feminism in Canada*. Montreal: McGill University Press.
- Palmer, H. (1988) 'Canadian Immigration and Ethnic History in the 1970s and 1980s', *International Migration Review*, 15 (3), 471–501.

- Paproski, S. (1979) Steve Paproski, Speech to the Canadian Consultative Council, Toronto, undated. The author was shown a copy of this speech in an interview.
- Parekh, B. (2000) *The Future of Multi-ethnic Britain*. London: Polity.
- Phillips, M. (2006) *Londonistan*. London: Gibson Square.
- Report on Constitutional Negotiations (1980) 'Report on the Progress of Three Weeks of Constitutional Negotiations in Montreal', Toronto and Vancouver, 28 July. FPRO-1-80DP. Released under the Access to Information Act.
- Ryan, C. (1971) 'L'Aide aux groupes ethniques exige-t-elle l'abandon du biculturalisme?' *Le Devoir*, 9 October, quoted in McRoberts, K. (1997) *Misceivng Canada*. Oxford: Oxford University Press, p. 129.
- Sen, A. (2006) 'Multiculturalism: An Unfolding Tragedy of Two Confusions', *Financial Times*, 21 August [online]. Available from: <http://www.ft.com/cms/5/2/c90fd530-3136-11db-b953-0000779e2340.html>.
- Smith, A. (2001) *Nationalism*. Cambridge: Polity.
- Statement of Principles (1980) LAC, RG6, Accession 2002-11145, Box 9, File 3200-23.
- Submission to the Joint Committee (1980) 'Submission to the Joint Senate-House of Commons Committee on the Constitution of Canada by the Chinese National Council for Equality and Chinese Benevolent Association of Vancouver', LAC, MG35, Box 125, File 350-2 Vol. 7.
- Summary of Proposed Amendments (1981) 'Summary of Proposed Amendments to Joint Resolution on the Constitution', 20 January. LAC, MG35, Series G15, Miscellaneous.
- Tarnopolsky, W. (1982) 'The Equality Rights', in W. Tarnopolsky and G. Beaudoin (eds), *The Canadian Charter of Rights Freedoms*. Toronto: Carswell, pp. 395-442.
- Taylor, C. (1991) 'Shared and Divergent Values', in R. Watts (ed.), *Options for a New Canada*. Toronto: University of Toronto Press, pp. 57-76.
- Trudeau, P. E. (1980) 'Draft Speech for the Prime Minister', LAC, MG32, Series G15, File, Miscellaneous.
- Trudeau, P. E. (1993) *Memoirs*. Toronto: McClelland and Stewart.
- Tully, J. (1997) *Strange Multiplicity*. Cambridge: Cambridge University Press.
- Ukrainian Canadian Committee (1964) 'Brief of the Ukrainian Canadian Committee to B & B Commission 1964', LAC, RG33, Series 80, Vol. 54, File 750-514.
- Webber, J. (1994) *Re-imagining Canada*. Kingston: McGill and Queens University Press.
- Working Draft (1981) 'Working Draft', 5 November, LAC, MG35, A88, Box 77 File Comte mixte special sur la Constitution.