Who Should Have Official Language Rights?

Alan Patten*

À qui devrait-on reconnaître des droits linguistiques? André Laurendeau raconte dans ses mémoires que l'Ouest canadien croyait souvent qu'il serait injuste d'accorder des droits linguistiques aux francophones plutôt qu'à d'autres communautés plus nombreuses. La Charte maintient résolument le cap du bilinguisme plutôt que celui du multilinguisme constitutionnel. Certains évoquent la justice dans un État libéral à l'appui des droits culturels et établissent une dichotomie entre les minorités nationales et les minorités d'immigration récente. Cet article avance que ce sont les droits et les intérêts de la société d'accueil qui justifient cette distinction.

I. The Problem

In his diaries concerning the work of the Royal Commission on Bilingualism and Biculturalism in 1964-1967, André Laurendeau confessed surprise at one particular objection the commissioners repeatedly faced while touring English-speaking Canada. Recounting the Commission's travels through western Canada in 1964, Laurendeau says they were often asked why it would not create an unjust situation to grant language rights to French but not to the languages of ethnic groups such as the Ukrainians. Laurendeau treats the issue as evidence of English Canada's profound misunderstanding of Quebec, but noticeably does not offer an answer to the question.[1]

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* Associate Professor of Politics, Princeton University, New Jersey, U.S.A. Revised version of a paper delivered at the Conference on Languages, Constitutionalism and Minorities held at the University of Ottawa, 11-12 November 2004.

[1] See André Laurendeau, *The Diary of André Laurendeau Written During the Royal Commission on Bilingualism and Biculturalism, 1964-67*, Patricia Smart and Dorothy Howard (trans.) (Toronto: James Lorimer, 1991), at 38, 47, 98-99 [hereinafter "B & B Commission"].

In the end, neither the B & B Commission nor Parliament when it enacted the *Official Languages Act*[2] allowed themselves to be derailed by the objection Laurendeau mentions. At the present, Canada's federal language regime establishes a rather sharp dichotomy between the two official languages, to which a norm of equal treatment is applied, and the 100 or more languages brought to Canada, and still used in certain contexts, by recent immigrants, which enjoy no constitutional recognition.

This dichotomy is difficult to explain in terms of relative population numbers, since speakers of particular immigrant languages in certain places far exceed the numbers speaking one or other of the two official languages. In British Columbia, for instance, Chinese-speakers outnumber French-speakers by a ratio of nearly 6:1, but it is French, not Chinese, that enjoys official language rights. The dichotomy would become even sharper if some of Canada's aboriginal languages were to enjoy an enhanced public status. To take the British Columbia example again, the ratio of Chinese-speakers to Cree-speakers (the most widely spoken Aboriginal language in B.C.) exceeds 100:1.[3]

If it is not just a matter of relative population numbers, then how should we answer the objection mentioned by Laurendeau? Why is it not morally arbitrary to extend one form of treatment to our national languages and a different, and symbolically diminished, form of treatment to immigrant languages? Can some morally salient rationale be given for this discrepant treatment or is it merely a reflection of relative differences in power or luck?

These questions have broader significance for our understanding of liberal democracy. A number of political theorists, including prominent Canadians like Charles Taylor and Will Kymlicka, have argued that the extension of rights to minority cultures is a matter of justice.[4] These include rights to use and maintain minority languages, as well as rights

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[2] The *Official Languages Act* was first enacted in 1969 (online at <http://www.ocol-clo.gc.ca/legislation.asp?Lang=English>). Now R.S.C. 1985, c. 38 (4th Supp.).

[3] The figures are from the 2001 Census, online at <http://www.bcstats.gov.bc.ca/data/cen01/profiles/59000000.pdf> (last accessed 4 November 2005).

[4] Charles Taylor, "The Politics of Recognition" in Amy Gutmann, ed., *Multiculturalism and the "Politics of Recognition"* (N.J.: Princeton University Press, 1993), at 25; Charles Taylor and Guy Laforest, *Reconciling the Solitudes — Essays on Canadian Federalism and Nationalism* (Montreal: McGill-Queen's University Press, 1993); Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995); Will Kymlicka, *Finding Our Way* (Toronto: Oxford University Press, 1998).

to a degree of self-government and to special representation within state-wide institutions. If one looks more closely at *which* cultures these theorists think are owed such rights, one finds the same sharp dichotomy between national minorities and immigrant or "ethnic" groups that is viewed in actual practice. Whereas the cultural rights proposed for immigrant groups are mainly integration-oriented, Kymlicka and Taylor think that national minorities have a legitimate aspiration to full public equality with the majority cultural group: the same rights to use and maintain their languages, to have institutions of self-government, and so on.

The objection made to the B & B Commission represents a major theoretical challenge to these liberal defenders of cultural rights as well. Why the dichotomous treatment of national and immigrant cultures? If no good answer to this question can be found, then the real implication of the cultural rights argument seems to be that *all* cultural groups have a legitimate claim to a full and equal set of such rights (perhaps with adjustments for differences in size). But for many critics, this implication amounts to a *reductio ad absurdum* of the cultural rights argument. It shows that one cannot start assigning cultural rights such as official language rights to certain groups without opening up a Pandora's Box full of cultural and identity claims which no political community could ever possibly fulfil.[5] Faced with this prospect, the critics argue, it is better to look for an alternative way of responding to cultural diversity within a liberal framework, one that is perhaps more akin to the "depoliticization" or "privatization" approach favoured by liberals with respect to religious diversity.[6]

For reasons that others and I have developed elsewhere, I do not think that this "depoliticization" approach is a viable alternative to a regime of official languages.[7] The parallel between religion and language simply will not work in the way the critics want. But even if their

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[5] The Pandora's Box image is suggested by Daniel Weinstock, "Le problème de la boîte de Pandore" in Michel Seymour, ed., *Nationalité, citoyenneté, et solidarité* (Montréal: Liber, 1999), at 17.

[6] See, *e.g.*, Brian Barry, *Culture and Equality* (Cambridge, MA: Harvard University Press, 2001).

[7] I have tried to develop a normative theory of language rights in several articles: Alan Patten, "Political Theory and Language Policy" (2001) 29 Political Theory 671; Alan Patten, "Liberal Neutrality and Language Policy" (2003) 31 Philosophy & Public Affairs 356. For an overview of the normative debate over language rights, see the editors' Introduction to Will Kymlicka & Alan Patten, eds., *Language Rights and Political Theory* (Oxford: Oxford University Press, 2003), at 1-51.

alternative is unworkable, the original objection of the critics still stands. Is there any reasonable solution that liberal proponents of cultural-linguistic rights can give to this problem? The remainder of the present paper will explore this issue. I begin by reviewing the best-known and most popular defence of the national/immigrant group dichotomy made by liberal defenders of cultural rights: the view that immigrants somehow *consent* to give up their cultural rights. After considering several serious problems with this view, I then develop my own defence of the dichotomy, which appeals to the *legitimate rights and interests of members of the receiving society*. If I can succeed in defending the dichotomy, then a major challenge to official language regimes will have been defused.

Before turning to the consent theory, let me add one final prefatory comment. The challenge posed to defenders of official language rights turns in part on the assumption that official language status could not possibly be extended to *all* the various languages spoken by members of a particular society. The problem, given this "non-universalizability" assumption, is to identify some way of deciding which languages should be included and which should be excluded that is not morally arbitrary or repugnant. It is possible, however, to question the non-universalizability assumption. Consider, for instance, the right to get information from the bureaucracy in a language of one's own choosing. There is no reason to think that the bureaucracy could not arrange to accommodate this (with the help of translators and interpreters) in an indefinite number of different languages. Other language rights might be applied to a wide variety of different languages through systematic use of a "where-numbers-warrant" principle. If a neighbourhood has a high enough concentration of speakers of a particular language, then why not insist that government officials, schools, hospitals, and so on, be prepared to offer services in that language? In other words, official language status need not be the uniform, once-and-for-all, all-or-nothing affair that it is in the Canadian model. Instead, official language rights could be extended on the basis of a more disaggregated and contextualized set of considerations.[8]

Although I am sympathetic with the idea of extending certain official language rights to an indefinitely large number of different

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[8] Some of the ideas in this paragraph were stimulated by conversations at the Ottawa conference with John Packer, Theresa Lee, and Denise Réaume, and also by Daniel Weinstock, "The Antinomy of Language Policy" in Kymlicka & Patten, *id.*, at 250-70.

languages, and am not at all wedded to the features of the Canadian model just described, my hunch is that there will remain a core set of contexts of official language use for which it would be highly desirable to limit the extension of rights to a fairly limited number of languages. Whatever the truth of this hunch, however, notice that it rests on both a normative principle (about what would or would not be "desirable") and on a set of empirical conjectures (about what would occur if rights were universalized). In the course of this paper I will make reference to several relevant empirical conjectures that are in line with my hunch, but I will not attempt to defend them. (The theory developed here does not itself depend on the empirical conjectures in question, although the policy implications of the theory do.) What the discussion will do along the way is shed some light on the normative principle by which the judgments about desirability are made. What kinds of factors are relevant for deciding whether or not a given conjectured outcome is desirable? And for whom should we determine whether it is desirable? These normative-theoretical questions have generally been ignored in the debate about official language rights, and one goal of this paper is to seek to address this gap.

II. The Consent Theory

The best-known attempt to justify the dichotomy between national and immigrant groups — the consent theory — is associated with the work of Will Kymlicka, although the solution that Kymlicka suggests has been around for a long time and is familiar from everyday discourse. In his 1995 book, *Multicultural Citizenship*, Kymlicka maintains that the contrasting ways in which national and immigrant groups come to find themselves under the jurisdiction of the state provides a morally relevant basis for treating their cultural-linguistic claims differently.

National groups, he argues, were typically involuntarily incorporated into the state through conquest or annexation, or voluntarily joined the state at some moment of confederation but with the implicit or explicit guarantee that their cultural and linguistic claims would be respected. The members of such groups thus never gave up the rights that they can claim to cultural-linguistic protection and recognition.

Immigrants, by contrast, "choose to leave their own culture" and thus can be regarded as "waiving" their rights to live and work in their own culture.[9] The expectation that immigrants integrate into the host society is not unjust "so long as immigrants had the option to stay in their original culture."[10] Kymlicka admits that refugees, including "economic refugees," cannot really be thought of as voluntarily leaving their home society.[11] But he does not think that treating such refugees as though they were national minorities is the best way to address their predicament. The injustices that force them to flee their country "must ultimately be solved in the original homeland."[12]

Kymlicka's justification of the immigrant/national group dichotomy relies, then, on the idea that newcomers can, in general, be described in one or other of two ways: either (1) they consented to waive their claim to official rights for their languages, or (2) they were unable to give their consent, but the conditions that undermined their ability to consent are the responsibility of their state of origin and thus the receiving society has no duty to extend official rights to their languages. By contrast, members of national groups cannot be described in either of these ways. They never waived their language rights, and there is no other homeland to whom they should address themselves in seeking rights for their languages.

Familiar as it is, this defence of the immigrant/national group dichotomy has been widely criticized. Many critics have attacked the notion that immigrants can, in general, be regarded as having voluntarily waived their language rights.[13] Certainly, we cannot regard the children of immigrants as having consented to waive their rights: they may not even have been born yet at the moment of immigration. Moreover, "for consent to be morally relevant, it needs to be free and informed."[14] There

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9 Kymlicka, *supra*, note 4, at 95.

10 *Id.*, at 96.

11 *Id.*, at 98.

12 *Id.*, at 100.

13 See *e.g.*, Weinstock, *supra*, note 5, at 29; Joseph Carens, *Culture, Citizenship, and Community* (Oxford: Oxford University Press, 2000), at 81; Sujit Choudhry, "National Minorities and Ethnic Immigrants: Liberalism's Political Sociology" (2002) 10:1 Journal of Political Philosophy 54, at 61-65.

14 Ruth Rubio-Marín, "Exploring the Boundaries of Language Rights: Insiders, Newcomers, and Natives" in Stephen Macedo and Allen Buchanan, eds., *Self-Determination and Secession: NOMOS XLV* (New York: NYU Press, 2003). For an earlier ancestor of the present paper, see my response to Rubio-Marín in the same volume: Alan Patten, "Can the Immigrant/National Minority Dichotomy Be Defended? Comment on Ruth Rubio-Marín," at 174-92.

are reasons to think that neither the freedom conditions, nor the informational one, are satisfied for many immigrants. To call a choice "free," there must be at least two viable options to choose from. We know that, very often, the political, economic, and cultural circumstances faced by people in developing and/or war-torn countries are such as to make emigration the only eligible option and to introduce an element of necessity into the "choice" to leave.

III. Beyond the Consent Theory

I will return to this issue of consent later in the paper, but first I want to draw attention to two additional problems in Kymlicka's presentation of the consent-based argument. Although these problems further weaken Kymlicka's defence of the dichotomy, they also point the way to a distinct and more robust solution to the puzzle being considered.

The first problem is connected with the broader argumentative context in which the claims he makes about consent appear. Kymlicka claims that access to a secure societal culture is a necessary precondition of individual autonomy and to this extent represents a kind of "primary good."[15] He also argues, on a variety of grounds, that people have interests in being able to access not just any secure societal culture, but, in particular, their *own* societal culture — *i.e.*, the one in which they were born and raised. Encouraged by some of Kymlicka's statements, readers have tended to put these two different claims together to reach the conclusion that access to one's own societal culture is, for Kymlicka, a primary good.

But, if access to one's own societal culture is such an important and fundamental good, then it is puzzling how immigrants could ever be thought to have waived their rights to re-create their own societal culture in the receiving society.[16] It looks, on Kymlicka's theory, as if they would be renouncing their own freedom. And we might legitimately question whether this is something that people could give up or, indeed,

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[15] The term is from John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), and denotes a basic social need that any citizen is assumed to have, whatever other more particular goal and needs he or she may also have.

[16] Weinstock, *supra*, note 5, at 30; Choudhry, *supra*, note 13, at 61-63; Rainer Bauböck, "Cultural Citizenship, Minority Rights and Self-Government" in Alex Aleinikoff & Doug Klusmeyer, eds., *Citizenship Today: Global Perspectives and Practices* (Washington, DC: Carnegie Endowment for International Peace, 2001), at 235.

whether it is something that a liberal receiving society could *ask* anyone to give up.

The solution to this problem, however, is not to jettison the whole theory. A better response is to be more careful in describing the way in which access to their own culture is a good for immigrants. We should be careful to disentangle the claim that "access to *a* societal culture is a primary good" from the claim that "people *have interests* in accessing their *own* societal culture." It is quite possible to accept both of these claims without mushing them together into the single proposition that "access to one's own societal culture is a primary good." One's own societal culture is a potential source of comfort, familiarity, identity, pride, and a way of talking about, and being in, the world that is to some extent unique. These all point to reasons for thinking that people have interests in being able to access their own societal culture. But they are not reasons for thinking that a person's very freedom would be fatally compromised if he or she were cut off from his or her own societal culture. It is possible for immigrants (and others) to find the range of meanings and options they need to be free in a new societal culture, if they can manage to learn that culture's language and master the rudiments of its way of life, and if the receiving society is willing to accept them with toleration and openness.

So one weakness in Kymlicka's defense of the dichotomy is that it is offered in the context of what seems to be an over-heated account of one's own societal culture as a primary good.[17] This makes it hard to see how anyone could be asked to waive away any cultural-linguistic rights. If we substitute for this account a more toned-down view of the interests that people have in accessing their own culture, then it becomes more reasonable to believe that certain cultural-linguistic rights are the kinds of things that people could sometimes legitimately be asked to give up.[18]

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[17] I say "seems" because I am not certain that the account in question is in fact Kymlicka's. I was not able to find in *Multicultural Citizenship* an explicit statement that access to one's own societal culture is a primary good. Kymlicka does say, at 86, that "we should treat access to one's culture as something that people can be expected to want, whatever their more particular conception of the good."

[18] In the longer version of this paper, I distinguish between two categories of language rights, which I term "norm-and-accommodation rights" (which provide transitional assistance to people who have not yet learned the "normal" language of their society) and "official language rights" (which seek to establish public equality between various languages). I argue that "norm-and-accommodation rights" (such as rights to a translator in court) are a fundamental interest for people, and thus not something that a liberal society could ask anyone to renounce. By contrast,

A second weakness in Kymlicka's original discussion of dichotomy is that it focuses too much attention on the situation of the immigrant and not enough on the rights and interests of members of the receiving society. This gap in the argument can be seen from two different angles. On the one hand, as we have just seen, even if there are immigrants who really would consent to give up certain rights, it would still be necessary to determine whether it is legitimate for a (liberal) receiving society to ask them to do so. Most readers would agree with Kymlicka that an American emigrating to Sweden could be asked to waive his rights to English-language public services. But readers would probably look at the case differently if Sweden were asking the American to give up the freedom to practice his own religion. However voluntary the American's acceptance of such a condition might be, there are some things a liberal society should not ask of anyone.[19]

It is the inverse case that is more relevant for the attempt to shore up Kymlicka's argument, however. Just as it may not be legitimate for a territorially based group to attach certain conditions to voluntary immigration, it *may* be legitimate for such a group to attach certain conditions to immigration that is involuntary or not fully voluntary. The members of a host group may have certain important interests of their own in being able to control a particular territory — interests that are weighty enough to ground rights to control access to the territory and to attach conditions to admission to the territory.

IV. Rights and Interests of Members of the Host Society

In general, to establish that some individual or group possesses a right, one must show:

1. that there is an interest or set of interests that would be protected by the right that is, at least *prima facie*, sufficiently weighty to place others under the set of duties corresponding to the right; and
2. that there are no competing considerations or interests that are weighty enough to override or nullify these duties.

"official language rights" have their basis in the equal treatment of different identities, and fall into the category of something that people could sometimes legitimately be asked to give up.

[19] Carens, *supra*, note 13, at 81.

Let's look at each of these requirements in turn in the context of the rights of the host society to control access to its territory and to attach conditions to admission.

Members of the receiving society have two important interests of relevance to establishing the rights in question:

1. an interest in securing the conditions of a democratic society oriented around the realization of a scheme of justice;
2. an interest in maintaining their own languages, as sources of identity, pride, comfort, cultural heritage, connection with the past, and so on.

Given certain plausible empirical conjectures (about which more in a moment), both of these interests support the idea that members of the receiving society have a right to control the territory they inhabit that includes the right to attach conditions to admission to the territory. If attaching a specific condition to admission is necessary to protect or secure one of these interests, then there is a *prima facie* case for thinking that the members of the receiving society have a right to do so. (If it is not reasonable to make the empirical conjectures alluded to, then there is less, or no, reason for thinking there is such a right.)

Requiring that immigrants give up the claim on official status for their languages is arguably a condition that is needed to secure the interests in democratic government and language maintenance. A plausible empirical conjecture is that a commitment by public institutions to recognize officially every immigrant language (as well as the languages of established groups) would be crippling to democratic self-government. An obscene proportion of resources would be devoted to translations, interpreters, language classes, and the like, leaving fewer resources to be spent on the purposes for which the institutions were established in the first place. Public meetings would be slowed down by the use of many different languages and sapped of their vitality and spontaneity. Because democratic self-government would be impossible under a regime of unrestricted official multilingualism, established citizens have a strong interest in requiring immigrant languages to give up their claim on official status. Established citizens are embarked on a project of democratic self-government and they have a strong stake in protecting the ongoing integrity of their project.

The same conclusion can be arrived at by reference to the interest in language maintenance. Here the relevant empirical conjecture is that

official recognition of all languages — including immigrant ones — would make it hard for minority languages to maintain themselves. The more languages there are that receive public recognition the more it is likely that such recognition will become a meaningless formality and the real work will be done in the dominant language. If just a few languages are privileged for official status, by contrast, then it may be easier to carve out for them a role in public institutions that is more than merely symbolic. The idea is that minority languages could not possibly compete with the dominant language unless a few are singled out and given a special public role. So the interest that minority language speakers in the receiving society have in maintaining their own languages translates into an interest in requiring immigrants to give up the claim on official status for immigrant languages.

Now both these arguments could be challenged by calling into question the empirical conjectures on which they rely. I do not consider this an embarrassment to the theory being developed here, however. If it is really not the case that there is a tension between recognizing immigrant languages and the specified interests of the host society, then why *should* we think that the host society has any right to require immigrants to waive away official language status? It is a virtue of the theory being proposed that it offers a clear, empirical test for when the host society has such a right and when it does not.

V. What About the Interests of Immigrants?

So much for the first step of the argument: showing that the members of the host society have an interest in attaching as a condition of admission the requirement that new immigrants waive their rights to have their languages recognized as official. The second step is more difficult, because it requires us to deal with the fact that the immigrants themselves seem to have a perfectly symmetrical and hence offsetting set of interests. If the immigrants have an equally strong set of interests in the official recognition of their own languages as do the members of the host society, then it would seem that the interests of the latter are not strong enough to place the former under a duty to waive their official language rights.

To solve this difficulty, two observations are necessary. The first is that the interests of the immigrants and the members of the host society are not perfectly symmetrical. There is an asymmetry with respect to the

first interest I mentioned — the interest in democracy. Immigrants and hosts alike share an interest in democracy, but they do not have symmetrical interests that the democratic institutions of the host state should be conducted in their own languages. The democratic institutions of the host state are *already* operating in the official languages of the host society — this is a morally relevant fact on the ground — and, given the linguistic capabilities of the host population, there is no feasible way of reforming the democracy so that it operates in the immigrant languages instead.

An American who emigrates to Sweden arrives in a well-functioning democracy that operates in Swedish. If Sweden were to try to reconfigure its institutions so that they also operated in English, and in the many other languages brought to its shores by immigrants, its democracy could well be compromised. And the deterioration of Sweden's democracy is something that the American immigrant, as much as the Swedish-born citizen, has an interest in avoiding. Thus, on the basis of the interest in democracy, *everyone* concerned shares an interest in requiring immigrants to waive their claims on official language status.

If we turn to the second interest I mentioned, the interest in language maintenance, the position of immigrants and host society members is symmetrical. The interests of hosts and the interests of immigrants in preserving their languages seem equally strong. It is hard therefore to see why the immigrants could have a duty corresponding to the interests of the hosts in this respect. The interests of immigrants in protecting their own languages seem to offset any duty they might otherwise have to help preserve the host languages.

But here the argument for thinking that the host society has a right to require immigrants to give up claims on official language status can be made in a different way. The symmetry of interests poses a problem to the extent that political morality requires strict impartiality between the interests of different people. Many philosophers believe, however, that at least some space should be left in an otherwise impartialist ethic for a self-regarding prerogative. People should be able to throw *some* additional weight behind their *own* projects, commitments, and attachments, even if, from an impartial standpoint, their energies would create more good if they were devoted to promoting the good of others. Reserving for people this self-regarding prerogative is a way of showing

respect for the integrity and agency of persons. One of the functions of rights is to mark out and protect these zones of reasonable partiality to self.[20]

Asking newcomers to waive certain cultural-linguistic rights is arguably a good example of just the sort of demand made by more privileged insiders that falls into this zone of reasonable partiality. The key point is that established members of the community (members of "national" groups) have priority over immigrants in claiming official language rights precisely because they are *established*. They are committed to, and in the middle of pursuing, a set of individual and collective projects, a set that typically includes the cultivation and maintenance of certain languages and cultures. Whatever the impersonal value of these projects, the projects belong *to* the established citizens, and their integrity and well-being as agents is partly bound up with having a meaningful opportunity to pursue and prioritize them. The importance of these projects to the agents who are in the middle of pursuing them makes it legitimate for those agents to show a degree of partiality to themselves, even where this conflicts with the impartial ethical requirements they may otherwise be facing.

I have conjectured that extending official status to immigrant languages is something that would conflict with the pursuit by established citizens of their own reasonable cultural and political projects. If this is right, then it seems as though we have identified precisely the kind of situation in which it is reasonable for members of the receiving society to exercise their self-regarding prerogative by insisting that immigrants give up the possibility of claiming official status for their languages.

VI. The New Theory and the Consent Theory Compared

Formulated in this way, the argument is not quite the same as the one proposed by Kymlicka, but it does help to make sense of the focus on consent in Kymlicka's original version. To regard the giving up of a claim on official status by an immigrant as an instance of "consent" or "waiving," it must be the case that the members of the receiving society

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[20] For a discussion of the philosophical position gestured at in this paragraph, see, *e.g.*, Samuel Scheffler, *The Rejection of Consequentialism* (Oxford: Oxford University Press, 1982); Samuel Scheffler, *Boundaries and Allegiances* (Oxford: Oxford University Press, 2003) and Thomas Nagel, *Equality and Partiality* (Oxford: Oxford University Press, 1995).

have the *right* to attach this condition to admission. The argument I have been making helps to flesh out why established members of the community might be regarded as having this right. But, of course, attributing this right to members of the receiving society is not sufficient for regarding the whole transaction as consensual. For consent to be present, there must also be (as Kymlicka's critics remind us) at least some minimal degree of voluntariness in the decision to immigrate. The would-be immigrants must have acceptable alternatives, they must be adequately informed about the options they face, and so on.

Arguably these conditions are often met in the real world of immigration. For a variety of reasons, many immigrants do not come from the worst-off or least-educated strata of their home societies. They have reasonable alternatives and some insight into the choice they are making, and thus it would not be inappropriate to describe them as "consenting" to give up their claim on official language status or as "waiving" such a claim. For some migrants, however, especially (as Kymlicka himself observes) for refugees, the minimal conditions of voluntariness are not satisfied. Here it would plainly not be appropriate to use terms such as "consent" or "waiving" to characterize the situation in which their languages are refused official status.

It does not follow from this, however, that the refusal of official status is illegitimate. The argument I have been proposing — that immigrants and members of the receiving society alike share an interest in maintaining the conditions of democracy, and that members of the receiving society are justified in showing some degree of partiality to their own cultural projects and commitments — does not stand or fall with facts about the voluntariness of the migrant's choices. What this suggests is that consent is not the operative *normative* principle in generating the immigrant/national group dichotomy. Rather it is a *descriptive* term that can often (but not invariably) be applied to characterize from the immigrant's point of view the refusal of official language status. The operative normative principles, I have been arguing, are the importance of democracy and the reasonable limited partiality of members of the receiving society.