SUB-STATE INSTITUTIONS
AND MINORITY SELF-DETERMINATION

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**Introduction**

Minority ethnolinguistic groups need ‘institutional completeness’ to survive and prosper (Breton 1964). Indeed, the ‘support and control of institutions’ is one of three structural variables that contribute most to the vitality of ethnolinguistic minorities (Giles et al 1977). The control of public institutions in the field of education is a constitutional right in Canada since 1982, albeit limited in practice, and recent jurisprudence suggests that similar constitutional guarantees may apply to health and municipal institutions. Also, recent literature in political geography confirms the importance of sub-state institutions as territorial and functional markers of minority group identity. There is thus a growing realization from a variety of social science disciplines that public institutions can play a significant role in helping minority groups survive and prosper.

That conclusion, however, needs nuances, clarifications and further empirical support. On the one hand, the empirical data supporting the correlation between strong ethnolinguistic vitality and institutional support and control does not explain why or how minorities with the highest level of vitality have a higher degree of institutional support. Nor does it say if institutions enhance vitality more than vitality enhances institutions. We also need explanations regarding if and how such institutional support is achieved and, especially, if and how institutions are used by minority groups to enhance their vitality. In fact, many minorities control their own school boards, municipal councils and regional health authorities, but do not use these institutions to promote and enhance their language, culture and identity. On the other hand, there is no overarching framework to string together the contributions of a variety of academic disciplines into a coherent explanation of the role public institutions play in ethnolinguistic vitality. It thus appears necessary to pursue a multidisciplinary research programme to (a) link the data obtained from social psychology, sociology, philosophy, political science, public administration and law, and (b) pursue research on the link between sub-state institutions and sociolinguistic vitality.

**One conclusion, six disciplines**

Sociologist Raymond Breton (1964) demonstrated that institutions, ie formal collective organizations, are important tools for minority groups because they enhance the group’s cohesiveness. Civil institutions like churches, social aid agencies, business groups and media, and public institutions like schools reinforce the cohesiveness of already existing networks and expand them further. Therefore, communities showing the highest degree of institutional completeness have a much greater proportion of their members with most of their personal relations within the ethnic group. The higher the number of institutions serving the minority group, the better their chances of survival. Breton added, however, that the total number of institutions was not as important as having at least one institution.

Breton’s seminal work, like most good research, raises as many questions as it answers. Do institutions hinder or facilitate integration between minority and majority groups? If so, how? Is there a difference between civil and public institutions? Is the conclusion reached in 1964 still relevant in light of the increased role of the State in the 1960s and 1970s and the reduced role of the State in the 1980s and 1990s? Is it still relevant in light...
of the increased rate of exogamous couples espousing two cultures? Is there a correlation between the number of institutions and the rate of transgenerational survival? Is there a difference between minority groups based on language, race, ethnicity and/or sex? If institutions reinforce and expand the cohesiveness of informal networks, do they tend to freeze the minority’s cultural values in time or facilitate their evolution over time? Also, can institutions create cohesiveness out of a vacuum: for example, can a school built for a minority group after two generations of assimilation re-establish a minority community?

Social psychologists took up some of these challenges in the 1970s. The seminal work in that field identified three structural variables that enhanced ethnolinguistic vitality (Giles et al 1977). First, demography: the number of minority members, their share of the local population, etc. Second, institutional support and control over schools, universities, post offices, social services, hospitals, media, police, business, sports, culture, churches, etc. And third, status: the recognition by outsiders that their cultural values and traits were positive characteristics. Others added a fourth variable (subjective vitality) to describe the factors that led minority members to recognize and appreciate their own culture and chances of survival (Landry and Allard 1996). These four structural variables also raise numerous questions, but two stand out for our purposes. First, is there a difference between civil/private and public institutions? Second, does ‘support from institutions’ enhance ethnolinguistic vitality as much as ‘control of’ collective institutions?

Political science would answer both questions with the following corollary hypotheses: (1) exercising control over institutions provides more power than securing support from such institutions; and (2) exercising control over public institutions would enhance the minority group’s vitality more so than controlling private institutions. The hypotheses are based on two assumptions: (1) making authoritative decisions (rule) wields more power than influencing decision-makers (governance); and (2) public institutions present three advantages over civil institutions: they exercise the State’s monopoly of coercion; their decisions have legislated legitimacy; they can more easily ensure implementation through stable and substantial public funds. With the reduced role and legitimacy of the State, however, these assumptions are challenged. But they still seem valid.

Two branches of political science have further explored questions related to minority self-determination, but research is at an early stage. Political geographers focus on sub-state institutions such as municipalities and regional agencies, boards and commissions (ABCs) responsible for land use planning, among others. Herb and Kaplan (1999) and Safran and Maïz (2000) show that territory and (sub-state) institutions whose service areas coincide with minority ‘homelands’ contribute to the creation or reinforcement of minority identity. Following Paasi’s (1997) claim that there occurs an institutionalisation of territory once sub-state institutions are established to service a specific area, scholars in public administration have shown how there also occurs a territorialisation of identity through sub-state institutions (Bourgeois and Bourgeois 2005a). In other words, the establishment of sub-state institutions such as municipalities and school districts create a mutually reinforcing relationship between institutions, territory and identity. Thus, if sub-state institutions serve a territory that coincides with a minority’s homeland, the minority can enhance its identity through the sub-state institution and its service area.
The relationship is further enhanced, it seems, when such sub-state institutions manage public functions that are deemed crucial to a minority’s survival and vitality, such as education (Landry and Rousselle 2003). But as we demonstrated elsewhere (Bourgeois and Bourgeois 2005b), ‘administrative nationalism’ can target any sub-state institution. Municipalities are corporations established primarily to manage ‘hard’ services like streets, water and sewers, functions that have no bearing on language and culture. But municipal councils can also be used by the minority to provide local services in the minority language, to organize leisure and cultural activities that reflect and respect the minority’s culture, and to symbolically proclaim their language and culture as ‘official’.

The relationship could be explained by verifying hypotheses drawn from the literature on administrative decentralization (Lemieux 1986, 2001, Page and Goldsmith 1987), such as: the delegation of authority and funds to a decentralized sub-state institution provides its managers with important discretionary powers that can be used against the central authority to justify further decentralization. For a minority group who finds it impossible to ever control the state apparatus, controlling sub-state institutions provides an interesting alternative. Administrative nationalism could also be explained by verifying hypotheses drawn from organization theory (Mintzberg 1979), especially ‘structures structure’: once a (sub-state) institution is established, its managers will develop formal and informal relations to ensure its effectiveness and survival and a match between the organization’s mission, structure and culture. According to this hypothesis, minority groups want to establish their own institutions or control existing (sub-state) institutions because their authority over such institutions would better ensure that the institutions will interpret the mission in a manner that meets their needs and respects their culture.

These assumptions and hypotheses are supported by some of the literature in political philosophy. Authors categorized as ‘the communitarian school’ (Taylor 1992, Sandel 1982, Walzer 1980) have over the years presented arguments that can be summarised into three basic assumptions. First, society cannot be reduced to the sum of its individuals; society synergizes its parts. In fact, secondly, society precedes the individual; individuals are ‘embedded’ beings whose ‘free’ decisions are structured by local history and culture. And third, communities, especially those whose members form a minority, have rights; individuals are not the only entity who can claim and exercise moral and political rights.

Discussion on rights leads us to the social science discipline that has dominated the study of minority groups over the past generation: law. This is especially true in Canada since the adoption of the 1982 Charter of Rights and Liberties. Legal scholars have studied sub-state institutions, stating how ‘educational self-government’ through minority-controlled school boards (Magnet 1983, 211) should be a fundamental minority group right because it is essential to its survival and is exercised collectively. The collective character of the effort enhances the minority’s identity. But legal scholars have paid little attention to other sub-state institutions like municipalities and regional health authorities.

Yet there is ample literature in administrative law to explore the possibility of applying the same jurisprudence that has sprung from Section 23 of the Charter related to minority educational self-government to other sub-state institutions. We argued elsewhere that
Section 23 jurisprudence enables minority school boards to claim they are a ‘level of
government’ similar to municipalities (Bourgeois 2003a). Municipalities are not a level
of government as are the federal and provincial/territorial orders, but the ‘myth of local
democracy’ puts them on such a pedestal (Bourgeois 1995). School boards are not held
in the same esteem, but the recognition and the powers bestowed upon them by Supreme
Court decisions\(^1\) outweigh the limited recognition and powers that municipalities have
received from the same court (Hoehn 1997). Put differently, minority school boards can
better claim to be a ‘level’ of government than municipalities restricted by Dillon’s rule\(^2\).

**Jurisprudence**

Educational self-management in Canada came about almost by accident. It happened in
1990 when the Supreme Court used an unrelated precedent to rule that the French version
of Section 23 would be preferred over the original English version to determine the
minority’s right in this regard.\(^3\) Thus, the translation of a section came to ‘revolutionise’
minority education rights in Canada (Behiels 2004, 5). Because the French version
specified that minority language schools were those ‘of’ the minority, the Court ruled that
they would ‘belong to’ the minority.\(^4\) Why? Because it ‘would be foolhardy to assume
that Parliament intended to . . . leave the sole control of the program development and
delivery with the English majority. If such were the case, a majority language group
could soon wreak havoc upon the rights of the minority and could soon render such a
right worthless.’\(^5\)

The Supreme Court’s decision surprised the federal and provincial governments who
elaborated Section 23 during the 1981 constitutional negotiations and adopted it
afterwards. Had they read the academic literature, as the justices did, they would have
expected the outcome. Concepts like ‘institutional completeness’ as a tool to enhance
‘ethnolinguistic vitality’ were known and played a key role in helping justices interpret
Section 23 and other minority rights\(^6\) It was thus to be expected that the Court would
‘breathe life’\(^7\) to minority rights with such academic guidance.

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\(^1\) *Mahé v. Alberta* [1990], 1 S.C.R., 342, *Reference re Public Schools Act (Man.), s. 79(3), (4) and (7)*

\(^2\) Dillon’s rule is the jurisprudential expression used to state that municipalities, because they are creatures of the provinces, can only exercise the authority that is given to them by provincial statutes and regulations.

\(^3\) *Mahé v. Alberta*, p. 372.


\(^7\) *Mahé v. Alberta*, p. 365.
Pleading ignorance was nevertheless justified because the Royal Commission on Bilingualism and Biculturalism had refused to recommend minority self-determination in education. This is important, because Canada’s sociolinguistic policy is largely based on the facts and arguments contained in the B&B Commission’s reports. The Commission, fearing that the poorer minority Francophone communities would not be able to afford education of equal quality without the state’s standard rules and funding, recommended, in its stead, that minority sub-boards be established within regional school boards shared with the majority in order to make decisions related to linguistic and cultural matters.

On the other hand, the Commission had outlined a political philosophy on minority rights and accommodations in the ‘blue pages’ of its first volume that argued for minority self-determination in all spheres. The ‘political dimension’ of ‘equality between the two communities’, it argued, ‘covers the possibilities for each society to choose its own institutions or, at least, to have the opportunity to participate fully in making political decisions within a framework shared with the other community.8 It added that the collective aspect of equality involves not only ‘cultural growth and development at the individual level’ but also, and more importantly, ‘the degree of self-determination which one society can exercise in relation to another.9 The Commission’s argument is clear:

‘We have in mind the power of decision of each group and its freedom to act, not only in its cultural life but in all aspects of its collective life. We are no longer concerned with the characteristics which distinguish the two communities qualitatively, or even with their respective social and economic positions, but with the extent of the control each has over its government or governments.’10

This referred to Francophones in Québec, but ‘mastery of its own existence’ also applied to the Francophone minority outside Québec after a century of provincial policies against the French language and culture. Their political status as a minority, the Commission argued, meant that they would have limited political recourse, but it also meant that Francophone minority communities outside Québec could legitimately ‘concentrate on the more limited political unit in which it is incontestably the majority group.’11 In other words, in the administrative areas of the country where they could exercise minority rule.

Thus, on the one hand, the Commission argued for minority self-determination, but in the field of education, arguably the most important public service enabling minority groups to transmit their language and culture to the next generation, on the other hand, it shied away from recommending minority-controlled school boards and decentralizing to such

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8 Royal Commission on Bilingualism and Biculturalism (1967) The Official Languages. Ottawa, Queen’s Printer, xlv-xlvi (we underline). Subsequent notes will abbreviate the author as RCBB.

9 RCBB (1967) The Official Languages..., xlvi (underline in original text).

10 RCBB (1967) The Official Languages..., xlvi.

11 RCBB (1967) The Official Languages..., xlvi. In the 1960s, Québec Anglophones enjoyed favourable status and did not warrant protection in the Commission’s eyes.
regional sub-state institutions key decision-making authority to meet the minority’s need. No wonder the federal and provincial governments could be confused by the Mahé case.

Moreover, the Supreme Court quoted the B&B reports in various lights. On the one hand, the Court used the Commission’s positive political philosophy. On the other, it neglected the Commission’s refusal to recommend educational self-management. The Court thus maintained the Commission’s quest for a balance between State intervention and minority self-determination without analyzing its impact. Provincial and territorial governments have since established minority-controlled school boards to manage minority language schools and delegated to them some of the authority exercised by their Departments of Education, but the courts have yet to disentangle the web it wove when it shared the responsibility over curriculum between the provincial and territorial authorities and the minority school boards. The minority school systems thus do not yet exercise the full authority bestowed upon them by the Supreme Court (Bourgeois 2005a), albeit major progress has been achieved since 1982. Therefore, in spite of the confusion and the lag between court decisions and the delegation of authority from Departments of Education to minority school boards, minority educational self-government will soon be a reality.

Jurisprudence has also focused on other fields, but not as often. Ottawa’s Montfort hospital provides the best example of how courts understand the importance of minority-controlled institutions in the health sector. Although the Ontario Court of Appeal ruled that the ‘status of Montfort as a francophone institution is not constitutionally protected by s. 16 (3) of the Charter’, it nevertheless ruled that the ‘respect for and protection of minorities’ identified by the Supreme Court as one of Canada’s unwritten constitutional principles, ‘is a fundamental constitutional value that has an important bearing upon the status of Montfort’12. Consequently, the Ontario justices ruled that, since Montfort was an important ‘institution to the survival of the Franco-Ontarian minority’, the government of Ontario could not redefine the hospital’s mandate13. This was not only because Montfort could guarantee health services in French better than majority-controlled hospitals and provide better medical training in French to health care professionals, but also because it was an ‘important linguistic, cultural, and educational institution, vital to the minority francophone population of Ontario.’14 Institutions matter symbolically.

Similar arguments were used in 1993 by Acadians living in Francophone-controlled Dieppe to avoid municipal amalgamation with Anglophone-dominated Moncton. But Acadians added to their arguments by invoking Section 16.1 (1) of the Charter: ‘The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.’ Specifically, they argued that the municipality of Dieppe was a cultural institution; consequently, Dieppe was sufficiently

12 Lalonde v. Ontario (Health Services Restructuring Commission) [2001] 56 R.J.O. (3d), 505, par. 188.
13 Lalonde v. Ontario…, par. 188.
14 Lalonde v. Ontario…, par. 188.
distinct from Moncton to ward off amalgamation. They dropped the injunction after the province opted for formal regionalization of services instead of amalgamation (Bourgeois 2005b). The courts have yet to determine if New Brunswick municipalities are important linguistic and cultural institutions vital to the minority according to Section 16.1 (1) of the Charter, but they stated something similar in previous cases. In light of the 1998 Secession ruling advocating the ‘protection of linguistic minorities’ and the 1999 Beaulac decision imposing positive obligations on provincial governments as they pertain to minority rights, however, it would be difficult for the courts to argue otherwise.

Yet this is exactly what the Québec Superior Court decided in Westmount. It ruled that, since municipalities are creatures of the province, the Government of Québec has complete jurisdiction over them. Consequently, Secession and Beaulac do not apply. Parallels between Anglophone school boards protected by Section 23 of the Charter and Anglophone municipalities were numerous, but the Court ruled against Anglophones. The appeal to the Supreme Court failed, so it seems that provincial governments outside New Brunswick, and maybe even in the bilingual province, do not have to protect the minority when intervening in municipal affairs that may pose risks to minority vitality.

The jurisprudence thus seems to present contradictory guidance: on the one hand, the Governments of Ontario and New Brunswick have to protect their Francophones’ vitality when it comes to its sub-state institutions (ie Montfort hospital, municipalities); on the other, the Government of Québec does not have to protect its Anglophone minority’s vitality when it comes to its sub-state institutions (ie Anglophone municipalities). The literature on institutional completeness and sub-state nationalism suggests that sub-state institutions can play a vital role in a minority’s vitality and should thus be protected. It appears that minority rights will sooner or later be fought over health and municipal institutions, notably, and that the courts will be forced to reconcile contradictory rulings.

**Minority Rule?**

If the integrated fragments of research on minority-controlled sub-state institutions demonstrate that such institutions (a) provide more and better services in the minority’s language, (b) better respect the minority’s cultural values (ie, adapt standard policies or adopt distinct policies to meet the minority’s needs) and (c) symbolically and practically promote the minority’s language, culture and identity, then municipalities and regional sub-state institutions managed by and for official language minority groups could play a significant role in the survival and vitality of the minority language and culture in Canada for years to come. For one thing, this research would provide sound arguments to entice

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minority groups to seek control over such institutions. Administrative nationalism may thus become a fashionable trend. For another, it would provide courts sound empirical examples of how the constitutional principle called ‘protection of linguistic minorities’, and variations thereof, could be interpreted liberally in order to take the jurisprudence established in support of minority school boards responsible for educational self-management and apply it to other sub-state institutions controlled by minorities.

Minority school boards thus provide a template for municipalities and regional health authorities, land use planning commissions and economic development commissions, to name a few. But there remains one important caveat: it may be counterproductive to reduce municipal councils’ significant authority to those of school boards. While municipal councils are limited by Dillon’s rule and do not have constitutional status, they have much more latitude in decision-making and, especially, in raising their own funds. On the other hand, the Supreme Court has been far more generous to minority school boards than to municipalities. Further consideration is warranted on whether minority school boards should ‘act like municipalities’ (Bourgeois 2003b) or vice versa. Nevertheless, what is important is that jurisprudence has forced provincial and territorial governments to let minority school boards hire and direct their pedagogical and administrative staff, spend funds and sign contracts to fulfill their mandate, establish curriculum in regards to language and culture, determine the minority’s educational needs, and determine school location. Similar administrative authority could be decentralised in favour of minority-controlled municipalities, health authorities, economic development commissions, etc. Most of these decentralized sub-state institutions already control most if not all of these decisions, but the ‘linguistic and cultural curricular activities’ seem absent from their functional schemes of thought.

In addition to empirical verification of the three hypothesis identified above – minority-controlled sub-state institutions (a) provide more and better services in the minority’s language, (b) better respect the minority’s cultural values (ie, adapt standard policies or adopt distinct policies to meet the minority’s needs) and (c) symbolically and practically promote the minority’s language, culture and identity –, research on minority rule (the control of sub-state institutions by minority groups) and administrative nationalism (the pursuit of nationalist collective projects by a minority group that seeks accommodations within the existing State administrative apparatus rather than through political autonomy – ie, its own State) must address at least four fundamental questions. First, do minority groups seek control over sub-state institutions to pursue collective goals? If so, which minority groups (language, race, etc.)? And why? Is it because of (a) state legitimacy, (b) taxation (the stability of funds), (c) benefits from the state’s monopoly of coercion, (d) all of the above or (e) other reasons? Second, do nationalists seek greater control over some functions and/or institutions in certain areas? If so, what functions, what institutions, and in what areas? And why? Moreover, what level of decision-making is considered ‘autonomous’? Third, what is the appropriate functional and territorial scale of sub-state institutions? What is the difference, if any, between a single provincial school board and a dozen regional school boards? Finally, there is a need for further exploration on the ‘critical mass’ theory on which is based many minority rights. For instance, if current formulae for the allocation of public services (number or proportion of
minority population within a service area of a given sub-state institution) favour minority groups who have a significant critical mass, is the neglect of smaller groups anathema to the principle of ‘protection of minority groups’?

However, in addition to empirical support and theoretical explanations regarding how such institutions can play such a pivotal role, minority groups must be careful of what they wish for. On the one hand, administrative decentralisation from provincial governments to sub-state institutions is not a panacea (Vié 1986). The most significant challenge is the minority’s limited critical mass: small numbers cause scale diseconomies (the cost per service unit increases as the number of consumers diminishes) and reduce specialisation of tasks (the more employees you have, the more you can specialize their work). This can be compensated by additional funding, but the other limits cannot. These include regionalism (the creation of particularities that threaten the universal norms) and the ‘cult of distinction’ (the virtuous or vicious cycle that occurs when a group claims to be distinct, then has to continually enhance its distinctiveness). The last two phenomena occurred in Dieppe after the 1993 threat of amalgamation: the city sought its own land use commission and water system and established its own economic development commission and its own downtown. Dieppe Council can pursue these autonomist projects, even if multiple land use commissions within the same urban area goes against the norm, but one has to wonder how a distinct water system can be argued on linguistic or cultural grounds (Bourgeois and Bourgeois 2005a). The fact that Dieppe, as an ‘edge city’ (Garreau 1991), sought its functional autonomy on other, more rational grounds does not negate the fact that its autonomous movement was initiated and based first and foremost on its attempt to distinguish itself through language and culture.

Research on administrative decentralization provides some assistance in guiding policy makers on the appropriate functions (education, health, etc.), decisions (plan, adopt, implement, evaluate) and activities (hiring of staff, internal and external regulation of the institution, funding) that governments can delegate to sub-state institutions. However, such research has yet to focus on the differences in that regard, if any, between minority-controlled and majority-controlled sub-state institutions. Research on New Public Management has also focused on the consequences of administrative decentralization, but it has been dominated by the neo-institutional school (Public Choice) that advocates a multiplication of sub-state institutions as a guarantor of majoritarian democracy and an antidote to bureaucratic autonomy. The neo-institutional school offers potential insights into the management of minority schools (Bourgeois 2003), and possibly in other sectors, but its ideological bias may limit its contribution to minority-majority accommodations.

But in the end, it appears that it is not the presence of sub-state institutions that matters, contrary to what Breton suggested; rather, it is if and how minorities use such institutions to meet their particular needs. Institutions are tools – means to achieve goals, although gaining their control can also represent an important symbolic goal for the minority. The means must link to the ends. If the various social sciences that have studied sub-state institutions can be integrated properly, they should be able to explain in what cases such institutions have been used to promote the language, culture and identity of minority communities, how such promotion was accomplished, and with what consequences. The
present state of research is far from this goal. But if the recent literature from political geography and public administration can be integrated to the existing literature on minority groups from social psychology, sociology, philosophy, political science and law, it is likely that concepts like ‘administrative nationalism’ and ‘minority rule’ will help minority groups, policy makers and courts explore the link between sub-state institutions and a minority’s ethnolinguistic vitality. But I repeat: more research is required.

In the meantime, minority groups will have to gamble that a quest for minority rule over sub-state institutions provides more and better services to these groups, better respects their cultural values and symbolically promotes the minority’s language, culture and identity. There are many examples ‘out there’ of groups already pursue such a quest. What is needed is empirical data on the causes, processes and consequences of such a pursuit. To successfully implement such a research agenda, scholars will have to integrate the contributions of various social sciences. Good research begets further research. Québec’s Anglophone communities may provide interesting case studies.
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