

Individual Rights – Group Rights

Based on Jane Jenson and Martin Papillon, *The “Canadian Diversity Model”:
A Repertoire in Search of a Framework* (CPRN, 2001).

The “Canadian Diversity Model”

The Canadian approach to diversity has long depended on a commitment to equality within a liberal democratic framework. This commitment is the common thread running through the four dimensions of choice that describe the lines of tension within the political community. The inclusion and participation of all citizens in the social, economic, cultural and political life of the community is, therefore, the necessary starting point for the successful management of diversity, as well as an end in itself.

Debate – about the balance points along each of the four dimensions – and collective choices – about the mix between uniformity and diversity – are crucial to the functioning of the model. Creating conditions where debate and collective choice are possible, in civil society as well as in everyday politics, has to be the fundamental aim of a diverse and pluralistic society such as Canada.

Four key dimensions of difference underpin the Canadian diversity model. Each dimension of difference has two end points. Our principal aim here is to describe the tensions inherent in each dimension and, in doing so, to locate the “saw-offs” that characterize the contemporary Canadian diversity model. Another is to identify the unresolved issues that will likely shape political discourse in the future.

Individual Rights – Group Rights

Well before the entrenching of the *Canadian Charter of Rights and Freedoms* in 1982, Canadians enjoyed certain fundamental individual freedoms protected by the laws and courts, as well as a commitment to equality. Because of its recognition of cultural diversity, Canada has not followed the standard model of liberal republicanism, in which citizens are granted a uniform set of individual – and purportedly “neutral” – rights based on a common citizenship. Instead, Canadians have always chosen some measure of protection and differentiated treatment for certain groups in society, based on the notion of *group rights*.

A supposedly “neutral” and context-blind conception of individual rights stands in stark contrast to the principles that informed the creation of the Canadian federation in the 19th century, as discussed above. Canadian federalism institutionalized compromises that required the extension of protections for language (French-English) and for religious communities (Catholic-Protestant). In the 20th century, Canada’s institutionalization of human rights commitments – through international covenants, the *Canadian Charter of Rights and Freedoms* and domestic human rights commissions – has extended protections against discrimination to a range of additional groups.

Group-based rights can be exercised by individuals or groups. As such, group rights are not necessarily

collective rights in the fullest sense of the term. For example, anti-discrimination measures are individual rights based on group membership. Other rights may be individual and collective. The distinction between group-based rights and individual rights, then, lies not in the rights themselves, but in how the rights are articulated in claims for recognition, as well as in how institutional responses to these claims are framed. For this reason, Canada's recognition of group rights, whether extended to collectivities or individuals within certain groups, is not in contradiction to liberal principles, once the value of culture to individual well-being and freedom is acknowledged.

The British North America Act, 1867 and the *Constitution Act, 1982* each recognize a range of group-based rights – for example, educational rights for religious minorities (*BNA Act*) and minority language educational rights (the *Charter of Rights and Freedoms*) – that are held by individuals, but exercised collectively through institutional arrangements granting the right to public funding to the minority group for separate schools in some provinces.

Sections 15 and 28 of the *Charter of Rights and Freedoms* extended the original group-based protections already present in human rights covenants and legislation. This extension signaled that procedural equality – treating everyone the same without distinction based on race, language, sex, religion or other characteristics – is not sufficient to guarantee equality. Instead, affirmative action may be needed to overcome past discriminatory treatment. These sections, nevertheless, remain well within the tradition of liberal recognition and protection of individual rights. Equality seekers making claims under Section 15 do not seek differentiated citizenship status but rather full inclusion in the citizenship regime.

The balance sought between individual and groups rights is also expressed in Sections 25 and 35 of the *Charter*, which define a specific set of protections

for the group rights of Aboriginal peoples living in Canada. The courts have played a significant role since 1982 elaborating a balance between the group rights of Aboriginal peoples and the guarantee of individual rights to all Canadians. Similarly, Quebec language policy emphasizes collectively held group rights. Language legislation is intended to provide protection to the French language, considered a cultural good for all members of the community.

Language and educational rights, as well as Aboriginal rights, are constitutional dispositions giving some groups particular recognition that result in differential treatment. These group-based rights – some held by individuals and others collectively – are in contradiction to a strict interpretation of the principle of universal and equal citizenship founded on a liberal republican model of individual rights. But, as a growing number of political theorists argue, in a diverse society, a *contextual* approach to equality that is sensitive to the reality and specificity of each case, and that goes beyond a simple *procedural* conception can bring much better results. Such an approach has been, and still is, a key component of Canada's repertoire for managing the tensions arising from cultural diversity.